
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**FORM 8-K
CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
Date of Report (Date of earliest event reported): September 22, 2020**

NRG ENERGY, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-15891
(Commission File Number)

41-1724239
(IRS Employer Identification No.)

804 Carnegie Center, Princeton, New Jersey 08540
(Address of principal executive offices, including zip code)

(609) 524-4500
(Registrant's telephone number, including area code)

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

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of exchange on which registered</u>
Common Stock, par value \$0.01	NRG	New York Stock Exchange

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

On September 22, 2020, NRG Receivables LLC (“NRG Receivables”), a wholly-owned subsidiary of NRG Retail LLC (“NRG Retail”), and certain of NRG Retail’s subsidiaries (the “Originators”) entered into a \$750 million accounts receivable securitized borrowing facility (the “Receivables Facility”) with a group of conduit lenders and banks and Royal Bank of Canada (“RBC), as Administrative Agent. The Receivables Facility includes a receivables sale agreement, a receivables loan and servicing agreement and a performance guarantee.

Pursuant to the receivables sale agreement dated as of September 22, 2020 among Green Mountain Energy Company, Reliant Energy Northeast LLC, Reliant Energy Retail Services, LLC, Stream SPE, Ltd, US Retailers LLC and Xoom Energy Texas, LLC, as the Originators, NRG Retail, as the Servicer, and NRG Receivables (the “Receivables Sale Agreement”), the Originators will sell to NRG Receivables substantially all of their receivables for the sale of electricity, natural gas and/or related services to their customers and certain related rights (collectively, the “Receivables”) and in connection therewith have transferred to NRG Receivables the deposit accounts into which the proceeds of such Receivables are paid. The Receivables will be sold by the Originators to NRG Receivables at a discount, which will initially be 1% and is subject to adjustment for future sales to reflect changes in prevailing interest rates and collection experience. NRG Receivables will be consolidated in the financial statements of NRG Energy, Inc. (“NRG”).

Pursuant to the receivables loan and servicing agreement dated as of September 22, 2020 (the “Receivables Loan Agreement”) among NRG Receivables, as Borrower, NRG Retail, individually and as Servicer, RBC, as Administrative Agent, the conduit lenders described therein, the committed lenders described therein, the LC Issuers described therein and the facility agents described therein (collectively, the “Lenders”), NRG Receivables may borrow up to \$750 million outstanding at any time, of which up to \$400 million may be in the form of letters of credit issued by the LC Issuers for the benefit of the Originators or their affiliates based on the availability of eligible Receivables and other customary factors. As part of the Receivables Loan Agreement, the Borrower has granted a security interest in its Receivables and other related assets to the Administrative Agent, for the benefit of the Lenders. The proceeds of the Receivables Facility will be used for general corporate purposes, including providing additional liquidity for the acquisition by NRG of Centrica plc’s North American energy supply, services and trading business, Direct Energy, under the terms of the previously disclosed Receivables Sale Agreement entered into on July 24, 2020. Unless earlier terminated or subsequently extended pursuant to the terms of the Receivables Loan Agreement, the Receivables Facility will expire on September 21, 2021. The Receivables Loan Agreement contains customary termination events that could cause an early termination date, including, among other things, the failure to make timely payments or deposits under the Receivables Facility documents, breach of representations or covenants, events of default under other indebtedness, certain changes of control and the failure to meet certain leverage ratios and Receivables ratios.

NRG has agreed to guarantee the performance of the Servicer and the Originators under the Receivables Facility documents. NRG has not agreed to guarantee any obligations of NRG Receivables or the collection of any of the Receivables.

In connection with the Receivables Facility, NRG Retail and the Originators also entered into a separate uncommitted repurchase facility pursuant to which they may obtain short-term financing secured by a subordinated note issued by NRG Receivables up to the lesser of \$75 million and the principal amount of such subordinated note. Any such repurchase transaction will have a one-month maturity unless terminated earlier as a result of a termination event under the Receivables Facility or the occurrence of any other event of default under the repurchase facility. NRG will guarantee the obligations of NRG Retail and the Originators under the repurchase facility.

The foregoing description of the Receivables Sale Agreement and the Receivables Loan Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the full text of such agreements, copies of which are filed as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K and are incorporated herein by reference.

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

The disclosures under Item 1.01 of this Current Report on Form 8-K are also responsive to Item 2.03 of this report and are incorporated by reference into this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit No.	Description
<u>10.1</u>	<u>Receivables Sale Agreement, dated as of September 22, 2020, among the Originators from time to time parties thereto, NRG Retail LLC, as Servicer, and NRG Receivables LLC.</u>
<u>10.2</u>	<u>Receivables Loan and Servicing Agreement, dated as of September 22, 2020, among NRG Receivables LLC, as Borrower, NRG Retail LLC, as Servicer, the persons from time to time party thereto as Conduit Lenders, the persons from time to time party thereto as Committed Lenders, the persons from time to time party thereto as Facility Agents, the financial institutions from time to time party thereto as LC Issuers, and Royal Bank of Canada as Administrative Agent.</u>
104	Cover Page Interactive Data File – the cover page XBRL tags are embedded within the iXBRL document contained in Exhibit 101.

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 hereunto duly authorized.

Dated: September 24, 2020

NRG Energy, Inc.
(Registrant)

By: /s/ Christine A. Zoino
Christine A. Zoino
Corporate Secretary

RECEIVABLES SALE AGREEMENT

dated as of September 22, 2020

among

THE ORIGINATORS FROM TIME TO TIME PARTIES HERETO,
as Originators

and

NRG RECEIVABLES LLC

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SCHEDULES

- Schedule I List of Originators
- Schedule II State of Organization of Originators
- Schedule III Location of Books and Records of Originators
- Schedule IV Prior Names

EXHIBITS

- Exhibit A Form of Subordinated Note
- Exhibit B Form of Joinder Agreement

This RECEIVABLES SALE AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “*Agreement*”), dated as of September 22, 2020 is entered into among THE ORIGINATORS (as defined below) FROM TIME TO TIME PARTIES HERETO, NRG RETAIL LLC, a Delaware limited liability company (the “*Servicer*”), and NRG RECEIVABLES LLC, a Delaware limited liability company (the “*Company*”).

BACKGROUND:

1. The Originators generate Receivables in the ordinary course of their business;
2. The Originators wish to sell Receivables to the Company, and the Company is willing to purchase Receivables from the Originators, on the terms and subject to the conditions set forth herein;
3. Each Originator has determined that such sales to the Company are in the reasonable commercial and best interests of such Originator and its creditors and that the transactions contemplated by this Agreement represent a practicable and reasonable course of action to improve the financial position of such Originator; and
4. The Originators and the Company intend the transactions hereunder to be a true sale of Receivables by the Originators to the Company, providing the Company with the full benefits of ownership of the Receivables, and the Originators and the Company do not intend the transactions hereunder to be a loan from the Company to the Originators (other than, if applicable, for income Tax purposes).

NOW THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

DEFINITIONS

Unless otherwise indicated herein, capitalized terms used and not otherwise defined in this Agreement are defined in *Section 1.01* of the Receivables Loan and Servicing Agreement, dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “*Receivables Loan Agreement*”), among the Company, as Borrower, NRG Retail, individually and as Servicer (the “*Servicer*”), the Conduit Lenders described therein, the Committed Lenders described therein, the LC Issuers described therein, the Facility Agents described therein, and Royal Bank of Canada, as Administrative Agent. In addition, the following terms shall have the following meanings:

- “*Agreement*” has the meaning specified in the first paragraph hereof.
 - “*Article 9*” has the meaning specified in *Section 1.5* of this Agreement.
 - “*Company*” has the meaning specified in the first paragraph of this Agreement.
-

“*Deemed Collections*” means any Seller Collections deemed received from the applicable Originator equal to on any day (i) the portion of any Sold Receivable which is reduced or cancelled as a result of the events described in *Section 2.09* of the Receivables Loan Agreement and (ii) the aggregate Outstanding Balance of all Receivables as to which any of the representations or warranties in *Sections 5.1(n), (o) or (s)* of this Agreement is not true.

“*Effective Date*” means (i) with respect to Reliant Energy Retail Services, LLC, Reliant Energy Northeast LLC, Green Mountain Energy Company, US Retailers LLC, Stream SPE, Ltd., and XOOM Energy Texas, LLC, September 22, 2020 and (ii) with respect to any other Originator, the day on which such Originator is added as an “Originator” hereunder pursuant to *Section 4.3*. “*Joinder Agreement*” has the meaning specified in *clause (a)* of *Section 4.3* of this Agreement.

“*Joinder Agreement*” has the meaning specified in *clause (a)* of *Section 4.3* of this Agreement.

“*Originator*” and “*Originators*” means each Person listed in *Schedule I* to this Agreement, as such Schedule may be revised from time to time in accordance with *Section 4.3* of this Agreement.

“*Payment Date*” means, with respect to any Originator, (a) the Effective Date and (b) each Business Day thereafter.

“*POR Receivable*” means a payment obligation of a Utility to an Originator arising from the sale of a Purchased-by-Utility Receivable by such Originator to such Utility.

“*Potential Purchase Termination Event*” means an event that, with the giving of notice or lapse of time, or both, would constitute a Purchase Termination Event.

“*Purchase Termination Date*” has the meaning specified in *Section 1.4* of this Agreement.

“*Purchase Termination Event*” has the meaning specified in *Section 8.1* of this Agreement.

“*Purchase Facility*” has the meaning specified in *Section 1.1* of this Agreement.

“*Purchase Price*” has the meaning specified in *Section 2.1* of this Agreement.

“*Purchased-by-Utility Program*” means a “purchase of receivables” or similar program pursuant to which a Utility agrees to purchase Retail Receivables from an Originator.

“*Purchased-by-Utility Receivable*” means any Retail Receivable sold or contracted to be sold, by an Originator to a Utility pursuant to a Purchased-by-Utility Program.

“*Receivable*” means any (i) Retail Receivable other than any Purchased-by-Utility Receivable or (ii) POR Receivable.

“*Receivables Loan Agreement*” has the meaning specified in the first paragraph of this *Definitions* section.

“*Reconveyed Receivable*” has the meaning specified in *Section 3.4*.

“*Related Rights*” has the meaning specified in the last paragraph of *Section 1.1* of this Agreement.

“*Related Security*” means, with respect to any Sold Receivable:

- (a) all instruments and chattel paper that may evidence such Sold Receivable;
- (b) all security interests or liens and property subject thereto from time to time purporting to secure payment of such Sold Receivable, whether pursuant to the related Contract or otherwise;
- (c) all UCC financing statements or other filings covering any collateral securing payment of such Sold Receivable (it being understood that such UCC financing statements will not be assigned of record to the Administrative Agent unless requested by the Administrative Agent after an Event of Termination);
- (d) (i) with respect to a Retail Receivable, all of the applicable Originator’s rights, interests and claims to receive payment under the Contract(s) with respect to such Retail Receivable or (ii) with respect to a POR Receivable, all of the applicable Originator’s rights, interests and claims to receive payment from the applicable Utility under the Contract(s) with respect to such POR Receivable and, in each case, all guaranties, indemnities, insurance and other agreements (including under the related Contract), supporting obligations (as defined in the UCC), letters of credit or arrangements of whatever character from time to time, supporting or securing payment of such Sold Receivable or otherwise relating to such Sold Receivable, whether pursuant to the Contract related to such Sold Receivable or otherwise;
- (e) all books and records (excluding the Contracts) relating to such Sold Receivable or any of the foregoing (it being understood that such books and records will be maintained by the Servicer); and
- (f) all proceeds of the foregoing;

provided that, notwithstanding the foregoing, any of the foregoing for which an assignment from the applicable Originator to the Company or the granting of a security interest from Company to Administrative Agent would violate any law, regulation or agreement binding upon such Originator or the Company (but, in the case of any agreement, only to the extent no law or regulation exists which would render such anti-assignment provision unenforceable), shall not be deemed to be Related Security; and provided, further, that the applicable Originator and the Company shall not be required to notify the related Obligor or to record the assignment to the Administrative Agent of any Related Security unless requested by the Administrative Agent after an Event of Termination.

“*Required Capital Amount*” has the meaning specified in *Section 3.2(b)* of this Agreement.

“*RSA Indemnified Party*” has the meaning specified in *Section 9.1* of this Agreement.

“*RSA Relevant Amounts*” has the meaning specified in *Section 9.1* of this Agreement.

“*Seller Collections*” means, with respect to any Sold Receivable: (a) all funds that are received (whether in the form of cash, wire transfer, check or otherwise) by an Originator, the Company or the Servicer in payment of any amounts owed in respect of such Sold Receivable (including purchase price, finance charges, interest, Taxes, transmission charges (if any) and all other charges), or applied to amounts owed in respect of such Sold Receivable (including insurance payments and net proceeds of the sale or other disposition of repossessed goods or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of such Sold Receivable and available to be applied thereon), and (b) all Deemed Collections.

“*Servicer*” has the meaning specified in the first paragraph of this *Definitions* section.

“*Sold Receivable*” means, with respect to any Originator, a Receivable sold, or purported to be sold, hereunder to the Company by such Originator which has not subsequently been reconveyed to the relevant Originator pursuant to the terms hereof.

“*Subordinated Note*” has the meaning specified in *Section 3.1* of this Agreement.

“*Utility*” means an electric and/or gas utility (or affiliated captive finance company).

ARTICLE I AGREEMENT TO PURCHASE AND SELL RECEIVABLES

Section 1.1 Agreement To Purchase and Sell Receivables. On the terms and subject to the conditions set forth in this Agreement, each Originator hereby sells to the Company, and the Company hereby purchases from such Originator, from time to time on or after the Effective Date, but before the Purchase Termination Date, all of such Originator’s right, title and interest in and to:

- (a) each Receivable outstanding as of the Effective Date or generated by such Originator after the Effective Date and prior to the Purchase Termination Date, whether now existing or hereafter created by such Originator, other than any Reconveyed Receivable;
- (b) all rights to, but not the obligations of, such Originator under all Related Security with respect to any of the foregoing Receivables;
- (c) all Seller Collections and other monies due or to become due to such Originator with respect to any of the foregoing; and
- (d) all proceeds (as defined in the UCC) of any of the foregoing received by (or for the account of) such Originator in respect of any of the foregoing (including, without limitation, net proceeds of sale or other disposition of repossessed goods or other collateral or property of the Obligors in respect of any of the above Receivables or any other parties directly or indirectly liable for payment of such Receivables).

All purchases and assignments hereunder shall be made without recourse, but shall be made pursuant to, and in reliance upon, the representations, warranties and covenants of such Originator set forth in this Agreement and each other Facility Document to which such Originator is a party. No obligation or liability to any Obligor on any Receivable is intended to be assumed by the Company hereunder, and any such assumption is expressly disclaimed. The Company’s foregoing commitment to purchase Receivables and the proceeds and rights described in *clauses (b) through (d)* (collectively, the “*Related Rights*”) is herein called the “*Purchase Facility*.”

Section 1.2 Timing of Purchases.

(a) **Effective Date Purchases.** Each Originator's entire right, title and interest in (i) each Receivable that existed and was owing to such Originator on the Effective Date for such Originator and (ii) all Related Rights with respect thereto automatically shall be deemed to have been sold by such Originator to the Company on the Effective Date.

(b) **Subsequent Purchases.** After the Effective Date for any Originator, on each Business Day until the Purchase Termination Date, each Receivable, other than any Reconveyed Receivable, and the Related Rights with respect thereto generated by such Originator shall be deemed to have been sold by such Originator to the Company immediately (and without further action) upon the creation of such Receivable, subject to the payment of the purchase price in accordance with *Section 3.2*. Notwithstanding the foregoing, the sales hereunder shall be suspended if the Releases have ceased to occur after the delivery of a Release Suspension Notice under the Receivables Loan Agreement and shall only resume when the Releases resume under the Receivables Loan Agreement.

Section 1.3 Consideration for Purchases. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to pay the applicable Purchase Price to the applicable Originator in accordance with Article III.

Section 1.4 Purchase Termination Date. The "*Purchase Termination Date*" for any Originator shall be the earlier of (i) date the Purchase Facility is terminated with respect to such Originator pursuant to *Section 8.2* or (ii) the Termination Date (as such term is defined in the Receivables Loan Agreement).

Section 1.5 Intention of the Parties. It is the express intent of each Originator and the Company that each conveyance by such Originator to the Company pursuant to this Agreement of any Receivables and Related Rights, including, without limitation, all Sold Receivables, if any, be construed as a valid and perfected sale and absolute assignment (without recourse except as provided herein) of such Receivables and Related Rights by such Originator to the Company (rather than the grant of a security interest to secure a debt or other obligation of such Originator) and that the right, title and interest in and to such Receivables and Related Rights conveyed to the Company be prior to the rights of and enforceable against all other Persons at any time, including, without limitation, lien creditors, secured lenders, purchasers and any Person claiming through such Originator. The parties acknowledge that an outright sale of receivables and interests in receivables is governed by Article 9 of the UCC ("*Article 9*"), notwithstanding that such a sale is not intended for security. The parties also acknowledge that, as a drafting convention under Article 9, terms used under Article 9 for secured transactions also apply to outright sales of receivables, including "debtor," which applies to a seller of receivables, "secured party," which applies to a buyer of receivables, and "security interest," which applies to the buyer's outright ownership interest. Thus, such terms, and other terms used in Article 9, will apply to this Agreement, and may be used in this Agreement or in connection with this Agreement and such use does not affect the nature of the outright sale hereunder of the Receivables by the Originators to the Company. Thus, under the Article 9 drafting convention, the outright sale of the Sold Receivables may be described as a transaction by which the Originators have granted to the Company a security interest in, among other things, the Sold Receivables (see UCC 1-201(b)(35) and therefore it is the intent of the parties that this Agreement shall be deemed to be a "security agreement" within the meaning of the UCC). However, if, contrary to the mutual intent of the parties, any conveyance hereunder of Receivables and Related Rights is not construed to be both a valid and perfected sale and absolute assignment of such Receivables and Related Rights, and a conveyance of such Receivables and Related Rights that is prior to the rights of and enforceable against all other Persons at any time, including, without limitation, lien creditors, secured lenders, purchasers and any Person claiming through any Originator, then, it is the intent of such Originator and the Company that such Originator shall be deemed to have granted to the Company as of the date of this Agreement, and such Originator hereby grants to the Company, a security interest in, to and under, all of such Originator's right, title and interest in and to each Receivable existing as of the Effective Date and generated by such Originator thereafter and prior to the Purchase Termination Date and all Related Rights with respect thereto, whether now existing or hereafter arising, to secure the prompt and complete payment of a loan deemed to have been made by the Company to such Originator in an amount equal to the Purchase Price of the Receivables originated by such Originator, together with all other obligations of such Originator hereunder.

ARTICLE II CALCULATION OF PURCHASE PRICE

Section 2.1 Calculation of Purchase Price. The "*Purchase Price*" to be paid to each Originator for the Receivables that are purchased hereunder from such Originator shall be (i) determined in accordance with the following formula and (ii) subject to the reductions as provided in *Sections 3.3(i)*:

$$PP = OB \times [1 - FMVD]$$

where:

PP = Purchase Price for each Receivable as calculated on the relevant Payment Date.

OB = The Outstanding Balance of such Receivable on the relevant Payment Date.

FMVD = 1.0% or such other percentage as agreed to between such Originator and the Company to reflect a fair market price for the Receivables.

ARTICLE III
PAYMENT OF PURCHASE PRICE

Section 3.1 Initial Purchase Price Payment. On the terms and subject to the conditions set forth in this Agreement, the Company agrees to pay to such Originator the Purchase Price for the purchase to be made from such Originator on the Effective Date for such Originator partially in cash (in an amount to be agreed between the Company and such Originator) and partially by issuing a promissory note in the form of *Exhibit A* to the Servicer for the benefit of the Originators (each such promissory note issued to an Originator, as it may be amended, supplemented, endorsed or otherwise modified from time to time, together with all promissory notes issued from time to time in substitution therefor or renewal thereof in accordance with the Facility Documents, being herein called the “*Subordinated Note*”) with an initial principal balance equal to the aggregate remaining Purchase Price payable by the Company to the Originators with respect to such purchase being made on the Effective Date.

Section 3.2 Subsequent Purchase Price Payments. On each Payment Date subsequent to the Effective Date for each Originator, on the terms and subject to the conditions set forth in this Agreement, the Company shall pay to each Originator the Purchase Price for the Receivables sold by such Originator hereunder on such Payment Date:

(a) FIRST, in cash to the extent the Company has cash available therefor (and such payment is not prohibited under the Receivables Loan Agreement) and/or, if requested by such Originator, in the form of a Letter of Credit issued by an LC Issuer in accordance with *Section 3.5* and on the terms and subject to the conditions of this *Article III* and the Receivables Loan Agreement; and

(b) SECOND, to the extent any portion of the Purchase Price remains unpaid, the principal amount outstanding under the Subordinated Note shall be automatically increased by an amount equal to such remaining Purchase Price, so long as the aggregate principal amount of the Subordinated Note does not cause the Company’s tangible net worth to be less than the greater of (i) \$16,500,000 and (ii) the amount that is 2.0% of the Facility Limit as of such date (such amount, the “*Required Capital Amount*”).

The total consideration paid by the Company to each Originator for each sale of Receivables by such Originator hereunder shall be an arm’s length price and shall be of reasonably equivalent value for the Receivables so sold by such Originator.

The Servicer shall make all appropriate record keeping entries with respect to the Subordinated Note to reflect (x) the foregoing payments and reductions made pursuant to *Sections 3.3* and *3.4*, and (y) the portion of the aggregate principal amount outstanding under the Subordinated Note payable for the benefit of each Originator. The Servicer’s books and records shall constitute rebuttable presumptive evidence of (x) the principal amount of, and accrued interest on, the Subordinated Note at any time and (y) the respective portions of aggregate principal amount outstanding under the Subordinated Note payable for the benefit of each Originator at any time. Each Originator hereby irrevocably authorizes the Servicer to mark the Subordinated Note “CANCELED” and to return such Subordinated Note to the Company upon the final payment thereof after the occurrence of the Final Collection Date.

Except as otherwise provided in *Sections 3.3* and *3.5*, any payments made by the Company in reduction of the outstanding principal balance of, or accrued and unpaid interest on, the Subordinated Note shall be allocated to the principal and interest payable for the benefit of the respective Originators ratably in accordance with the respective amounts of principal or interest, as applicable, payable for their benefit under the Subordinated Note.

Each Originator acknowledges that it has received a copy of the Subordinated Note and agrees to be bound by, and to comply with, all the terms of the Subordinated Note, including, without limitation, the subordination provisions set forth in paragraph 9 thereof.

In the event that an Originator requests that any purchases be paid for by issuance of a Letter of Credit, such Originator shall on a timely basis provide the Company with such information as is necessary for the Company to obtain such Letter of Credit from an LC Issuer. Neither such Originator nor any Affiliate thereof (other than the Company) shall have any reimbursement or recourse obligations in respect of any Letter of Credit.

Section 3.3 Settlement as to Specific Receivables and Deemed Collections. Each Originator hereby agrees to pay to Company the amount of any Deemed Collections in accordance with the provisions of this Section 3.3. If on any day there are unpaid Deemed Collections with respect to Sold Receivables, then such Deemed Collections shall be paid as follows:

(i) as long as no Advance Suspension Event, Potential Event of Termination or Event of Termination exists under the Receivables Loan Agreement, no Potential Purchase Termination Event exists and the Purchase Termination Date has not occurred, the amount of such Deemed Collections shall be paid, first, by means of a reduction of the Purchase Price payable by the Company to the applicable Originator on such day; and second, any remaining amount of Deemed Collections shall be paid by the applicable Originator to the Company, on the first Interest and Fee Payment Date after the event giving rise the applicable Deemed Collection, by deposit in immediately available funds of such remaining amount into a Deposit Account or the Collection Account; or

(ii) if an Advance Suspension Event, a Potential Event of Termination Event or an Event of Termination exists under the Receivables Loan Agreement, a Potential Purchase Termination Event exists or the Purchase Termination Date has occurred, all Deemed Collections shall be paid by the applicable Originator to the Company on the first Interest and Fee Payment Date after the event giving rise to the applicable Deemed Collection by deposit in immediately available funds of the amount of such Deemed Collections into a Deposit Account or the Collection Account.

Section 3.4 Reconveyance of Receivables. In the event that an Originator has paid to the Company the full Outstanding Balance of any Sold Receivable pursuant to *Section 3.3* or otherwise, such Originator may elect to have the Company reconvey such Sold Receivable to such Originator. Any such reconveyance shall be without recourse and without representation or warranty except that such Sold Receivable is free and clear of all liens, security interests, charges, and encumbrances created by the Company. Once so reconveyed by the Company to such Originator, such Originator shall not thereafter sell such Receivable (a "*Reconveyed Receivable*") to the Company.

Section 3.5 Letters of Credit. (a) Upon the request of an Originator, and on the terms and conditions for issuing Letters of Credit under the Receivables Loan Agreement (including any limitations therein on the amount of any such issuance), the Company agrees to cause an LC Issuer to issue, on the Purchase Dates specified by such Originator, Letters of Credit in favor of the beneficiaries specified by such Originator. The aggregate Stated Amount of the Letters of Credit being issued on any Purchase Date on behalf of such Originator shall constitute a credit against the aggregate Purchase Price payable by the Company to such Originator on such Purchase Date pursuant to *Section 3.2*. To the extent that the aggregate Stated Amount of the Letters of Credit being issued on any Payment Date exceeds the aggregate Purchase Price payable by the Company to such Originator on such Payment Date, such excess shall be deemed to be a reduction in the Purchase Price payable on the Purchase Dates immediately following the date any such Letter of Credit is issued. In the event that any such Letter of Credit issued pursuant to this *Section 3.5* (i) expires or is cancelled or otherwise terminated with all or any portion of its stated amount undrawn, (ii) has its Stated Amount decreased (for a reason other than a drawing having been made thereunder) or (iii) the Company's Reimbursement Obligation in respect thereof is reduced for any reason other than by virtue of a payment made in respect of a drawing thereunder (any of the foregoing, a "*Reduction Event*"), then an amount equal to such undrawn amount or such reduction, as the case may be, shall be paid in cash to such Originator on the Payment Date following such Reduction Event or, if the Company does not then have cash available therefor, shall be deemed to be added to the outstanding principal balance of the Subordinated Note issued to such Originator to the extent that such addition would not cause the Company's Net Worth to be less than the Required Capital Amount. Under no circumstances shall any Originator (or any Affiliate thereof (other than the Company)) have any reimbursement or recourse obligations in respect of any Letter of Credit.

(b) In the event that an Originator requests that any Purchase be paid for by the issuance of one or more Letters of Credit as described herein, such Originator shall, on a timely basis: (i) provide the Company with such information as is necessary for the Company to obtain such Letter of Credit from the applicable LC Issuer, (ii) execute such documentation, including, without limitation, the applicable Letter of Credit Application, as the applicable LC Issuer of such Letter of Credit may request or require and (iii) notify the Company and the Administrative Agent of the allocations of the Purchase Price to be paid for by the issuance of such one or more Letters of Credit, it being understood that, upon such notification, such allocations shall be binding on the Company and such Originator, absent manifest error.

(c) Each Originator agrees to be bound by the terms of each Letter of Credit Application referenced in the Receivables Loan Agreement and by the applicable LC Issuer's interpretations of any Letter of Credit issued for the Company and by the applicable LC Issuer's written regulations and customary practices relating to letters of credit, in each case subject to the terms and conditions set forth in the Receivables Loan Agreement.

ARTICLE IV CONDITIONS TO EFFECTIVENESS AND PURCHASES

Section 4.1 Conditions Precedent to Effectiveness. This Agreement shall become effective at such time as it is executed and delivered by the Originators and the Company.

Section 4.2 Certification as to Representations and Warranties. Each Originator, by accepting the Purchase Price related to each purchase of Receivables generated by such Originator, shall be deemed to have certified that the representations and warranties contained in *Article V* are true and correct in all material respects or, if such representation or warranty is by its terms subject to a materiality qualification or a Material Adverse Effect qualification, such representation or warranty is true and correct in all respects, on and as of such day, with the same effect as though made on and as of such day (except for representations and warranties which apply to an earlier date, in which case such representations and warranties shall be true and correct in all material respects or, if such representation or warranty is by its terms subject to a materiality qualification or a Material Adverse Effect qualification, such representation or warranty shall be true and correct in all respects, as of such earlier date).

Section 4.3 Additional Originators

. Additional Persons may be added as Originators hereunder, with the prior written consent of the Company, the Administrative Agent and each Facility Agent (each acting in its sole discretion); *provided* that no Person may be added as an Originator hereunder unless the following conditions are satisfied on or before the date of such addition:

(a) such proposed additional Originator shall have executed and delivered to the Company, the Administrative Agent and each Facility Agent an agreement substantially in the form attached hereto as *Exhibit B* (a “*Joinder Agreement*”);

(b) the Purchase Termination Date shall not have occurred; and

(c) such proposed additional Originator shall have delivered to the Company, each Facility Agent and the Administrative Agent (as the Company’s assignee) on or before the Effective Date for such Originator, the following, each (unless otherwise indicated) dated the Effective Date for such Originator, and each in form and substance reasonably satisfactory to the Company, each Facility Agent and the Administrative Agent (as the Company’s assignee):

(i) A certified copy, dated as of the applicable Effective Date, of the resolutions of the appropriate governing body of such Originator authorizing the execution, delivery and performance by it of the Facility Documents to which it is a party;

(ii) A good standing (or comparable) certificate with respect to such Originator issued by the Secretary of State (or a comparable official) of the jurisdiction of such Originator’s organization or formation, dated as of a date prior to, but reasonably near the applicable Effective Date;

(iii) A certificate of an appropriate officer, director or manager, as applicable, of such Originator dated as of the applicable Effective Date, certifying as to (i) the names and true signatures of its officers who are authorized to sign the Facility Documents, (ii) the truth and correctness in all material respects of the representations and warranties in the Facility Documents, and (iii) the absence of any Potential Purchase Termination Events or Purchase Termination Events;

(iv) A certified copy, dated as of the applicable Effective Date, of the certificate of incorporation or formation, by-laws, limited liability company agreement or other applicable organizational document of such Originator;

(v) Proper financing statements, suitable for filing under the UCC of all jurisdictions necessary in order to (i) perfect the interests of the Company contemplated by this Agreement and (ii) assign, of record, such interests to the Administrative Agent (for the benefit of the Lender Groups);

(vi) Completed lien search reports, dated a date prior to, but reasonably near the applicable Effective Date, listing all financing statements filed in the jurisdiction in which such Originator is "located" (within the meaning of the UCC) that name such Originator as debtor, together with copies of such financing statements showing no Adverse Claims on any Sold Receivables (other than those with respect to which the Administrative Agent and the Facility Agents are in receipt of satisfactory evidence of the release thereof);

(vii) Favorable opinions of counsel to such Originator, in form, substance and scope reasonably satisfactory to the Company, each Facility Agent and the Administrative Agent (as the Company's assignee) and generally consistent with those delivered on the date hereof; and

(viii) Evidence (i) of the execution and delivery by each of the parties thereto of each of the other Facility Documents to be executed and delivered in connection herewith and (ii) that each of the conditions precedent to the execution, delivery and effectiveness of such other Facility Documents has been satisfied to the Company's, each Facility Agent's and the Administrative Agent's reasonable satisfaction.

At the time any Person is added as an additional Originator pursuant to this *Section 4.3, Schedule I* to this Agreement shall be deemed to be automatically amended to reflect the addition of such Originator.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF THE ORIGINATORS

Section 5.1 Each Originator hereby makes the representations and warranties set forth in this *Article V* as of the Effective Date for such Originator and on each day on which such Originator sells Receivables hereunder.

(a) *Due Formation and Good Standing.* Such Originator is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, has all organizational power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where the nature of its business requires it to be so qualified except where the failure so to qualify could not reasonably be expected to have a Material Adverse Effect.

(b) *Due Authorization and No Conflict.* The execution, delivery and performance by such Originator of this Agreement are within such Originator's organizational powers, have been duly authorized by all necessary organizational action on the part of such Originator and do not contravene or constitute a default (i) under any provision of applicable law, tariff or regulation, (ii) of such Originator's organizational documents or (iii) of any agreement, judgment, injunction, decree or other instrument binding upon such Originator, except in case of clause (i) or (iii), any contravention or default that could not be reasonably expected to have a Material Adverse Effect or result in the creation or imposition of any Adverse Claim on any asset of such Originator upon or with respect to any of its properties. This Agreement and the other Facility Documents to which such Originator is a party have been duly executed and delivered on behalf of such Originator.

(c) *Governmental Approvals.* No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by such Originator of this Agreement or any other agreement, document or instrument to be delivered by it hereunder that has not already been given or obtained, other than the filing of UCC financing statements and continuation statements.

(d) *Enforceability of Facility Documents.* This Agreement and each other Facility Document to be delivered by such Originator in connection herewith constitutes the legal, valid and binding obligation of such Originator enforceable against such Originator in accordance with its terms, subject to the Enforceability Exceptions.

(e) *No Litigation.* Except as publicly disclosed by the Performance Guarantor in its securities filings, there is no action, suit or proceeding pending against, or to such Originator's knowledge threatened against, such Originator or the property of such Originator, in any court, or before any arbitrator or before or by any Governmental Authority in which there is a reasonable possibility of an adverse determination that, if adversely determined, could reasonably be expected to have a Material Adverse Effect or that seeks to prevent the consummation of the transactions contemplated by this Agreement and the other Facility Documents. Except as publicly disclosed by the Performance Guarantor in its securities filings, such Originator is not in default with respect to any order of any court, arbitrator or other Governmental Authority, which default could reasonably be expected to have a Material Adverse Effect or prevent the consummation of the transactions contemplated by this Agreement and the other Facility Documents.

(f) *Compliance with Laws.*

(i) Except as publicly disclosed by the Performance Guarantor in its securities filings, such Originator is in compliance with all laws, rules and regulations applicable to it except where such non-compliance could not reasonably be expected to have a Material Adverse Effect (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) other than as set forth in clauses (ii), (iii) and (iv) below with respect to Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws;

(ii) To the extent applicable, such Originator is in compliance with Anti-Terrorism Laws in all material respects;

(iii) Such Originator has implemented and maintains in effect policies and procedures designed to ensure compliance by such Originator, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions;

(iv) Such Originator and its Subsidiaries and, to the knowledge of such Originator, its officers, directors and employees, are not Sanctioned Persons; and

(v) No part of the proceeds of any purchase under the Purchase Facility will be used, directly, or to the knowledge of such Originator, indirectly (i) in violation of the Anti-Corruption Laws or (ii) in violation of Section 6.3(j).

(g) *Accuracy of Information.* All information heretofore furnished by such Originator or any of its Affiliates to the Company, the Administrative Agent, any Facility Agent, any Lender or any LC Issuer for purposes of or in connection with this Agreement, the Receivables Loan Agreement, any Monthly Report, any of the other Facility Documents or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by such Originator or any of its Affiliates to the Company, the Administrative Agent, any Facility Agent, any Lender or any LC Issuer will be, true and complete in every material respect on the date such information is stated or certified and does not and will not contain any material misstatement of fact or omit to state a material fact necessary to make the statements contained therein not misleading.

(h) *Location.* Such Originator's "location" (as defined in the UCC) is such jurisdiction set forth on *Schedule II* or such other jurisdiction as notified to the Company and the Administrative Agent (as the Company's assignee) in accordance with this Agreement. The office where such Originator keeps its books and records concerning the Sold Receivables is at the address set forth on *Schedule III* or such other location as such Originator may notify the Company and the Administrative Agent (as the Company's assignee).

(i) *No Purchase Termination Event or Potential Purchase Termination Event.* No event has occurred and is continuing, or would result from a sale of Receivables or from the application of the proceeds therefrom, that constitutes a Purchase Termination Event or a Potential Purchase Termination Event.

(j) *Records.* Such Originator will account for each sale of ownership interests in the Sold Receivables hereunder in its books and financial statements as sales.

(k) *Compliance with Credit and Collection Policy.* Such Originator has complied in all material respects with the Credit and Collection Policy with regard to the Sold Receivables and the related Contracts and has not made any change to such Credit and Collection Policy other than as permitted under Section 6.3(k).

(l) *Investment Company Act.* Such Originator is not required to register as an "investment company" under the Investment Company Act.

(m) *Use of Proceeds.* No proceeds of any purchase of Receivables shall be used for purposes that violate Regulations T, U or X of the Federal Reserve Board.

(n) *Eligibility.* Each Receivable sold hereunder by such Originator and included as an Eligible Receivable in the calculation of the Net Receivables Balance is, on the date of such sale or calculation, an Eligible Receivable.

(o) *No Fraudulent Transfer.* No sale by such Originator of any Sold Receivable constitutes a fraudulent transfer or conveyance under any United States federal or applicable state bankruptcy or insolvency Laws or is otherwise void or voidable under such or similar principles or for any other reason.

(p) *Solvency.* On the Effective Date for such Originator (before and after giving effect to the sale of Receivables by such Originator on such Effective Date), such Originator has the ability to meet its debts as they become due.

(q) *Ordinary Course of Business.* If (but only to the extent that) the conveyance of any property described herein is not characterized by a court or other governmental authority as a sale, each remittance of Seller Collections by such Originator to the Company hereunder will have been (i) in payment of a debt incurred by such Originator in the ordinary course of business or financial affairs of such Originator and the Company and (ii) made in the ordinary course of business or financial affairs of such Originator and the Company.

(r) *Names.* Such Originator's complete organizational name is set forth on *Schedule I* to this Agreement, and it does not use and has not during the last five years used any other organizational name, trade name, doing-business name or fictitious name, except as set forth on *Schedule IV*.

(s) *Ownership; Perfection.* Immediately prior to the sales to the Company contemplated by this Agreement, such Originator owns all right, title and interest in, to and under the Sold Receivables, Related Rights and Seller Collections to be sold by it hereunder, free and clear of any Adverse Claim (other than any Adverse Claim being released upon such sale or arising solely as a result of any action taken by the Company or the Administrative Agent as the Company's assignee). This Agreement creates a security interest in favor of the Company in the Sold Receivables, Related Rights and Seller Collections and the Company has first priority interest in the Sold Receivables, Related Rights and Seller Collections. No effective financing statement covering any Sold Receivables or Related Rights sold by such Originator is on file in any recording office, except (i) those filed in favor of the Company pursuant to this Agreement and the Administrative Agent (as the Company's assignee) pursuant to the Receivables Loan Agreement or (ii) such filings in respect of which the security interests over such Sold Receivables or Related Rights by such filings have been released and for which UCC-3 filings excluding such Sold Receivables and Related Rights have been filed.

(t) *Taxes.* Such Originator has filed all material Tax returns and reports required by Law to be filed by it and has timely paid all Taxes, governmental charges and energy surcharges at any time owing, except for Taxes, charges or surcharges that are being contested in good faith by appropriate proceedings and for which appropriate reserves in accordance with relevant GAAP shall have been set aside on its books.

(u) *Beneficial Ownership Certification.* As of the Effective Date, the information included in the Beneficial Ownership Certification for such Originator is true and correct in all respects.

ARTICLE VI COVENANTS OF THE ORIGINATORS

Section 6.1 Affirmative Covenants. Until the Final Collection Date, each Originator will, unless the Administrative Agent (as assignee of the Company) and the Company shall otherwise consent in writing:

(a) *Compliance with Laws, Etc.* Comply with all applicable laws, rules, regulations and orders applicable to it (other than those specifically relating to any Anti-Corruption Laws, Anti-Terrorism Laws or Sanctions) (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy), except to the extent that the failure so to comply with any such laws, rules, regulations and orders could not reasonably be expected to have a Material Adverse Effect.

(b) *Preservation of Existence.* (i) Observe all procedures required by its certificate of formation and limited liability company agreement and preserve and maintain its limited liability company existence, rights, franchises and privileges in the jurisdiction of its formation, except where the failure to preserve and maintain such rights, franchises and privileges could not reasonably be expected to have a Material Adverse Effect, and (ii) qualify and remain qualified in good standing as a foreign limited liability company in each other jurisdiction where the nature of its business requires such qualification and where, in the case of clause (ii), the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

(v) *Audits.* At any time and from time to time during regular business hours and upon reasonable prior notice, permit the Administrative Agent (as assignee of the Company), the Facility Agents or their agents or representatives:

(i) to conduct periodic audits of the Sold Receivables and the Related Rights and the related books and records and collection systems of such Originator;

(ii) to examine and make copies of and abstracts from the books and records in its possession or control relating to the Sold Receivables and Related Rights, including, without limitation, the related Contracts;

(iii) to visit the offices and properties of such Originator for the purpose of examining the materials described in clause (ii) above; and

(iv) to discuss matters relating to the Sold Receivables or such Originator's performance hereunder with any of the officers or employees of such Originator having knowledge of such matters;

provided that, (i) so long as no Advance Suspension Event, Potential Event of Termination, Event of Termination, Potential Purchase Termination Event or Purchase Termination Event shall have occurred, such Originator shall not be required to pay the expenses of more than one due diligence visit and one audit per year, (ii) the Administrative Agent and the Facility Agents shall coordinate their due diligence visits with each other and with their inspection of the Servicer and the Borrower pursuant to Sections 5.01(d) and 5.04(e) of the Receivables Loan Agreement and (iii) the Administrative Agent and the Facility Agents shall use commercially reasonable efforts to minimize disruption to the business of such Originator and to coordinate their due diligence visits with the audits to be conducted pursuant to Section 5.04(d) of the Receivables Loan Agreement.

(c) *Location of Records.* Keep its chief place of business and chief executive office and the offices where it keeps the books and records at (i) the address of such Originator referred to on *Schedule III* or (ii) upon 30 days' prior written notice to the Administrative Agent (as assignee of the Company), at any other location in the United States where all actions reasonably requested by Administrative Agent (as assignee of the Company) or any Facility Agent to protect and perfect the interests of the Administrative Agent (as assignee of the Company), the Lenders and the LC Issuers in the Sold Receivables, the Related Rights and the Seller Collections with respect thereto have been taken and completed.

(d) *Ownership.* Take all necessary action to vest legal and equitable title to the Sold Receivables, the Related Rights and the Seller Collections sold hereunder in the Company, free and clear of any Adverse Claims (including, without limitation, the filing of all financing statements or other similar instruments or documents necessary under the UCC (or any comparable law) of all appropriate jurisdictions to perfect the Company's and the Administrative Agent's (as assignee of the Company) interest in such Sold Receivables, Related Rights and Seller Collections and such other action to perfect, protect or more fully evidence the interest of the Company and the Administrative Agent (as assignee of the Company) therein as the Company or the Administrative Agent (as assignee of the Company) or any Facility Agent may reasonably request. Without limiting the foregoing, such Originator hereby authorizes, and will, upon the request of the Company, the Administrative Agent (as assignee of the Company) or any Facility Agent, at such Originator's own expense, execute (if necessary) and file such financing or continuation statements, or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Company, the Administrative Agent (as assignee of the Company) or any Facility Agent may reasonably request, to perfect, protect or evidence any of the foregoing. Such Originator authorizes the Company or the Administrative Agent (as assignee of the Company) to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Sold Receivables, the Related Rights and the Seller Collections with respect thereto and the other collateral subject to a lien under any Facility Document without the signature of such Originator.

(e) *Deposits to Deposit Accounts.* If the Servicer fails to instruct an Obligor to make payments of all Sold Receivables to one or more Deposit Accounts or Lock-Boxes or Payment Processors or to instruct a Payment Processor to remit all payments of all Sold Receivables received by such Payment Processors to one or more Deposit Accounts or Lock-Boxes, in each case as required under the Receivables Loan Agreement, or if an Obligor or a Payment Processor fails to so deliver payments to a Deposit Account or Lock-Box, use all reasonable efforts to cause such Obligor or Payment Processor to deliver subsequent payments on Sold Receivables to a Deposit Account or Lock-Box and deposit, or cause to be deposited, any Seller Collections received by it, into a Deposit Account subject to a Deposit Account Control Agreement not later than two (2) Business Days after receipt thereof.

(f) *Performance and Compliance with Sold Receivables and Contracts.* At its expense, timely and fully perform and comply in all material respects with all provisions, covenants and other promises required to be observed by it with respect to the Sold Receivables and the Contracts related thereto.

(g) *Taxes.* File all material tax returns and reports required by law to be filed by it and promptly pay all Taxes and governmental charges at any time owing, except such as are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established. Pay when due, or at the option of the Administrative Agent (as assignee of the Company) timely reimburse it for the payment of, any Direct Taxes payable in connection with the Pool Receivables, exclusive of any Direct Taxes the validity of which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with relevant GAAP shall have been set aside on its books.

(h) *Marking of Records.* At its expense, mark its master data processing records relating to Sold Receivables, including with a legend evidencing that the ownership interest related to the Sold Receivables have been sold in accordance with this Agreement.

(i) *Separate Existence.* Take all steps specifically required by this Agreement to continue the Company's identity as a separate legal entity and to make it apparent to third Persons that the Company is an entity with assets and liabilities distinct from those of such Originator and any other Person, and is not a division of such Originator or any other Person. Without limiting the generality of the foregoing and in addition to and consistent with the other covenants set forth herein, such Originator agrees to take such actions as are necessary on its part to ensure that the facts and assumptions set forth in the opinion issued by Shearman & Sterling LLP, as counsel for the Company, in connection with the closing of the transactions contemplated in the Facility Documents (or in any similar opinion rendered in connection with the addition of such Person as an Originator) and relating to true sale and substantive consolidation issues, and in the certificates accompanying such opinion, remain true and correct in all material respects at all times.

Section 6.2 Reporting Requirements of the Originators. Until the Final Collection Date, each Originator will, unless the Administrative Agent and the Company shall otherwise consent in writing, furnish or cause to be furnished to the Company, the Administrative Agent (as assignee of the Company) and each Facility Agent:

(a) *Event of Termination.* As soon as reasonably practicable and in any event within three (3) Business Days after any Responsible Officer of such Originator obtains knowledge of the occurrence of each Purchaser Termination Event or Potential Purchase Termination Event (if such Potential Purchase Termination Event is continuing on the date of such notice), the statement of a Responsible Officer of such Originator setting forth the details of such Purchase Termination Event or Potential Purchase Termination Event and the action which such Originator is taking or proposes to take with respect thereto.

(b) *Reporting on Adverse Effects.* Promptly and in no event more than two (2) Business Days after any Responsible Officer of such Originator obtains knowledge of any (i) matter or the occurrence of any event concerning such Originator which would reasonably be expected to have a Material Adverse Effect on such Originator, (ii) litigation or proceeding that may exist at any time between such Originator and any Governmental Authority that, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect on such Originator, (iii) litigation or proceedings adversely affecting such Originator in which the amount involved could reasonably be expected to have a material adverse effect on such Originator or in which injunctive relief is sought that could reasonably be expected to have a Material Adverse Effect on such Originator or (iv) litigation or proceeding relating to any Facility Document to which such Originator is a party, notice thereof.

(c) *Adverse Claims.* Promptly, notice in writing of (A) any Adverse Claim upon the Sold Receivables or Seller Collections with respect thereto, (B) any Person other than the Company, the Servicer or the Administrative Agent obtaining any rights or directing any action with respect to any Deposit Account, Lock-Box or Payment Processor or (C) any Obligor receiving any change in payment instructions with respect to Sold Receivable(s) from a Person other than the Company, the Servicer or the Administrative Agent.

(d) *Credit and Collection Policy.* Promptly and in no event more than three (3) Business Days after any Responsible Officer of such Originator obtains knowledge of (i) any amendment, modification, supplement or other change to the Credit and Collection Policy or (ii) the adoption, implementation or institution of any tariff, rule, regulation, ordinance or decree of a government regulator having agency authority over such Originator or the Servicer, in either case, that could have a material adverse effect on the collectibility of the Sold Receivables of such Originator, the statement of a Responsible Officer of such Originator setting forth the details of such amendment, modification, supplement, change, tariff, rule, regulation, ordinance or decree and the action which such Originator is taking or proposes to take with respect thereto.

(e) *ERISA Events.* Promptly and in any event within five (5) Business Days after obtaining knowledge of the occurrence or existence of any ERISA Event which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, notice of such ERISA Event setting forth the details of such ERISA Event and the action that it proposes to take with respect thereto.

(f) *Beneficial Ownership Certification.* Promptly after obtaining knowledge thereof, notify the Administrative Agent (as assignee of the Company) and each Facility Agent of any change in the information provided in the Beneficial Ownership Certification for such Originator that would result in a change to the list of beneficial owners identified therein.

(g) *Other Information.* As soon as reasonably practicable, from time to time, such other information, documents, records or reports respecting the Sold Receivables of such Originator or the conditions or operations, financial or otherwise, of such Originator as the Company, the Administrative Agent (as assignee of the Company) or any Facility Agent may from time to time reasonably request, including, without limitation, information (including nonfinancial information) as any Lender, LC Issuer, Administrative Agent or Facility Agent may from time to time reasonably request in order to assist such persons (or any related Program Support Provider) in complying with the requirements of Regulation (EU) No. 2017/2402 of the European Parliament as may be applicable to such Lender (or Program Support Provider).

Section 6.3 Negative Covenants of the Originators. From the Effective Date until the Final Collection Date, such Originator shall not, without the written consent of the Company, the Administrative Agent (as assignee of the Company) and the Majority Facility Agents:

(a) *Sales, Liens, Etc. Against Sold Receivables.* Except as permitted by the Facility Documents, sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to, any Sold Receivable, Related Rights or Seller Collections with respect thereto.

(b) *Extension or Amendment of Pool Receivables.* Extend, amend, waive or otherwise modify, the terms of any Sold Receivable or any Contract related thereto, except (i) in accordance with any rule, regulation, ordinance or other directive of a government regulator having agency authority over such Originator or the Servicer, (ii) in accordance with the Credit and Collection Policy or (iii) as otherwise permitted under the Facility Documents.

(c) *Change in Business or Credit and Collection Policy.* (x) Make any change in the Credit and Collection Policy, which change would materially and adversely affect the collectability of the Sold Receivables, the credit quality of the Sold Receivables, the enforceability of the Contracts, or be reasonably expected to have a Material Adverse Effect, in each case other than any change implemented for purposes of complying with federal, state or local laws, regulations, orders or guidelines, or (y) make any change in the character of its business which change would be reasonably expected to have a Material Adverse Effect.

(d) *Change in Payment Instructions to Obligors.* Make any change in its instructions to Obligors regarding the making of payments in respect of the Sold Receivables to any Lock-Box or Deposit Account, other than instructing Obligors to remit payments to another Lock-Box or Deposit Account.

(e) *Changes to Lock-Boxes, Deposit Accounts and Deposit Account Control Agreements.* Add any account as a Deposit Account, any bank as a Deposit Account Bank, or any lock-box as a Lock-Box with respect to any Sold Receivable, in each case other than those then listed in Exhibit F of the Receivables Loan Agreement, unless the Administrative Agent (as assignee of the Company) shall have received (i) thirty (30) days' prior written notice of such addition and (ii) prior to the effective date of such addition, (x) executed copies of Deposit Account Control Agreements (in the case of each new Deposit Account), (y) copies of all material agreements signed by the Company, the Servicer or the respective Deposit Account Bank with respect to any new Deposit Account, Deposit Account Bank or Lock-Box, and (z) a revised Exhibit F to the Receivables Loan Agreement.

(f) *Merger, Consolidation, Division, Etc.* Consolidate with or merge into or with any Person, or purchase or otherwise acquire all or substantially all of the assets or capital stock, or other ownership interest of, any Person or from any Subsidiary, or sell, transfer, lease or otherwise dispose of all or substantially all of its assets to any Person, or permit or suffer a plan of division (as defined in Section 18-217 of the DE LLC Act), in each case, except as expressly provided or permitted under the terms of this Agreement or as consented to in writing by the Administrative Agent (as assignee of the Company).

(g) *Change in Name; Jurisdiction of Organization.* (i) Make any change to its name (within the meaning of Section 9-507(c) of any applicable enactment of the UCC) indicated on its certificate of formation (or equivalent organizational document), or (ii) change its form of organization or its jurisdiction of organization, unless, in either case, 30 days prior to the effective date of such change, it delivers to the Administrative Agent such financing statements or amendments to financing statements (Form UCC-1 or Form UCC-3, respectively) authorized by it which the Administrative Agent may request to reflect such name change or change in form or jurisdiction of organization, together with such other documents, legal opinions and instruments that the Administrative Agent may reasonably request in connection with the transaction giving rise thereto.

(h) *ERISA Matters.* Establish or be a party to any Plan or Multiemployer Plan other than any such plan established by an Affiliate of the Performance Guarantor.

(i) *Treatment as Sales.* Not account for or treat (whether in financial statements or otherwise) the transactions contemplated by this Agreement in any manner other than as the sale of Sold Receivables by such Originator to the Company.

(j) *Sanctions; Anti-Corruption.* Directly or, to the knowledge of such Originator, indirectly use the proceeds of any sales of Sold Receivables hereunder or otherwise make available such proceeds to any Person to fund, finance or facilitate any activities or business of or with any Person that is, at the time of such funding, a Sanctioned Person or in any country or territory that is at the time of such funding a Sanctioned Country or in any other manner that would result in a violation of Sanctions by any Person (including a Lender, Facility Agent, Administrative Agent or otherwise).

ARTICLE VII
ADDITIONAL RIGHTS AND OBLIGATIONS IN RESPECT OF RECEIVABLES

Section 7.1 Rights of the Company. Each Originator hereby authorizes the Company and the Servicer to take any and all steps in such Originator's name necessary or desirable, in their respective determination, to collect all amounts due under any and all Receivables sold or purported to be sold by it hereunder, including, without limitation, if a Purchase Termination Event exists, endorsing the name of such Originator on checks and other instruments representing Seller Collections and enforcing such Receivables and the provisions of the related Contracts that concern payment and/or enforcement of rights to payment.

Section 7.2 Responsibilities of the Originators. Anything herein to the contrary notwithstanding:

(a) *Seller Collection Procedures.* Each Originator agrees to (i) direct, or cause each Payment Processor to direct, its respective Obligors to make payments of Receivables sold or purported to be sold by it hereunder to one or more Payment Processors, Deposit Accounts or Lock-Boxes and (ii) direct each Payment Processor to remit all payments of Receivables sold or purported to be sold by it hereunder to one or more Deposit Accounts or Lock-Boxes. Each Originator further agrees to transfer any Seller Collections of Sold Receivables that it receives directly to a Deposit Account within two (2) Business Days of receipt thereof, and agrees that all such Seller Collections shall be deemed to be received in trust for the Company and the Administrative Agent (as the Company's assignee).

(b) Each Originator shall perform its obligations hereunder, and the exercise by the Company or its designee of its rights hereunder shall not relieve such Originator from such obligations.

(c) The Company shall have no obligation or liability to any Obligor or any other Person with respect to any Receivables, Contracts related thereto or any other related agreements, nor shall the Company be obligated to perform any of the obligations of any Originator thereunder.

(d) Each Originator hereby grants to the Servicer an irrevocable power of attorney, with full power of substitution, coupled with an interest, during the occurrence and continuation of a Purchase Termination Event or an Event of Termination to take in the name of such Originator all steps necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind held or transmitted by such Originator or transmitted or received by the Company (whether or not from such Originator) in connection with any Receivable or Related Rights sold or purported to be sold by it hereunder. Each Originator hereby acknowledges and consents to the powers of attorney granted by the Company and the Servicer to the Administrative Agent pursuant to *Section 6.04(d)* of the Receivables Loan Agreement.

Section 7.3 Further Action Evidencing Purchases. Each Originator agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action that the Company, the Servicer or the Administrative Agent (as the Company's assignee) may reasonably request in order to perfect, protect or more fully evidence the Sold Receivables and Related Rights purchased by the Company hereunder, or to enable the Company or the Administrative Agent (as the Company's assignee) to exercise or enforce any of its rights hereunder. Without limiting the generality of the foregoing, upon the request of the Company or the Administrative Agent (as the Company's assignee), such Originator will execute (if applicable), authorize and file such financing or continuation statements, or amendments thereto or assignments thereof, and such other instruments or notices, as may be necessary or appropriate to perfect, protect or evidence any of the foregoing.

Each Originator hereby authorizes the Company or its designee or assignee (including, without limitation, the Administrative Agent) to file one or more financing or continuation statements, and amendments thereto and assignments thereof, without the signature of such Originator, relative to all or any of the Receivables and Related Rights sold or purported to be sold by it hereunder, whether now existing or hereafter generated by such Originator. If any Originator fails to perform any of its agreements or obligations under this Agreement, the Company or its designee or assignee (including, without limitation, the Administrative Agent) may (but shall not be required to) itself perform, or cause the performance of, such agreement or obligation, and the expenses of the Company or its designee or assignee (including, without limitation, the Servicer and the Administrative Agent) incurred in connection therewith shall be payable by such Originator.

Section 7.4 Application of Seller Collections. Any payment by an Obligor in respect of any indebtedness owed by it to any Originator shall, except as otherwise specified by such Obligor or required by applicable law and unless otherwise instructed by the Servicer (with the prior written consent of the Administrative Agent) or the Administrative Agent, be applied as a Seller Collection of any Receivable or Receivables of such Obligor to the extent of any amounts then due and payable thereunder before being applied to any other indebtedness of such Obligor.

ARTICLE VIII PURCHASE TERMINATION EVENTS

Section 8.1 Purchase Termination Events. As used in this Agreement, “*Purchase Termination Event*” means with respect to an Originator, the occurrence of any of the following events (provided, however, that the occurrence of any of the events described in clauses (b), (c), (d) or (k) below with respect to one or more Sold Receivables shall not constitute a Purchase Termination Event if, after such Sold Receivable(s) are removed from the calculation of Net Receivable Balance under the Receivables Loan Agreement, no Borrowing Base Default shall exist under the Receivables Loan Agreement):

- (a) Such Originator shall fail to make any payment or deposit required to be made by it hereunder or under any other Facility Document to the Borrower, the Administrative Agent or any Secured Party when due and such failure shall continue for two (2) Business Days;
- (b) (i) Such Originator shall fail to perform or observe any term, covenant or agreement contained in this Agreement or any other Facility Document (unless otherwise provided in this Section 8.1) and such failure shall remain unremedied for thirty (30) days after the Company or any Affected Person gives notice thereof to such Originator or such Originator otherwise obtains knowledge thereof or (ii) such Originator shall fail to perform or observe any term, covenant or agreement on its part to be performed or observed under Section 6.03 of this Agreement;

(c) Any representation or warranty made or deemed to be made by such Originator under or in connection with this Agreement or any other Facility Document (including any information or report delivered pursuant hereto) shall prove to have been materially false or incorrect (except that the materiality standard in this clause (c) shall not apply to any such representation or warranty that is qualified by a materiality standard by its terms) when made or deemed made or delivered, and in each case, is not cured within 30 days after the Company or any Affected Person gives notice thereof to such Originator or such Originator otherwise obtains knowledge thereof;

(d) The Company, shall cease to have a valid and perfected first priority security interest in the Sold Receivables and the Related Rights and Seller Collections with respect to the Sold Receivables sold by such Originator to the Company (subject to the Lien of the Administrative Agent pursuant to the Receivables Loan Agreement);

(e) An Event of Bankruptcy shall occur with respect to such Originator;

(f) A Material Adverse Effect shall occur with respect to such Originator or the Sold Receivables sold by such Originator hereunder;

(g) (i) such Originator shall default for a period beyond any applicable grace period (x) in the payment of any principal, interest or other amount due under any Indebtedness (other than trade payables or non-recourse indebtedness), or (y) any other event shall occur or condition shall exist under an agreement, or related agreements, under which such Originator has outstanding Indebtedness (other than trade payables or non-recourse indebtedness), if the effect of such event or condition is to permit the acceleration of the maturity of such Indebtedness (other than trade payables or non-recourse indebtedness), and the outstanding amount or amounts payable under all such Indebtedness under clauses (x) and (y) equals or exceeds \$150,000,000 or (B) an event of default shall have occurred and be continuing under an agreement, or related agreements, under which such Originator has outstanding Indebtedness (other than trade payables or non-recourse indebtedness) of \$150,000,000 or more and, in the case of this clause (B), such debt has been accelerated by the holder of such debt, or the holder of such debt has attempted to accelerate but such acceleration was prevented by applicable Law;

(h) One or more judgments for the payment of money in an aggregate amount in excess of \$150,000,000 (excluding therefrom any amount covered by insurance) shall be rendered against such Originator, and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of such Originator to enforce any such judgment;

(i) Any of this Agreement or any other Facility Document to which such Originator is a party shall cease to be in full force and effect or such Originator shall so assert in writing or otherwise seek to terminate or disaffirm its obligations under any such Facility Document at any time following the execution thereof;

(j) A Change in Control shall have occurred with respect to such Originator;

(k) There shall have been filed (i) notice of a Lien from the IRS pursuant to Section 6323 of the Code against any of the Sold Receivables, Related Rights or Collection with respect to any of the Sold Receivables of such Originator, (ii) notice of a Lien from the PBGC pursuant to Section 430(k) of the Code or Section 303(k) of ERISA against such Originator for a failure to make a required installment or other payment to a Plan to which either of such sections applies, or (iii) a notice of any other Lien the existence of which could reasonably be expected to have a Material Adverse Effect against such Originator and, in each case, such Lien shall not have been released or withdrawn within ten (10) days; or

(l) Such Originator shall become or shall be required to register as an “investment company” or shall become “controlled by an investment company” (or a company required to register as an “investment company”), in each case within the meaning of the Investment Company Act.

Section 8.2 Termination; Remedies.

(a) *Termination.* Upon the occurrence of a Purchase Termination Event, the Company may or, if directed by the Administrative Agent, shall, by notice to the affected Originator (with a copy to the Administrative Agent), declare the Purchase Facility, as it relates to the affected Originator, terminated.

(b) *Remedies Cumulative.* Upon any termination of the Purchase Facility as it relates to any Originator pursuant to Section 8.2(a), the Company shall have, in addition to all other rights and remedies under this Agreement, all other rights and remedies provided under the UCC of each applicable jurisdiction and other applicable laws, which rights shall be cumulative.

ARTICLE IX INDEMNIFICATION

Section 9.1 Indemnities by the Originators. Without limiting any other rights which the Company may have hereunder or under applicable law, each Originator, severally and for itself alone, hereby agrees to indemnify and hold harmless the Company and each of its Affiliates, agents, employees, officers, directors and assignees (each of the foregoing Persons being individually called a “*RSA Indemnified Party*”), forthwith on demand, from and against any and all damages, losses, claims, liabilities and related costs and expenses, including reasonable attorneys’ fees and disbursements and all costs and expenses incurred, including reasonable attorneys’ fees and disbursements, in connection with the enforcement of this provision (all of the foregoing being collectively called “*Purchase Relevant Amounts*”) arising out of or resulting from the failure of such Originator to perform its obligations under this Agreement, or arising out of the claims asserted against a RSA Indemnified Party relating to the acquisition of the Sold Receivables by the Company, excluding, Purchase Relevant Amounts to the extent, (a) such Purchase Relevant Amounts are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such RSA Indemnified Party, (b) the credit risk or financial inability to pay of an Obligor and for which reimbursement would constitute recourse to any Originator for uncollectible Receivables or (c) such Purchase Relevant Amounts are in respect of Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim; *provided*, that nothing contained in this sentence shall limit the liability of such Originator or limit the recourse of any RSA Indemnified Party to such Originator for any amounts otherwise specifically provided to be paid by such Originator hereunder. Without limiting the foregoing indemnification, but subject to the limitations set forth in *clauses (a), (b) and (c)* of the previous sentence, each Originator, severally for itself alone, shall indemnify each RSA Indemnified Party for Purchase Relevant Amounts relating to or resulting from:

- (a) the failure of any representation or warranty made or deemed made by such Originator (or any of its officers, employees or agents) under or in connection with this Agreement or any other Facility Document to have been true and correct as of the date made or deemed made;
- (b) the failure by such Originator to comply with any term, provision or covenant contained in this Agreement or any other Facility Document to which it is party or with any applicable law, tariff, rule or regulation with respect to any Sold Receivable, the related Contract, or the Related Security, or the nonconformity of any Sold Receivable, the related Contract or the Related Security with any such applicable law, tariff, rule or regulation;
- (c) the failure by such Originator to vest and maintain vested in the Company a first priority security interest in the Sold Receivables generated by such Originator and the Related Rights free and clear of any Adverse Claims, whether existing at the time such Receivable arose or at any time thereafter;
- (d) the failure to file, or any delay in filing, financing statements or other similar instruments or documents under the applicable UCC or other applicable laws naming the Originator as “Debtor/Seller” with respect to any Receivables or Related Rights;
- (e) any commingling of Seller Collections with other funds;
- (f) any dispute, claim, offset or defense (other than discharge in bankruptcy or insolvency of the related Obligor or a dispute or claim based on the Obligor’s financial inability to pay) of an Obligor to the payment of any Sold Receivable generated by such Originator (including, without limitation, a defense based on such Receivable or the related Contract not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the sale of goods or services related to any such Sold Receivable or the furnishing of or failure to furnish such goods or services or relating to collection activities with respect to such Sold Receivable or any Contract related thereto (if such collection activities were performed by such Originator or any of its Affiliates or by any agent or independent contractor retained by such Originator or its Affiliates);

- (g) any failure of such Originator to perform its duties and obligations in accordance with the provisions of this Agreement, any Contract or any other Facility Document to which it is a party or under the Contracts;
- (h) any products liability, personal injury, property damage, environmental or other claim or action of whatever sort arising out of or in connection with goods or services, the sale or provision of which gave rise to or are the subject of any Sold Receivable or Contract;
- (i) the use of any Purchase Price paid to such Originator or any draw under a Letter of Credit;
- (j) the failure of such Originator to pay when due any Taxes, energy surcharges or other governmental charges payable by it in connection with the Sold Receivables generated by it or this Agreement;
- (k) the payment by such RSA Indemnified Party of Taxes, including, without limitation, any taxes imposed by any jurisdiction on amounts payable and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, to the extent caused by the Originator's actions or failure to act in breach of this Agreement;
- (l) any failure by the Company to give reasonably equivalent value to such Originator in consideration for the transfer by such Originator to the Company of any Pool Receivables, or any attempt by any Person to void any such transfer under any statutory provision or common law or equitable action, including, without limitation, any provision of the Bankruptcy Code;
- (m) any investigation, litigation or proceeding relating to this Agreement, any of the other Facility Documents, the transactions contemplated hereby or thereby or the ownership of the Sold Receivables generated by such Originator;
- (n) any action taken by such Originator (or any of its Affiliates) in the enforcement or collection of any Sold Receivable generated by such Originator; the grant by the Originator of a security interest in any Receivable in violation of any applicable law, tariff, rule or regulation;
- (o) the failure of the Originator to furnish accurate and complete documentation (including, without limitation, a Contract or invoice) to any Obligor;
- (p) the amendment, modification or termination of any tariff or similar contract governing any Pool Receivable or the activities of the Company; or
- (q) the failure of the sale and pledge of any Pool Receivable under the Facility Documents to comply with the requirements of Federal Assignment of Claims Act or any analogous State or local Laws.

ARTICLE X
MISCELLANEOUS

Section 10.1 Amendments, etc.

(a) The provisions of this Agreement may from time to time be amended, modified or waived, if such amendment, modification or waiver is in writing and executed by the Company, the Originators and the Administrative Agent (as the Company's assignee).

(b) No failure or delay on the part of the Company, the Servicer, any Originator or any assignee of any of the foregoing in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. No notice to or demand on the Company, the Servicer or any Originator in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval by the Company or the Servicer under this Agreement shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval under this Agreement shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder.

(c) This Agreement and the other Facility Documents embody the entire agreement and understanding among the parties hereto and supersede all prior or contemporaneous agreements and understandings, verbal or written, relating to the subject matter hereof and thereof.

Section 10.2 Notices, etc. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including facsimile and email communications) and shall be personally delivered or sent by facsimile or email, or by overnight mail, to the intended party at the mailing or email address or facsimile number of such party set forth under its name on the signature pages hereof or at such other address or facsimile number as shall be designated by such party in a written notice to the other parties hereto or in the case of the Administrative Agent at its address for notices pursuant to the Receivables Purchase Agreement. All such notices and communications shall be effective when received.

Section 10.3 No Waiver; Cumulative Remedies. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Section 10.4 Binding Effect; Assignability. This Agreement shall be binding upon and inure to the benefit of the Company and each Originator and their respective successors and permitted assigns. No Originator may assign any of its rights hereunder or any interest herein without the prior written consent of the Company and, unless the Final Collection Date has occurred, the Administrative Agent except as otherwise herein specifically provided. Notwithstanding the foregoing, each Originator and the Servicer may pledge its respective rights under the Subordinated Note to a Subordinated Note Financier pursuant to Subordinated Note Financing Documents so long as a No Petition Agreement between the Subordinated Note Financier and the Administrative Agent is in full force and effect. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms, and shall remain in full force and effect until such time as the parties hereto shall agree. The rights and remedies with respect to any breach of any representation and warranty made by any Originator pursuant to *Article V* and the indemnification and payment provisions of *Article IX, Sections 10.6, 10.12 and 10.13* and this *Section 10.4* shall be continuing and shall survive any termination of this Agreement.

Section 10.5 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN §5-1401 AND §5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WHICH SHALL APPLY HERETO)).

Section 10.6 Costs, Expenses and Taxes. In addition to the obligations of the Originators under *Article IX*, each Originator, severally and for itself alone, agrees to pay on demand (which demand shall be accompanied by documentation thereof in reasonable detail):

(a) to the Company all reasonable and documented costs and expenses incurred by such Person in connection with the enforcement of this Agreement; and

(b) all stamp and other Taxes and fees payable in connection with the execution, delivery, filing and recording of this Agreement, and agrees to indemnify each RSA Indemnified Party against any liabilities with respect to or resulting from any delay in paying or omitting to pay such Taxes and fees.

Section 10.7 SUBMISSION TO JURISDICTION. EACH OF THE PARTIES HERETO HEREBY AGREES TO THE NON-EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURT LOCATED WITHIN THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO HEREBY WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS, AND ANY OBJECTION TO VENUE OF ANY ACTION INSTITUTED HEREUNDER IN ANY OF THE AFOREMENTIONED COURTS AND CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT.

Section 10.8 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO WAIVES ITS RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WITH RESPECT TO CONTRACT CLAIMS. EACH OF THE PARTIES HERETO AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A JUDGE WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, EACH OF THE PARTIES HERETO FURTHER AGREES THAT ITS RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING THAT SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT OR ANY PROVISION HEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT.

Section 10.9 Captions and Cross References; Incorporation by Reference. The various captions and headings of this Agreement, including any Exhibit, Schedule or Annex hereto, are included for convenience or reference only and shall not affect the interpretation hereof or thereof. The Schedules and Exhibits hereto are hereby incorporated by reference into and made a part of this Agreement.

Section 10.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (including electronic PDF, DocuSign, Adobe “fill and sign” or such other provider as specified in writing by the applicable party) shall be effective as delivery of a manually executed counterpart hereof and shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. 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, 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 Electronic Signatures in Global and National Commerce Act of 2000, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding the foregoing, if any party shall request manually signed counterpart signatures to this Agreement, each of the other parties hereby agrees to provide such manually signed signature pages as soon as commercially reasonable.

Section 10.11 Acknowledgment and Agreement. By execution below, each Originator expressly acknowledges and agrees that (i) the Company shall, pursuant to the Receivables Loan Agreement, grant a security interest in all of its rights, title and interest in, to, and under the Sold Receivables to the Administrative Agent (on behalf of the Lender Groups) and (ii) all of the Company’s right, title, and interest in, to, and under this Agreement (but not its obligations), shall be collaterally assigned by the Company to the Administrative Agent (on behalf of the Lender Groups) pursuant to the Receivables Loan Agreement, and each Originator consents to the foregoing. Each Originator further expressly acknowledges and agrees that, following the occurrence of an Event of Termination, the Administrative Agent (on behalf of the Lender Groups) shall have the right to enforce directly all rights hereunder of the Company and all obligations hereunder of each Originator (but without the assumption of any obligations or liabilities hereunder).

Section 10.12 No Proceeding. Each Originator hereby agrees that it will not institute, or join any other Person in instituting, against the Company any Insolvency Proceeding so long as any obligations of the Company pursuant to the Receivables Loan Agreement or any other Facility Document remains outstanding and until one year plus one day following the day on which such obligations are paid in full. Each Originator further agrees that notwithstanding any provisions contained in this Agreement to the contrary, the Company shall not, and shall not be obligated to, pay any amount in respect of the Subordinated Note or otherwise to such Originator pursuant to this Agreement unless the Company has received funds which may, subject to *Section 2.07 or 2.08* of the Receivables Loan Agreement, be used to make such payment. Any amount which the Company does not pay pursuant to the operation of the preceding sentence shall not constitute a claim (as defined in §101 of the Bankruptcy Code) against or corporate obligation of the Company for any such insufficiency unless and until the provisions of the foregoing sentence are satisfied. The agreements in this *Section 10.12* shall survive any termination of this Agreement.

Section 10.13 Limited Recourse. Except as explicitly set forth herein, the obligations of the Company under this Agreement or any other Facility Document to which it is a party are solely the obligations of the Company. No recourse under any Facility Document shall be had against, and no liability shall attach to, any officer, employee, director, or beneficiary, whether directly or indirectly, of the Company. The agreements in this *Section 10.13* shall survive any termination of this Agreement.

Section 10.14 Treatment as Sales; Tax Treatment. Except for U.S. federal income Tax purposes, the parties hereto will not account for or treat (whether in financial statements or otherwise) the transactions contemplated by this Agreement in any manner other than as the sale of Receivables. The parties agree that the transactions contemplated under this Agreement shall be treated as the issuance of indebtedness for U.S. federal income Tax purposes and agree not to take any Tax position inconsistent with such Tax treatment and shall not report the transactions arising under this Agreement in any manner other than the issuance of indebtedness on all applicable Tax returns unless otherwise required by applicable Law.

Section 10.15 Subordinated Note Financing.

(a) Waiver of Setoff. Notwithstanding anything in this Agreement to the contrary, (i) all payments to be made by the Company under the Subordinated Note shall be made without setoff, counterclaim or other defense, (ii) the Company hereby waives any and all of its rights to assert any right of setoff, counterclaim or other defense to the making of a payment under the Subordinated Note (which waiver shall be binding on any assignee of the Company's rights hereunder), and (iii) each Originator and the Servicer hereby waives any and all rights it may have to set-off any amounts owing by such Originator or the Servicer to the Company (whether under the Facility Documents or otherwise) against any amounts owing for the account of such Originator under the Subordinated Note.

(b) Assignment. To the extent the Subordinated Note is assigned, pledged or transferred to a Subordinated Note Financier in accordance with a Subordinated Note Financing, the Company acknowledges and agrees that, upon the occurrence of an “event of default”, an “event of termination” or similar event under the Subordinated Note Financing Documents, the Subordinated Note Financier may exercise all the rights of the Servicer and the Originators under the Subordinated Note, including directing the Company to make all payments under the Subordinated Note directly to the Subordinated Note Financier. Each of the parties hereto hereby acknowledges and agrees that each Subordinated Note Financier is a third-party beneficiary of this Section 10.15 and shall have the right to enforce the provisions of this Section 10.15. The agreements in this Section 10.15 shall survive any termination of this Agreement until such time as the Final Collection Date has occurred and the principal and interest on the Subordinated Note has been repaid in full.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

GREEN MOUNTAIN ENERGY COMPANY, as an Originator

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 910 Louisiana Street Houston, Texas 77002

Attn: Legal Department

Phone: 713-537-3000

[Signature Page to Receivables Sale Agreement (NRG)]

RELIANT ENERGY RETAIL SERVICES, LLC, as an Originator

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 910 Louisiana Street Houston, Texas 77002

Attn: Legal Department

Phone: 713-537-3000

[Signature Page to Receivables Sale Agreement (NRG)]

RELIANT ENERGY NORTHEAST, LLC, as an Originator

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 804 Carnegie Center Princeton, New Jersey 08540

Attn: Legal Department

Phone: 609-524-4500

[Signature Page to Receivables Sale Agreement (NRG)]

STREAM SPE, LTD., as an Originator

By: Stream SPE GP, LLC, its Sole General Partner

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 910 Louisiana Street Houston, Texas 77002

Attn: Legal Department

Phone: 713-537-3000

[Signature Page to Receivables Sale Agreement (NRG)]

XOOM ENERGY TEXAS, LLC, as an Originator

By: XOOM Energy, LLC, its Sole Manager

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 910 Louisiana Street Houston, Texas 77002

Attn: Legal Department

Phone: 713-537-3000

[Signature Page to Receivables Sale Agreement (NRG)]

US RETAILERS LLC, as an Originator

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 910 Louisiana Street Houston, Texas 77002

Attn: Legal Department

Phone: 713-537-3000

[Signature Page to Receivables Sale Agreement (NRG)]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

NRG RETAIL LLC, as Servicer

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 804 Carnegie Center Princeton, New Jersey 08540

Attn: Legal Department

Phone: 609-524-4500

[Signature Page to Receivables Sale Agreement (NRG)]

NRG RECEIVABLES LLC

By: /s/ Elizabeth Killinger

Name: Elizabeth R. Killinger

Title: President

Address: 804 Carnegie Center Princeton, New Jersey 08540

Attn: Legal Department

Phone: 609-524-4500

[Signature Page to Receivables Sale Agreement (NRG)]

FORM OF SUBORDINATED NOTE

New York, New York

FOR VALUE RECEIVED, the undersigned, NRG RECEIVABLES LLC, a Delaware limited liability company (the “*Company*”), promises to pay NRG RETAIL LLC, a Delaware limited liability company (the “*Servicer*”) for the benefit of the Originators (as defined in the Receivables Sale Agreement), on the terms and subject to the conditions set forth herein and in the Receivables Sale Agreement referred to below, the aggregate unpaid Purchase Price of all Receivables purchased by the Company from each Originator pursuant to such Purchase Agreement, as such unpaid Purchase Price is shown in the records of the Servicer.

1. *Receivables Sale Agreement.* This Subordinated Note is the Subordinated Note described in, and is subject to the terms and conditions set forth in, that certain Receivables Sale Agreement dated as of September 22, 2020 (as the same may be amended, supplemented, restated or otherwise modified in accordance with its terms, the “*Receivables Sale Agreement*”), between the Company, the Servicer and the Originators named therein. Reference is hereby made to the Receivables Sale Agreement for a statement of certain other rights and obligations of the Company, the Servicer and the Originators.

2. *Definitions.* Capitalized terms used (but not defined) herein have the meanings assigned thereto in (or by reference in) the Receivables Sale Agreement. In addition, as used herein, the following terms have the following meanings:

“*Bankruptcy Proceedings*” means an Event of Termination described in *Section 7.01(e)* of the Receivables Loan Agreement with respect to the Company.

“*Eurodollar Rate*” means, with respect to the period commencing on the date hereof and ending one month thereafter and each successive one month period thereafter (each, an “*Interest Period*”), an interest rate per annum determined on the basis of the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person which takes over the administration of that rate) for deposits in United States dollars for one month period as it appears on the relevant display page on the Bloomberg Professional Service (or any successor or substitute page or service providing quotations of interest rates applicable to United States dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Originator from time to time), at approximately 11:00 a.m., London, England time, two (2) Business Days prior to the first day of such Interest Period. Notwithstanding the foregoing, if the Eurodollar Rate is below zero, the rate will be deemed to be zero.

“*Federal Funds 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 arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that if such day is not a Business Day, the Federal Funds 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.

“*Final Maturity Date*” means the date immediately following the date that falls one year and one day after the Final Collection Date.

“*Interest Period*” has the meaning set forth in the definition of “Eurodollar Rate”.

“*Senior Interests*” means, collectively, (i) all Borrower Obligations and (ii) all other obligations of the Company, the Servicer and the Performance Guarantor that are due and payable, to (a) each Lender, each LC Issuer, each Facility Agent, the Administrative Agent and their respective successors, permitted transferees and assigns arising in connection with the Facility Documents and/or (b) any Indemnified Party or Affected Person arising in connection with the Receivables Loan Agreement, in each case, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due, together with any and all Interest accruing on any such amount after the commencement of any Bankruptcy Proceedings, notwithstanding any provision or rule of law that might restrict the rights of any Senior Interest Holder, as against the Company or anyone else, to collect such interest.

“*Senior Interest Holders*” means, collectively, each Lender, each LC Issuer, each Facility Agent, the Administrative Agent and the Indemnified Parties and Affected Persons.

“*Subordination Provisions*” means, collectively, *clauses (a) through (l) of paragraph 9* hereof.

3. *Interest.* Subject to the Subordination Provisions, the Company promises to pay interest on this Subordinated Note as follows:

(a) Prior to the Final Maturity Date, the principal amount of this Subordinated Note from time to time outstanding during any Interest Period shall bear interest at a rate per annum equal to the Eurodollar Rate for such Interest Period plus 1.75%, as determined by the Servicer; and

(b) From (and including) the Final Maturity Date to (but excluding) the date on which the entire principal amount of this Subordinated Note is fully paid, the principal amount of this Subordinated Note from time to time outstanding shall bear interest at a rate per annum equal to the Federal Funds Rate plus 2.25%.

4. *Interest Payment Dates.* Subject to the Subordination Provisions, the Company shall pay accrued interest on this Subordinated Note on each Interest and Fee Payment Date, and shall pay accrued interest on the amount of each principal payment made in cash on a date other than a Interest and Fee Payment Date at the time of such principal payment, in each case, (A) if the Termination Date has not occurred under the Receivables Loan Agreement, to the extent funds are available for application by the Borrower pursuant to Section 2.07(b)(iii) of the Receivables Loan Agreement and (B) if such Termination Date has occurred, then on the Final Collection Date to the extent funds are available to the Borrower pursuant to Section 2.08(b) (viii) under the Receivables Loan Agreement.

5. *Basis of Computation.* Interest accrued hereunder that is computed by reference to the Eurodollar Rate shall be computed for the actual number of days elapsed on the basis of a 360-day year, and interest accrued hereunder that is computed by reference to the rate described in paragraph 3(b) of this Subordinated Note shall be computed for the actual number of days elapsed on the basis of a 365- or 366-day year, as applicable.

6. *Principal Payment Dates.* Subject to the Subordination Provisions, the entire principal amount of this Subordinated Note shall be paid (A) on the Final Collection Date to the extent funds are available to the Borrower pursuant to Section 2.08(b)(viii) under the Receivables Loan Agreement after payment of any interest then due and payable on this Subordinated Note, and (B) to the extent this Subordinated Note has not been previously repaid in full, on the Final Maturity Date. For the avoidance of doubt, following the occurrence of the Termination Date, the Borrower shall not use any funds available to it pursuant to Section 2.08(b)(viii) of the Receivables Loan Agreement to make any Restricted Payments (as defined in the Receivables Loan Agreement) unless the principal and accrued interest on this Subordinated Note has been repaid in full.

Subject to the Subordination Provisions, the principal amount of and accrued interest on this Subordinated Note may be prepaid in whole or in part by, and in the sole discretion of the Company, on any Business Day without premium or penalty prior to the Termination Date under the Receivables Loan Agreement to the extent funds are available for application by the Borrower pursuant to Section 2.07(b)(iii) of the Receivables Loan Agreement.

7. *Payment Mechanics.* All payments of principal and interest hereunder are to be made in lawful currency of the United States of America.

8. *Enforcement Expenses.* In addition to and not in limitation of the foregoing, but subject to the Subordination Provisions and to any limitation imposed by applicable law, the Company agrees to pay all reasonable and documented expenses, including reasonable attorneys' fees and legal expenses, incurred by the Servicer and the Originators in seeking to collect any amounts payable hereunder which are not paid when due.

9. *Subordination Provisions.* The Company covenants and agrees, and the Servicer, each Originator and any other holder of this Subordinated Note (collectively, the Originator and any such other holder are called the "*Holder*"), by its acceptance of this Subordinated Note (or a beneficial interest herein), likewise covenants and agrees on behalf of itself and any holder that:

(a) No payment or other distribution of the Company's assets of any kind or character, whether in cash, securities, or other rights or property, shall be made on account of this Subordinated Note except to the extent such payment or other distribution is permitted under Section 5.03(I) of the Receivables Loan Agreement;

(b) In the event of the occurrence of Bankruptcy Proceedings, the Senior Interests shall first be paid and performed in full and in cash before the Holder shall be entitled to receive and to retain any payment or distribution in respect of this Subordinated Note;

(c) In the event that the Holder receives any payment or other distribution of any kind or character from the Company or from any other source whatsoever, in respect of this Subordinated Note, other than as expressly permitted by the terms of this Subordinated Note, such payment or other distribution shall be received in trust for the Senior Interest Holders and shall promptly be turned over by the Holder to the Administrative Agent (for the benefit of the Senior Interest Holders);

(d) Notwithstanding any payments or distributions received by the Senior Interest Holders in respect of this Subordinated Note, prior to the occurrence of the Final Collection Date, the Holder shall not be subrogated to the then existing rights of the Senior Interest Holders in respect of the Senior Interests until the Senior Interests have been paid and performed in full and in cash. Upon the occurrence of the Final Collection Date, the Holder will be subrogated to the then existing rights of the Senior Interest Holders, if any;

(e) These Subordination Provisions are intended solely for the purpose of defining the relative rights of the Holder, on the one hand, and the Senior Interest Holders, on the other hand. Nothing contained in these Subordination Provisions or elsewhere in this Subordinated Note is intended to or shall impair, as between the Company, its creditors (other than the Senior Interest Holders) and the Holder, the Company's obligation, which is unconditional and absolute, to pay the Holder the principal of and interest on this Subordinated Note as and when the same shall become due and payable in accordance with the terms hereof or to affect the relative rights of the Holder and creditors of the Company (other than the Senior Interest Holders);

(f) The Holder shall not, until the Senior Interests have been paid and performed in full and in cash, cancel, waive, forgive, or commence legal proceedings to enforce or collect this Subordinated Note;

(g) [Reserved];

(h) If, at any time, any payment (in whole or in part) of any Senior Interest is rescinded or must be restored or returned by a Senior Interest Holder (whether in connection with Bankruptcy Proceedings or otherwise), these Subordination Provisions shall continue to be effective or shall be reinstated, as the case may be, as though such payment had not been made;

(i) Each of the Senior Interest Holders may, from time to time, at its sole discretion, without notice to the Holder, and without waiving any of its rights under these Subordination Provisions or otherwise affecting these Subordination Provisions, take any or all of the following actions: (i) retain or obtain an interest in any property to secure any of the Senior Interests; (ii) retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to any of the Senior Interests; (iii) extend or renew for one or more periods (whether or not longer than the original period), alter or exchange any of the Senior Interests, or release or compromise any obligation of any nature with respect to any of the Senior Interests; (iv) amend, supplement, restate, or otherwise modify any Facility Document (on the terms set forth in such Facility Document); and (v) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of any rights or property securing any of the Senior Interests, or extend or renew for one or more periods (whether or not longer than the original period), or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such rights or property;

(j) The Holder hereby waives: (i) notice of acceptance of these Subordination Provisions by any of the Senior Interest Holders; (ii) notice of the existence, creation, non-payment or non-performance of all or any of the Senior Interests; and (iii) all diligence in enforcement, collection or protection of, or realization upon, the Senior Interests, or any thereof, or any security therefor;

(k) Each of the Senior Interest Holders may, from time to time, on the terms and subject to the conditions set forth in the Facility Documents to which such Persons are party, but without notice to the Holder, assign or transfer any or all of the Senior Interests, or any interest therein; and, notwithstanding any such assignment or transfer or any subsequent assignment or transfer thereof, such Senior Interests shall be and remain Senior Interests for the purposes of these Subordination Provisions, and every immediate and successive assignee or transferee of any of the Senior Interests or of any interest of such assignee or transferee in the Senior Interests shall be entitled to the benefits of these Subordination Provisions to the same extent as if such assignee or transferee were the assignor or transferor; and

(l) These Subordination Provisions constitute a continuing offer from the Holder to all Persons who become the holders of, or who continue to hold, Senior Interests; and these Subordination Provisions are made for the benefit of the Senior Interest Holders, and the Administrative Agent may proceed to enforce such provisions on behalf of each of such Persons.

10. *No Waiver; No Petition.* (a) No failure or delay on the part of the Originator in exercising any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. No amendment, modification or waiver of, or consent with respect to, any provision of this Subordinated Note shall in any event be effective unless (i) the same shall be in writing and signed and delivered by the Company and the Holder and (ii) the Administrative Agent shall have consented thereto in writing.

(b) The Holder hereby agrees that it will not (i) institute against, join any other Person in instituting against or take any action, direct or indirect, in furtherance or contemplation of instituting against, the Company any bankruptcy, insolvency, winding up, dissolution, receivership, conservatorship or other similar proceeding or action or (ii) exercise any right of set-off or recoupment, or assert any counterclaim, against the Company in each case so long as there shall not have elapsed one year and one day since the Final Collection Date has occurred.

11. *Maximum Interest.* Notwithstanding anything in this Subordinated Note to the contrary, the Company shall never be required to pay unearned interest on any amount outstanding hereunder and shall never be required to pay interest on the principal amount outstanding hereunder at a rate in excess of the maximum nonusurious interest rate that may be contracted for, charged or received under applicable federal or state law (such maximum rate being herein called the “*Highest Lawful Rate*”). If the effective rate of interest which would otherwise be payable under this Subordinated Note would exceed the Highest Lawful Rate, or if the holder of this Subordinated Note shall receive any unearned interest or shall receive monies that are deemed to constitute interest which would increase the effective rate of interest payable by the Company under this Subordinated Note to a rate in excess of the Highest Lawful Rate, then (i) the amount of interest which would otherwise be payable by the Company under this Subordinated Note shall be reduced to the amount allowed by applicable law, and (ii) any unearned interest paid by the Company or any interest paid by the Company in excess of the Highest Lawful Rate shall be refunded to the Company. Without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received by the Servicer or any Originator under this Subordinated Note that are made for the purpose of determining whether such rate exceeds the Highest Lawful Rate applicable to the Servicer or any Originator (such Highest Lawful Rate being herein called the “*Maximum Permissible Rate*”) shall be made, to the extent permitted by usury laws applicable to the Servicer and the Originators (now or hereafter enacted), by amortizing, prorating and spreading in equal parts during the actual period during which any amount has been outstanding hereunder all interest at any time contracted for, charged or received by the Servicer or any Originator in connection herewith. If at any time and from time to time (i) the amount of interest payable to the Servicer or any Originator on any date shall be computed at the Maximum Permissible Rate pursuant to the provisions of the foregoing sentence and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the Servicer or any Originator would be less than the amount of interest payable to the Servicer or such Originator computed at the Maximum Permissible Rate, then the amount of interest payable to the Servicer or such Originator in respect of such subsequent interest computation period shall continue to be computed at the Maximum Permissible Rate until the total amount of interest payable to the Servicer or such Originator shall equal the total amount of interest which would have been payable to the Originator if the total amount of interest had been computed without giving effect to the provisions of the foregoing sentence.

12. *Governing Law.* THIS SUBORDINATED NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO ITS CONFLICTS OF LAW PROVISIONS (OTHER THAN §5-1401 AND §5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, WHICH SHALL APPLY HERETO)).

13. *Captions.* Paragraph captions used in this Subordinated Note are for convenience only and shall not affect the meaning or interpretation of any provision of this Subordinated Note.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused this Subordinated Note to be executed as of the date first written above.

NRG RECEIVABLES LLC

By: _____
Name: _____
Title: _____

Exhibit A-7

RECEIVABLES LOAN AND SERVICING AGREEMENT

dated as of September 22, 2020

among

NRG RECEIVABLES LLC,
as Borrower

NRG RETAIL LLC,
as Servicer

THE PERSONS FROM TIME TO TIME
PARTY HERETO AS CONDUIT LENDERS,

THE PERSONS FROM TIME TO TIME
PARTY HERETO AS COMMITTED LENDERS,

THE PERSONS FROM TIME TO TIME
PARTY HERETO AS FACILITY AGENTS,

THE FINANCIAL INSTITUTIONS FROM TIME TO TIME
PARTY HERETO AS LC ISSUERS,

and

ROYAL BANK OF CANADA
as Administrative Agent

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RECEIVABLES LOAN AND SERVICING AGREEMENT

This RECEIVABLES LOAN AND SERVICING AGREEMENT dated as of September 22, 2020 is among NRG RECEIVABLES LLC, a Delaware limited liability company, as Borrower, NRG RETAIL LLC, a Delaware limited liability company, as Servicer, OLD LINE FUNDING, LLC, ATLANTIC ASSET SECURITIZATION LLC, LA FAYETTE ASSET SECURITIZATION LLC and GOTHAM FUNDING CORPORATION, as Conduit Lenders, THE PERSONS FROM TIME TO TIME PARTY HERETO, as Committed Lenders, THE PERSONS FROM TIME TO TIME PARTY HERETO, as Facility Agents, THE FINANCIAL INSTITUTIONS FROM TIME TO TIME PARTY HERETO, as LC Issuers, and ROYAL BANK OF CANADA, as Administrative Agent for the Conduit Lenders, the Committed Lenders, the LC Issuers and the Facility Agents. Capitalized terms used herein shall have the meanings specified in Section 1.01.

PRELIMINARY STATEMENTS

WHEREAS, the Borrower has purchased and may from time to time purchase Receivables from the Originators pursuant to the Receivables Sale Agreement;

WHEREAS, to fund its purchases under the Receivables Sale Agreement, the Borrower may from time to time request Loans from the Lenders and the issuance of Letters of Credit from the LC Issuers on the terms and conditions of this Agreement;

WHEREAS, the Conduit Lenders may, in their sole discretion, make Loans so requested from time to time, and if a Conduit Lender in any Lender Group elects not to make any such Loan, the Committed Lenders in such Lender Group have agreed that they shall make such Loan, in each case subject to the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each party agrees as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

“Administrative Agent” means RBC, in its capacity as agent for the Lenders, the LC Issuers and the Facility Agents, together with its successors and permitted assigns.

“Administrative Agent Fee Letter” means that certain Administrative Agent Fee Letter, dated as of the Effective Date, between the Borrower and the Administrative Agent.

“Advance Suspension Event” means, the occurrence of any of the following:

(a) any Transaction Party shall fail to make any payment or deposit required to be made by it hereunder or under any other Facility Document to the Borrower, the Administrative Agent or any Secured Party when due, without giving effect to the proviso at the end of Section 5.01, 5.02, 5.04 or 5.05;

(b) the Servicer shall fail to deliver a Borrowing Base Certificate on the Monthly Reporting Date;

(c) any Loan Party shall fail to perform or observe any term, covenant or agreement contained in this Agreement or any other Facility Document (unless otherwise provided in this definition of Advance Suspension Event) where such failure is continuing and such Loan Party is relying on the proviso in Section 5.01, 5.02, 5.04 or 5.05 for such failure not to constitute a breach; provided, that there shall be no Advance Suspension Event if such breach is specific to a Pool Receivable that (x) would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and (y) with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default;

(d) any representation or warranty made or deemed to be made by any Loan Party under or in connection with this Agreement or any other Facility Document (including any Monthly Report, any Borrowing Request, any Borrowing Base Certificate, any Letter of Credit Request or other information or report delivered pursuant hereto) shall prove to have been materially false or incorrect (except that the materiality standard in this clause (d) shall not apply to any such representation or warranty that is qualified by a materiality standard by its terms) when made or deemed made or delivered, and in each case, is not cured; provided, that there shall be no Advance Suspension Event if any such representation or warranty is specific to a Pool Receivable that (x) would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and (y) with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default; or

(e) as of the close of business on any date, any Borrowing Base Deficiency shall exist.

“Adverse Claim” means a Lien other than any Permitted Lien.

“Affected Person” means any Lender, any LC Issuer, the Administrative Agent, any Facility Agent, any Liquidity Provider, any other Program Support Provider, any Program Administrator and, with respect to each of the foregoing, any of their respective Affiliates.

“Affiliate” means, with respect to any Person, any other Person that directly or indirectly controls or is controlled by or is under common control with such specified Person.

“Aggregate Commitment” means, at any time, the sum of the Commitments then in effect (giving effect to the adjustments to the Commitments for each Period). The initial Aggregate Commitment as of the Effective Date is \$750,000,000.

“Aggregate Exposure Amount” means, at any time, without duplication, the aggregate of all Exposure Amounts of all Lenders and LC Issuers hereunder.

“Aggregate Principal Balance” means, at any time, the aggregate outstanding Principal Balance of the Loans hereunder at such time.

“Agreement” means this Receivables Loan and Servicing Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Alternative Rate” means, for any day, an interest rate equal to the LIBO Rate determined as of such day; provided that for any day for which adequate means do not exist for ascertaining the LIBO Rate, the Base Rate shall be used.

“Anti-Corruption Laws” means the United States Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010 and, to the extent applicable, other similar legislation in any other jurisdictions.

“Anti-Terrorism Laws” means (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto and (ii) the PATRIOT Act.

“Assignment and Acceptance” means an agreement substantially in the form set forth as Exhibit H hereto pursuant to which a new Conduit Lender or Committed Lender becomes party to this Agreement.

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

“Bail-In Legislation” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. Section 101 *et seq.*, as amended from time to time, or any successor thereto.

“Basel III” means the third Basel Accord issued by the Basel Committee on Banking Supervision.

“Base Rate” means a fluctuating interest rate per annum as shall be in effect from time to time, which rate shall at all times be equal to the highest of: (A) the Prime Rate, (B) the Federal Funds Rate plus 0.50% and (C) the LIBO Rate (to the extent available) plus 1.00%.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation in a form provided to the Servicer, on behalf of the Borrower, by the Administrative Agent or such other form as is reasonably acceptable to the Administrative Agent.

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

“Billed Receivable” means any Receivable which is not an Unbilled Receivable.

“Board of Directors” means (a) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board; (b) with respect to a partnership, the board of directors of the general partner of the partnership; (c) with respect to a limited liability company, any managing member or members, any controlling committee of managing members, any board of directors or any board of managers thereof, as applicable, that has the power to direct the management of such limited liability company; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

“Borrower” means NRG Receivables LLC, a Delaware limited liability company, in its capacity as Borrower hereunder, together with its successors and permitted assigns.

“Borrower Obligations” means all present and future indebtedness and other liabilities and obligations (howsoever created or evidenced, whether direct or indirect, absolute or contingent, or due or to become due) of the Borrower to the Secured Parties arising under this Agreement or any other Facility Document or the transactions contemplated hereby or thereby, and shall include, without limitation, the repayment of the Aggregate Principal Balance and the payment of Interest, Fees, Fronting Fees, Other LC Fees, Reimbursement Obligations, and all other amounts due or to become due from the Borrower under the Facility Documents (whether in respect of fees, expenses, indemnifications, breakage costs, increased costs or otherwise), including, without limitation, interest, fees and other obligations that accrue after the commencement of any bankruptcy, insolvency or similar proceeding with respect to any Transaction Party (in each case whether or not allowed as a claim in such proceeding).

“Borrowing” means a borrowing of Loans under this Agreement.

“Borrowing Base” means, at any time, an amount equal to (a) the sum of (i) the Net Receivables Balance at such time plus (ii) an amount equal to cash held at such time in the Collection Account, the Designated Deposit Account or any other account designated by the Administrative Agent pursuant to Section 2.07(a)(viii) minus (b) the Total Reserve Amount at such time.

“Borrowing Base Certificate” has the meaning specified in Section 2.03(a).

“Borrowing Base Default” means that a Borrowing Base Deficiency exists and continues to exist (i) at 5 p.m. (New York city time) on the second Business Day after the Borrower or the Servicer has knowledge thereof or (ii) past 11:00 a.m. (New York city time) on the third Business Day after the Borrower or the Servicer has knowledge thereof if (x) the Servicer has notified the Administrative Agent no later than the end of such second Business Day that the Borrower will have sufficient cash to eliminate such Borrow Base Deficiency and (y) such Borrowing Base Deficiency does not exceed five percent (5%) of the Aggregate Exposure Amount at such time. For purposes of this definition, the Borrower and the Servicer shall be deemed to have “knowledge” of a Borrowing Base Deficiency if either (i) the President or the Treasurer of the Servicer, or any of their successors or any officers with similar roles or responsibilities has knowledge of such Borrowing Base Deficiency or (ii) a Borrowing Base Certificate evidencing a Borrowing Base Deficiency is delivered hereunder.

“Borrowing Base Deficiency” means, at any time, the excess, if any, of (i) the Aggregate Exposure Amount over (ii) the lesser of (A) the Borrowing Base and (B) the Facility Limit.

“Borrowing Date” has the meaning specified in Section 2.02(a)(i).

“Borrowing Request” has the meaning specified in Section 2.02(a)(i).

“Business Day” means any day other than a Saturday, Sunday or public holiday or the equivalent for banks in New York City, New York and, if the term “Business Day” is used in connection with the LIBO Rate, any day on which dealings are carried on in the London interbank market.

“CACIB Lender Group” means the Crédit Agricole Corporate and Investment Bank Lender Group as defined on Schedule I.

“Calculation Period” means each calendar month.

“Carrying Cost Reserve Amount” means, at any time, an amount equal to the product of (i) the Carrying Cost Reserve Percentage at such time and (ii) the Net Receivables Balance at such time.

“Carrying Cost Reserve Percentage” means, at any time, the product of (i) 1.5, (ii) the Default Rate and (iii) a fraction, the numerator of which is the highest Days’ Sales Outstanding for the prior twelve (12) Calculation Periods, and the denominator of which is 360.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the LC Issuers or the Lenders, as collateral for LC Obligations or, to the extent that Cash Collateralize relates to any Lender obligations, obligations of the Lenders to fund Reimbursement Borrowings in respect of LC Obligations, cash or deposit account balances or, if the Administrative Agent and the LC Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the LC Issuer. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“CCS Billing Platform” means the billing platform used by the Originators to generate invoices to Obligor, which maintains a subledger showing the receivables created and the cash received and applied to such receivables.

“Change in Control” means (i) with respect to the Borrower, NRG Retail LLC shall cease to directly own 100% of the issued and outstanding ownership interests of the Borrower, free of any Adverse Claims, (ii) with respect to an Originator, the Performance Guarantor ceases to own, directly or indirectly, 100% of the ownership interests having ordinary voting power to elect a majority of the Board of Directors or other Persons performing similar functions of such Originator free of all Adverse Claims, (iii) with respect to the Servicer, the Performance Guarantor ceases to own, directly or indirectly, 100% of the ownership interests having ordinary voting power to elect a majority of the Board of Directors or other Persons performing similar functions of the Servicer free of all Adverse Claims, or (iv) with respect to the Performance Guarantor, a “Change in Control” (as defined in the Parent Credit Agreement) occurs. Notwithstanding the foregoing, any Person may pledge, grant a security interest in, or create a charge over, the shares or other forms of ownership interest it owns in any Originator, the Servicer or the Performance Guarantor as long as such pledge, security interest or charge does not result in the Performance Guarantor, or the applicable Originator or the Servicer, as the case may be, ceasing to have the power, directly or indirectly, to direct the management and policies of the entity the ownership interest in which is pledged.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of the Code also refer to any successor sections.

“Collateral” has the meaning set forth in Section 2.15.

“Collection Account” means the account which may be established and maintained pursuant to Section 6.04(c) by and in the name of the Administrative Agent on behalf of the Lender Groups, for the purpose of receiving Collections, or any other account which may be designated by the Administrative Agent from time to time upon written notice to the Servicer and the Borrower.

“Collections” means, with respect to any Receivable: (a) any and all funds that are received (whether in the form of cash, wire transfer, check or otherwise) by the Borrower (including from the Servicer or any Originator pursuant to the Receivables Sale Agreement or this Agreement) in payment of any amounts owed in respect of such Receivable (including purchase price, finance charges, interest, Taxes, transmission charges (if any) and all other charges) or applied to amounts owed in respect of such Receivable (including insurance payments and net proceeds of the sale or disposition of repossessed goods or other collateral or property of the related Obligor or any other Person directly or indirectly liable for the payment of such Receivable and available to be applied thereon), and (b) any amounts deemed to have been received with respect to such Receivable pursuant to Section 2.09 hereof.

“Commercial Paper Notes” means short-term promissory notes issued or to be issued by any Conduit Lender to fund its investments in accounts receivable or other financial assets.

“Commitment” means, for each Committed Lender at any time, the commitment of such Committed Lender to fund Loans and purchase participation interests in respect of LC Credit Extensions under Section 2.04(f), in each case in the event that each Conduit Lender (if any) in its Lender Group declines to fund a Loan or a Reimbursement Borrowing under Section 2.04, in an amount not to exceed, in the aggregate, the Dollar amount set forth opposite such Committed Lender’s name on Schedule I hereto for the applicable Period or, in the case of a Committed Lender that becomes a party to this Agreement pursuant to a Joinder Agreement or an Assignment and Acceptance, the amount set forth therein as such Committed Lender’s “Commitment”, in each case, as such amount may be modified in accordance with the terms hereof.

“Committed Lender” means, as to any Lender Group, each of the financial institutions listed on Schedule I as a “Committed Lender” for such Lender Group, together with its respective successors and permitted assigns.

“Concentration Limit” means, for any Obligor at any time, an amount equal to the product of (a) the applicable percentage set forth in the chart below for such Obligor and (b) the Outstanding Balance of all Eligible Receivables at such time:

Rating of Obligor ⁽¹⁾	Concentration Limit
A-1 by S&P / P-1 by Moody’s (A+ by S&P / A1 by Moody’s) or above	10.0%
Below A-1 by S&P / P-1 by Moody’s (A+ by S&P / A1 by Moody’s) but at least A-2 by S&P / P-2 by Moody’s (BBB+ by S&P / Baa1 by Moody’s)	5.0%
Below A-2 by S&P / P-2 by Moody’s (BBB+ by S&P / Baa1 by Moody’s) but at least A-3 by S&P / P-3 by Moody’s (BBB- by S&P / Baa3 by Moody’s)	3.33%
Below A-3 by S&P / P-3 by Moody’s (BBB- by S&P / Baa3 by Moody’s) or unrated	2.00%

(1) If an Obligor’s short-term rating is split, the lower of the available ratings shall be used to determine the applicable Concentration Limit. If no short-term rating is available, the long-term equivalent (specified in the parentheses above) shall be used, and if such long-term rating is split, the higher long-term ratings shall be used to determine the applicable Concentration Limit. If only one rating is available, such rating category will apply to determine the applicable Concentration Limit. If an Obligor’s payment obligation under a Contract is guaranteed by such Obligor’s parent, such parent’s rating shall be used, subject to the same rules of construction set forth in the three preceding sentences.

“Conduit Lender” means, collectively, the Persons identified as “Conduit Lenders” on Schedule I and their respective successors and permitted assigns.

“Consolidated Total Net Leverage Ratio” shall have the meaning assigned to such term in the Parent Credit Agreement.

“Contract” means, with respect to any Pool Receivable, any and all contracts, instruments, agreements, leases, invoices, notes or other writings pursuant to which such Pool Receivable arises or that evidence such Pool Receivable or under which an Obligor becomes or is obligated to make payment in respect of such Pool Receivable.

“CP Rate” means, for any Conduit Lender, for any period and with respect to any portion of any Credit Extension funded by Commercial Paper Notes, any rate designated as the “CP Rate” for such Conduit Lender in the Fee Letter, an Assignment and Acceptance or a Joinder Agreement pursuant to which such Person becomes a party as a Conduit Lender to this Agreement, or any other writing or agreement provided by such Conduit Lender to the Borrower, the Servicer and the applicable Facility Agent from time to time.

“Credit and Collection Policy” means the credit and collection policies and practices relating to the Receivables and the related Obligor that have been delivered to the Administrative Agent, as modified from time to time in accordance with the terms of Section 5.03(c) and delivered to the Administrative Agent thereafter.

“Credit Extension” means a Loan or an LC Credit Extension.

“Customer Deposit Amount” means (a) at any time that the Performance Guarantor has a long-term credit rating of at least BB- by S&P and Ba3 by Moody’s, \$0 and (b) at any other time, the aggregate Customer Deposits at such time.

“Customer Deposits” means any cash or credits held by an Originator for the account of an Obligor as security for, or for application to, the payment of the Receivables of such Obligor.

“Days’ Sales Outstanding” means, at any time, an amount equal to the product of (i) a fraction, the numerator of which is the Outstanding Balance of all Receivables on the first day of the immediately preceding Calculation Period, and the denominator of which is the aggregate Outstanding Balance (in each case, at the time of billing) of all Billed Receivables generated by the Originators during such Calculation Period, multiplied by (ii) 30.

“DE LLC Act” means the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as it may be amended from time to time, and any successor thereto.

“Debtor Relief Laws” means (i) the United States Bankruptcy Code and (ii) all other applicable liquidation, conservatorship, bankruptcy, moratorium, arrangement, receivership, insolvency, reorganization, suspension of payments, adjustment of debt, marshalling of assets or similar debtor relief laws of the United States, any state or any foreign country from time to time in effect affecting the rights of creditors generally.

“Debt Rating” means, with respect to any Person at any time, the then current rating by S&P or Moody’s of such Person’s long-term public senior unsecured non-credit enhanced debt.

“Default Rate” means an interest rate per annum equal to the Base Rate plus 2.00%.

“Default Ratio” means, as of any time, with respect to the immediately preceding Calculation Period, the fraction (expressed as a percentage), (a) the numerator of which is the aggregate Outstanding Balance of all Billed Receivables that were not Defaulted Receivables at the beginning of such Calculation Period but that became Defaulted Receivables during such Calculation Period and (b) the denominator of which is the aggregate amounts payable in respect of all Billed Receivables (including any Unbilled Receivable that became a Billed Receivable) billed by an Originator in the four (4) consecutive Calculation Periods ending immediately prior to such Calculation Period.

“Defaulted Receivable” means a Receivable: (i) as to which any payment, or part thereof, remains unpaid for ninety-one (91) or more days from the original due date thereof taking into account any Deferred Payment Plan, (ii) as to which the Obligor thereof is subject to an Event of Bankruptcy, (iii) which has been identified by the Servicer or the applicable Originator as uncollectible or (iv) which, consistent with the Credit and Collection Policy, has been or should be written off as uncollectible.

“Defaulting Committed Lender” means any Committed Lender that (a) has failed to fund all or any portion of its share of a Credit Extension on the date 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 Committed Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (b) as determined by the Administrative Agent, has failed to fund any of its Lender Group Percentage of a Reimbursement Borrowing in accordance with Section 2.04(f), (c) has notified the Borrower, the Servicer, the Administrative Agent, any Facility Agent or any other 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 indicates that such position is based on such Committed Lender’s good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (d) has become the subject of an Event of Bankruptcy; provided that a Committed Lender shall not be a Defaulting Committed Lender pursuant to this clause (d) solely by virtue of the ownership or acquisition of any Equity Interest in such Committed Lender or its Parent Company by a Governmental Authority or agency thereof.

“Deferred Payment Plan” means with respect to any Receivable, a payment plan that permits the related Obligor to make a down payment on the Outstanding Balance of such Receivable on the original due date, unless charging a down payment is not permitted by federal, state or local laws, regulations, orders or guidelines, and the balance of which or the remaining balance of which, as the case may be, is to be repaid over the following 5 months.

“Deferred Payment Plan Excess Concentration Amount” means, at any time, the amount by which the aggregate Outstanding Balance of all Eligible Receivables that are subject to a Deferred Payment Plan exceeds the product of (a) 5.0% and (b) the aggregate Outstanding Balance of all Eligible Receivables.

“Delinquency Ratio” means, as of any time, with respect to the immediately preceding Calculation Period, the fraction (expressed as a percentage), (a) the numerator of which is the aggregate Outstanding Balance of all Delinquent Receivables as of the end of such Calculation Period and (b) the denominator of which is the aggregate Outstanding Balance of all Pool Receivables as of the end of such Calculation Period.

“Delinquent Receivable” means a Receivable which is not a Defaulted Receivable (i) as to which any payment, or part thereof, remains unpaid for sixty-one (61) or more days from the original due date thereof or (ii) which, consistent with the Credit and Collection Policy, has been or should be classified as delinquent by the applicable Originator or the Servicer.

“Deposit Account” means each depository account, concentration account or other similar account into which Collections are collected or deposited.

“Deposit Account Bank” means a financial institution at which a Deposit Account is maintained.

“Deposit Account Control Agreement” means an agreement with respect to a Deposit Account at a Deposit Account Bank, in a form acceptable to the Administrative Agent in its reasonable discretion, among the Borrower, the Administrative Agent and such Deposit Account Bank.

“Designated Deposit Account” means the Deposit Account (i) identified as the “Designated Deposit Account” on Exhibit F or such other Deposit Account as identified by the Borrower (or the Servicer on its behalf) to the Administrative Agent in writing and (ii) that is subject to a valid and enforceable Deposit Account Control Agreement. For avoidance of doubt, if such identified Deposit Account is not subject to a valid and enforceable Deposit Account Control Agreement, it shall not be the Designated Deposit Account any purpose under this Agreement.

“Diluted Receivable” means that portion of any Receivable which is either (a) reduced or canceled as a result of a Dilution Factor or (b) subject to any bona fide specific dispute, offset, counterclaim or defense whatsoever.

“Dilution Factor” means any of the following factors giving rise to dilution: (i) any failure by an Originator to deliver electric power or natural gas or to perform any services or otherwise perform as required by the underlying Contract or invoice, (ii) any change, cash discount, rebate, allowance, cancellation of any terms of such contract, invoice or billing error by an Originator or any other party that generates such invoice, applied Customer Deposits or any other adjustment applied to an invoice which, in each case, reduces the amount payable by an Obligor on the related Billed Receivable and (iii) any setoff in respect of any claim by the Obligor thereof (whether such claim arises out of the same or a related transaction or an unrelated transaction).

“Dilution Horizon Ratio” means, at any time, with respect to the immediately preceding Calculation Period, the fraction, (i) the numerator of which equals the aggregate Outstanding Balance (in each case, at the time of billing) of all Billed Receivables generated by the Originators during the Calculation Period and (ii) the denominator of which equals the Net Receivables Balance at the end of such Calculation Period.

“Dilution Ratio” means, at any time, with respect to the immediately preceding Calculation Period, the fraction, (i) the numerator of which is the portion of all Receivables which became Diluted Receivables during such Calculation Period, and (ii) the denominator of which is the aggregate Outstanding Balance (in each case, at the time of billing) of all Billed Receivables generated during the Calculation Period immediately preceding the Calculation Period referred to in clause (i).

“Dilution Reserve Amount” means, at any time, an amount equal to the product of (i) the Dilution Reserve Percentage at such time and (ii) the Net Receivables Balance at such time.

“Dilution Reserve Percentage” means, at any time, with respect to the immediately preceding Calculation Period, the percentage that is equal to the greater of (a) the product of (i) the highest Dilution Ratio for any calendar month in the twelve (12) most recent calendar months and (ii) the Dilution Horizon Ratio and (b) the percentage calculated in accordance with the following formula:

$$((SF \times ED) + ((DS - ED) \times (DS / ED))) \times DHR$$

where:

- SF = the Stress Factor
- ED = the average of the Dilution Ratios for each of the twelve (12) most recently ended Calculation Periods;
- DS = the highest Dilution Ratio during the twelve (12) most recently ended Calculation Periods; and
- DHR = the Dilution Horizon Ratio at such time.]

“Direct Taxes Amount” means (a) at any time that the Performance Guarantor has a long-term credit rating of at least BB- by S&P and Ba3 by Moody’s, \$0 and (b) at any other time, the aggregate amount of Direct Taxes owed with respect to the Pool Receivables at such time.

“Direct Taxes” means any sales, use, gross receipts, goods and services, excise or personal property Taxes imposed on or with respect of any Pool Receivable.

“Dollars” and “\$” each mean the lawful currency of the United States of America.

“Drawing Date” has the meaning set forth in Section 2.04(f)(i).

“Early Terminating Lender Group” means each of (a) any Non-Renewing Lender Group and (b) the CACIB Lender Group, if the related Facility Agent has designated an Early Termination Date.

“Early Termination Date” means, (a) for any Non-Renewing Lender Group, Lenders and LC Issuers therein and the Facility Agent thereof, the last agreed-to Scheduled Termination Date of such Lender Group and (b) for the CACIB Lender Group, Lenders and LC Issuers therein and the Facility Agent thereof, any date so designated in writing no later than 30 days in advance of the occurrence of such date (such writing to be irrevocable unless the Borrower and the Servicer consent to any revocation thereof) by the related Facility Agent (in its sole discretion) to the Administrative Agent, the Borrower and the Servicer, after the occurrence of a Liquidity-Based Amortization Event.

“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.

“Effective Date” means September 22, 2020.

“Eligible Account Bank” means a depository institution organized under the laws of the United States or any one of the states thereof, including the District of Columbia (or any United States branch or agency of a foreign bank), which is subject to supervision and examination by federal or state banking authorities, the deposits of which are insured by the Federal Deposit Insurance Corporation and which at all times (a) has a net worth in excess of \$100,000,000 and (b) has either (x) a long-term rating of A2 or higher by Moody’s and A or higher by S&P’s or (y) a short-term certificate of deposit rating of P-1 by Moody’s and A-1 by S&P.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.03 (subject to such consents, if any, as may be required under Section 10.03).

“Eligible Originator” means an Originator with respect to which no Purchase Termination Event has occurred and is continuing.

“Eligible Receivable” means, at any time, a Receivable:

- (i) the Obligor of which (a) has a service address in the United States, (b) is not an Affiliate of any Transaction Party and (c) is not a Sanctioned Person;
- (ii) which is not a Defaulted Receivable;
- (iii) (a) which is denominated and payable only in Dollars within the United States and (b) the related electricity, electric power, natural gas and/or related services of which were provided to an address in the United States;
- (iv) which, together with the related Contract, does not contravene any applicable law, rule or regulation and no party to such Contract is in violation of any such law, rule or regulation, in each case, if such contravention or violation, as applicable, would impair the validity, enforceability or collectability of such Receivable;
- (v) in which the Borrower owns good and marketable title, free and clear of any Adverse Claims, and that is freely assignable and no consent, authorization or approval of, or notice to, the Obligor thereof, any Governmental Authority or any other Person (except for such consent, authorization or approval that has been obtained or such notice that has been given) is required to (a) convey such Receivable, the Related Security and the Collections from the related Originator to the Borrower, or (b) grant a security interest in such Receivable, the Related Security and the Collections by the Borrower to the Administrative Agent, for the benefit of the Secured Parties (except, that none of any Originator, the Servicer or the Borrower shall be required to comply with the Federal Assignment of Claims Act in connection with the assignment or subsequent reassignment of any Receivable and any restrictions on the right of any Person to enforce any Receivable the Obligor of which is a Federal Government Obligor directly against such Federal Government Obligor to the extent that the applicable provisions of the Federal Assignment of Claims Act have not been complied with shall not cause such Receivable to not be an Eligible Receivable);

(vi) the related Contract of which does not contain confidentiality provisions that would be breached if such Receivable (together with all Related Security and Collections with respect thereto) were assigned to the Administrative Agent pursuant to the Facility Documents or to any other Person;

(vii) which was originated by an Originator in accordance, and complies, in all material respects with all applicable requirements of the Credit and Collection Policy;

(viii) which, pursuant to the Contract related thereto, (x) in the case of a Retail Receivable, is (or, in the case of an Unbilled Receivable, will be) required to be paid in full within sixty (60) days of the original invoice date therefor and (y) in the case of a POR Receivable, is due and payable within sixty-five (65) days after the sale of the related Purchased-by Utility Receivable;

(ix) which (a) (x) in the case of a Retail Receivable, is an "account" within the meaning of 9-102 of the UCC or (y) in the case of a POR Receivable, is an "account" or a "payment intangible" within the meaning of 9-102 of the UCC, (b) together with the Contract related thereto, (x) has been duly authorized, (y) is in full force and effect, and (z) represents a bona fide obligation of the related Obligor to pay the stated amount and constitutes the legal, valid and binding obligation of the Obligor thereof enforceable against such Obligor in accordance with its terms, subject to the Enforceability Exceptions, (c) has not been satisfied, released, canceled, subordinated or rescinded, nor has any instrument been executed by the related Originator or the Borrower which would effect any such satisfaction, release, cancellation, subordination or rescission, (d) which has not been waived, restructured or otherwise modified, has not had its due date deferred, is not subject to forbearance and has not otherwise had its invoice date or due date changed on the books and records of the related Originator or the Servicer and (e) is not subject to any setoff, recoupment, counterclaim, defense, right of rescission or bona fide dispute, whether arising out of transactions concerning such Receivable or otherwise;

(x) in and to which (a) the applicable Originator has validly sold all of its right, title and interest in and to such Receivable, together with all Related Security and Collections with respect thereto, to the Borrower pursuant to the Receivables Sale Agreement, free and clear of any Adverse Claim, (b) the Borrower owns good and marketable title to the Receivable, Related Security and Collections with respect thereto, free and clear of Adverse Claim and (c) the Administrative Agent has a first priority security interest in such Receivable, the Related Security and the Collections with respect thereto, free and clear of any Adverse Claim;

(xi) which arises under a Contract, (i) (x) in the case of a Retail Receivable, for the sale of electricity or electric power, natural gas and/or related services of an Originator to an Obligor in the ordinary course of such Originator's business or (y) in the case of a POR Receivable, for the sale of Purchased-by-Utility Receivables in the ordinary course of such Originator's business, (ii) that is governed by the laws of the United States or one of the United States and (iii) that contains an obligation to pay a specified sum of money, which, in the case of Retail Receivables, is contingent only upon the sale of goods or the provision of services;

(xii) with respect to which all obligations on the part of the Originator (other than, in the case of an Unbilled Receivable, the rendering of an invoice) have been performed to the extent necessary to establish the right to receive full payment, and no further action is required to be performed by such Originator or any other person with respect thereto other than payment thereon by the applicable Obligor;

(xiii) which is not interest-bearing (except for any late payment charges);

(xiv) payment of which by the applicable Obligor is not subject to any withholding tax;

(xv) which, if a Retail Receivable, is evidenced by a final (and not provisional) invoice with a unique invoice number that does not correspond to any other Retail Receivable and which represents amounts not less than the invoiced balance or, if such Retail Receivable is an Unbilled Receivable, has been individualized in the related Originator's accounting systems such that such Retail Receivable is easily distinguished from all other Retail Receivables;

(xvi) which has not been compromised, adjusted or modified (including by extension of time of payment) other than pursuant to a Deferred Payment Plan;

(xvii) which, if an Unbilled Receivable, (a) has not remained unbilled for more than sixty (60) consecutive calendar days after the earlier of (i) the end of the calendar month during which the related goods were sold or the services were performed and (ii) the date on which the obligation or agreement of the related Originator to sell goods or provide services to the related Obligor is terminated and (b) the Performance Guarantor has (x) a long-term local issuer credit rating from Standard & Poor's and (y) a long-term corporate family rating from Moody's and such rating is not less than B- by Standard & Poor's or B3 by Moody's;

(xviii) as to which the related Obligor or applicable Payment Processor is required to make payments directly to a Lock-Box or Deposit Account listed on Exhibit F hereof;

(xix) which is registered on the CCS Billing Platform of the Performance Guarantor;

(xx) which, if a POR Receivable, is identified by Utility in the applicable Originator's accounting system and arose from the sale of retail electric services and/or gas services in the applicable Originator's ordinary course of business and for which the applicable Utility is obligated to invoice, collect and purchase;

(xxi) with respect to which all representations and warranties under this Agreement are true and correct;

(xxii) with respect to which all representations and warranties under the Receivables Sale Agreement are true and correct as of the date of sale to the Borrower; and

(xxiii) the related Originator is an Eligible Originator.

“Enforceability Exceptions” means exceptions to the enforceability of an obligation arising under (i) bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or affecting creditors' rights generally, and (ii) general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, regardless of whether considered in a proceeding at equity or at law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute of similar import, together with the regulations thereunder, in each case as in effect from time to time. References to sections of ERISA also refer to any successor sections.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with any Person, 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 of the Code.

“ERISA Event” means (a) any “reportable event” (as that term is defined in Section 4043 of ERISA or the regulations issued thereunder (other than an event for which the 30 day notice period is waived)) with respect to a Plan; (b) a withdrawal by any Originator or any of its ERISA Affiliates from a Plan subject to Section 4063 of ERISA during a plan year in which the relevant entity is a “substantial employer” (as defined in Section 4001(a) (2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA which could reasonably be expected to give rise to any liability with respect to such withdrawal; (c) a complete or partial withdrawal by such Originator or any of its ERISA Affiliates from a Multiemployer Plan; (d) the filing of a notice of intent to terminate a Plan in a distress termination under Section 4041(c) of ERISA, the treatment of a Plan or Multiemployer Plan amendment as a termination under Sections 4041(c) or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Plan or Multiemployer Plan or to appoint a trustee to administer any Plan or Multiemployer Plan; or (e) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Originator or any of its ERISA Affiliates.

“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 Bankruptcy” means, with respect to any Person:

(i) such Person shall fail generally to pay his, her or its debts as they come due, or shall make a general assignment for the benefit of creditors; or any case or other proceeding shall be instituted by such Person seeking to adjudicate him, her or it as bankrupt or insolvent, or seeking liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of him, her or it or his, her or its debts under the Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or seeking the entry of an order for relief or the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or substantially all of its assets; or such Person shall take any corporate or limited liability company action to authorize any of such actions; or

(ii) a case or other proceeding shall be commenced, without the application or consent of such Person in any court seeking the liquidation, reorganization, debt arrangement, dissolution, winding up, or composition or readjustment of debts of such Person, the appointment of a trustee, receiver, custodian, liquidator, assignee, sequestrator or the like for such Person or all or substantially all of its assets, or any similar action with respect to such Person under the Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and (A) such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty (60) consecutive days or (B) an order for relief in respect of such Person shall be entered in such case or proceeding or a decree or order granting such other requested relief shall be entered.

“Event of Termination” has the meaning assigned to that term in Section 7.01.

“Excluded Taxes” means, with respect to an Affected Person, any of the following Taxes imposed on or with respect to such Affected Person or required to be withheld or deducted from a payment to such Affected Person: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, state gross receipts Taxes, and branch profits Taxes, in each case, imposed as a result of such Affected Person being organized under the Laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or that are Other Connection Taxes, (b) United States federal withholding Taxes imposed on amounts payable to or for the account of such Affected Person with respect to its portion of Aggregate Exposure Amount pursuant to a law in effect on the date on which (i) such Affected Person first funds a portion of Aggregate Exposure Amount or first becomes obligated to fund a portion of Aggregate Exposure Amount (other than pursuant to an assignment request by the Borrower under Section 2.13(f)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.13, 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 Tax, assignment or other governmental charge attributable to such Affected Person’s failure to comply with the requirements contained in Section 2.14, and (d) any withholding Taxes imposed under FATCA.

“Exposure Amount” of any Lender or LC Issuer means, at any time, (A) the portion of the Principal Balance of the Loans made to the Borrower by such Lender plus (B) the aggregate amount paid by such Lender to an LC Issuer to fund Reimbursement Borrowings pursuant to Section 2.04 plus (C) the portion of the LC Undrawn Amount for all Letters of Credit then outstanding that such Lender is committed to reimburse pursuant to Section 2.04 that have not been otherwise Cash Collateralized, plus (D) with respect to an LC Issuer, the aggregate amount of Reimbursement Obligations then owing to such LC Issuer (including all Participation Advances deemed to have been funded by such LC Issuer) that have not been otherwise paid or Cash Collateralized, minus (E) sum of the aggregate amount of Collections and other payments received by the Administrative Agent, the Facility Agents or the Lenders in respect thereof which in each case are applied to reduce such Exposure Amount in accordance with the terms and conditions of this Agreement; provided, that if such Exposure Amount shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Exposure Amount shall be increased by the amount of such rescinded or returned distribution, as though it had not been received by such Lender or LC Issuer, as applicable.

“FACA” means the Federal Assignment of Claims Act, 41 U.S.C. § 15, as supplemented by the Federal Acquisition Regulations, 48 C.F.R.

“Facility Agent” means, as to any Conduit Lender or Committed Lender, the Person listed on Schedule I as the “Facility Agent” for such Lenders, together with its respective successors and permitted assigns.

“Facility Documents” means collectively, this Agreement, each Borrowing Request, each Letter of Credit Request, each Letter of Credit Application, the Receivables Sale Agreement, the Subordinated Note, the No Petition Agreement, the Fee Letter, the Administrative Agent Fee Letter, the Performance Guaranty, each Deposit Account Control Agreement, each LC Fronting Fee Letter and all other agreements, documents and instruments delivered pursuant thereto or in connection therewith.

“Facility Limit” means, at any time, the lesser of (i) \$750,000,000 and (ii) the aggregate amount of the Commitments of the Committed Purchasers set forth on Schedule I for the applicable Period in effect at such time, as such amount may be increased or decreased in accordance with Sections 2.01(c) and 10.04 and on the Scheduled Termination Date with respect to an Early Terminating Lender Group.

“FATCA” means Section 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 practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities in respect thereof.

“Federal Funds Rate” means, with respect to any Lender for any period, a fluctuating interest rate per annum equal (for each day during such period) to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York; or if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the applicable Facility Agent from three federal funds brokers of recognized standing selected by it. Notwithstanding the foregoing, if the rate in the preceding sentence is below zero, the “Federal Funds Rate” will be deemed to be zero.

“Federal Governmental Excess Concentration Amount” means, at any time, the aggregate amount by which the Outstanding Balance of Eligible Receivables for which the Obligor is a Federal Government Obligor exceeds the product of (x) 5.00% and (y) the aggregate Outstanding Balance of all Pool Receivables at such time.

“Federal Government Obligor” means the United States, any territory, possession or commonwealth of the United States, or any agency, department or instrumentality of any of the foregoing.

“Fee Letter” means the Fee Letter, dated as of the Effective Date, between the Facility Agents and the Borrower.

“Fees” means, collectively, all Used Fees, Unused Fees, Other Fees and any fees set forth in the Administrative Agent Fee Letter.

“Final Collection Date” means the date on or following the Termination Date on which the Aggregate Principal Balance has been reduced to zero, all other Borrower Obligations have been paid in full and all Letters of Credit have been cancelled or expired.

“Final Maturity Date” means the date that is 120 days after the Termination Date, or if such date is not a Business Day, the next succeeding Business Day.

“Financial Officer” of any Person means any of the chief executive officer, chief financial officer or treasurer (or if no individual shall have such designation, the Person charged by the Board of Directors of such Person (or a committee thereof) with such powers and duties as are customarily bestowed upon the individual with such designation) or the audit or finance committee of the Board of Directors of such Person.

“Foreign Affected Party” has the meaning set forth in Section 2.14(b)(ii).

“Foreign Lender” has the meaning set forth in Section 2.14(b)(ii).

“Fronting Fees” has the meaning set forth in Section 2.04(k).

“GAAP” means generally accepted accounting principles as in effect in the United States of America from time to time, consistently applied.

“Governmental Authority” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, the Federal Energy Regulatory Commission, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party to this Agreement at law.

“Indebtedness” of any Person means, without duplication, means (a) indebtedness for borrowed money; (b) obligations evidenced by bonds, debentures, notes, mortgages, indentures or other similar instruments; (c) obligations to pay the deferred purchase price of property or services (other than trade accounts payable due not more than six months after such property is acquired or such services are completed); (d) all capital lease obligations; and (e) obligations under guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clauses (a) through (d).

“Indemnified Party” has the meaning set forth in Section 8.01.

“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 the Borrower, any Originator or the Performance Guarantor under any Facility Document and (b) to the extent not otherwise described in (a), Other Taxes.

“Initial Credit Extension” means the first Credit Extension made pursuant to this Agreement.

“Interest” means, for any Loan (or portion thereof) and any Interest Period, the sum for each day during such Interest Period (or portion thereof) of the following:

$$(IR \times PB) / CB$$

where:

IR = the Interest Rate for such Loan for such day.

PB = the Principal Balance of such Loan on such day.

CB = if such Loan (or portion thereof) is funded based upon: (i) the Base Rate, 365 or 366 days, as applicable and (ii) LIBO Rate or CP Rate, 360 days.

“Interest and Fee Payment Date” means (i) the fourth (4th) day of each calendar month, or if such day is not a Business Day, the next succeeding Business Day and (ii) (A) during any period when the conditions precedent set forth in Section 3.02 are not satisfied and (B) on and after the occurrence of the Termination Date, each Business Day.

“Interest Period” means (a) (i) initially the period commencing on the Effective Date and ending on (and including) the last day of September 2020; and (ii) thereafter, each period beginning on the first day of each calendar month and ending on (and including) the last day of such calendar month and (b) on and after the Termination Date, each Business Day.

“Interest Rate” means, with respect to any Loan on any day: (a) in the case of any portion of any Loan funded by Commercial Paper Notes, the applicable CP Rate, and (b) in the case of any portion of any Loan not funded by Commercial Paper Notes (including under a Liquidity Agreement or other Program Support Agreement), the Alternative Rate; provided, that, following an Event of Termination, the “Interest Rate” for any Loan funded or maintained hereunder shall be the Default Rate.

“Investment Company Act” has the meaning set forth in Section 4.01(q).

“IRS” means the Internal Revenue Service of the United States of America.

“Issuance Date” means the date on which a Letter of Credit is issued in accordance with the terms of Section 2.04.

“Joinder Agreement” means a joinder agreement substantially in the form set forth as Exhibit I hereto pursuant to which a new Lender Group becomes party to this Agreement.

“Law” means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, order, injunction, writ, decree or award of any government or political subdivision or any agency, authority, bureau, central bank, commission, department or instrumentality of either, or any court, tribunal, grand jury or arbitrator, in each case, whether foreign or domestic.

“LC Cash Collateral Date” means the earlier of (i) with respect to any Letters of Credit that are scheduled to expire after the then-current Scheduled Termination Date, the date that is 30 days prior to the then-current Scheduled Termination Date, unless waived in writing by each LC Issuer, each Lender and the Administrative Agent and (ii) the Termination Date.

“LC Collateral Account” has the meaning set forth in 2.04(n)(i).

“LC Commitment” means, with respect to any LC Issuer, its obligation to issue Letters of Credit to the Borrower pursuant to Section 2.04, in the amount not to exceed the amount set forth on Schedule I (or in the Joinder Agreement pursuant to which such LC Issuer became party hereto), subject to assignment pursuant to Section 10.03.

“LC Credit Extension” has the meaning set forth in Section 2.01(a).

“LC Fronting Fee Letter” means each fee letter among the Borrower, one or more LC Issuers and their related the Facility Agents, including the Letter of Credit Fronting Fee Letter, dated as of the Effective Date, among the Borrower, the Facility Agent and the LC Issuer for the CACIB Lender Group and the Facility Agent and LC Issuer for the RBC Lender Group.

“LC Issuer” means any Person listed on Schedule I hereto (or in the Joinder Agreement pursuant to which such Person became party hereto) as an “LC Issuer”, or which has been designated in writing to the Borrower and the Administrative Agent as an “LC Issuer” by the related Facility Agent, together with their respective successors and permitted assigns hereunder.

“LC Obligations” means, at any time, the sum, without duplication, of (a) the LC Undrawn Amount at such time, plus (b) the aggregate unpaid amount at such time of all Reimbursement Obligations.

“LC Sublimit” means an amount equal to the lesser of (a) \$400,000,000 and (b) the Aggregate Commitments. The LC Sublimit is part of, and not in addition to, the Aggregate Commitments.

“LC Undrawn Amount” means, at any time, the aggregate undrawn amount of all outstanding Letters of Credit at such time.

“Lender” means any Conduit Lender or Committed Lender, as applicable, and “Lenders” means, collectively, the Conduit Lenders and the Committed Lenders.

“Lender Group” means each group consisting of a Facility Agent, one or more related Conduit Lenders, if any, one or more related Committed Lenders and a related LC Issuer, if any.

“Lender Group Limit” means, for any Lender Group at any time, the amount set forth on Schedule I (or in the Joinder Agreement pursuant to which such Lender Group became party hereto) for the applicable Period in effect at such time subject to assignment pursuant to Section 10.03, as such amount may be reduced in accordance with Section 2.01(c). The Lender Group Limit for any Lending Group shall be equal to the aggregate Commitments of all Committed Lenders in such Lender Group.

“Lender Group Percentage” means, for any Lender Group at any time, the percentage equivalent of a fraction (expressed out to five decimal places), the numerator of which is the aggregate Commitments of all Committed Lenders in such Lender Group at such time and the denominator of which is the Facility Limit at such time. If all of the Commitments have terminated or expired, the Lender Group Percentages shall be determined based upon the Commitments most recently in effect.

“Letter of Credit” means a stand-by or documentary letter of credit issued by an LC Issuer pursuant to this Agreement in Dollars for the account of an Originator or an Affiliate of an Originator at the request of such Originator under and pursuant to the Receivables Sale Agreement.

“Letter of Credit Application” has the meaning set forth in Section 2.04(b).

“Letter of Credit Request” has the meaning set forth in Section 2.04(b).

“LIBO Rate” means for any applicable Interest Period, an interest rate per annum determined on the basis of the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other Person which takes over the administration of that rate) for deposits in United States dollars for one month period as it appears on the relevant display page on the Bloomberg Professional Service (or any successor or substitute page or service providing quotations of interest rates applicable to United States dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by each Facility Agent for its respective Lender Group from time to time), at approximately 11:00 a.m., London, England time, two (2) Business Days prior to the first day of such Interest Period. Notwithstanding the foregoing, if the rate in the preceding sentence is below zero, the “LIBO Rate” will be deemed to be zero.

“LIBOR Successor Rate” has the meaning set forth in Section 2.03(e)(i).

“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Alternative Rate, Interest Period, timing and frequency of determining rates and making payments of interest, spread adjustments and other administrative matters as may be appropriate, as agreed between the Administrative Agent and the Borrower, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent in consultation with the Borrower determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines with the consent of the Borrower). For the avoidance of doubt, any amendment effectuating any LIBOR Successor Rate Conforming Changes shall be subject to the Borrower’s approval.

“LIBOR Termination Date” has the meaning set forth in Section 2.03(e)(i).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), or preference, priority, charge or other security agreement or preferential arrangement of any kind or nature whatsoever that is intended as security.

“Liquidity Advance” means a loan, advance, purchase or other similar action made by a Liquidity Provider pursuant to a Liquidity Agreement.

“Liquidity Agreement” means any agreement entered into, directly or indirectly, in connection with or related to, this Agreement pursuant to which a Liquidity Provider agrees to make loans or advances to, or purchase assets from, a Conduit Lender (directly or indirectly) in order to provide liquidity or other enhancement for such Conduit Lender’s Commercial Paper Notes or other senior indebtedness.

“Liquidity Provider” means each bank, other financial institution or other Person that is at any time party to a Liquidity Agreement as a lender (or any participant thereof).

“Liquidity-Based Amortization Event” shall be deemed to have occurred when the Facility Agent of the CACIB Lender Group notifies the Administrative Agent, the other Facility Agents, the Borrower and the Servicer in writing that each Conduit Lender in such Facility Agent’s Lender Group has been funding such Conduit Lender’s Exposure Amount through such Conduit Lender’s Program Support Agreement(s) (rather than through the issuance of Commercial Paper Notes) for a period of 270 consecutive days.

“Loan” has the meaning set forth in Section 2.01(a).

“Loan Parties” means, collectively, the Borrower, the Performance Guarantor and, so long as it is NRG Retail LLC or an Affiliate thereof, the Servicer.

“Lock-Box” means any post office box maintained by a Deposit Account Bank or a Payment Processor for the purpose of receiving payments on Receivables or other Collections.

“Loss Horizon Ratio” means, at any time, with respect to the immediately preceding Calculation Period, the fraction, (a) the numerator of which is equal to the sum of (i) the aggregate Outstanding Balance (in each case, at the time of billing) of all Billed Receivables generated during the four (4) most recent Calculation Periods preceding such Calculation Period and (ii) the Outstanding Balance of Unbilled Receivables generated during such Calculation Period, and (b) the denominator of which is equal to the Net Receivables Balance on the last day of such Calculation Period.

“Loss Ratio” means, at any time, the highest average of the Default Ratios for any three (3) consecutive Calculation Periods during the past twelve (12) Calculation Periods.

“Loss Reserve Amount” means, at any time, an amount equal to the product of (i) the Loss Reserve Percentage at such time and (ii) the Net Receivables Balance at such time.

“Loss Reserve Percentage” means, at any time, the greatest of (a) 10.0% and (b) the product of (i) the Stress Factor, (ii) the Loss Ratio at such time and (iii) the Loss Horizon Ratio at such time.

“Low Ratings Deposit Account Bank” shall have the meaning set forth in Section 6.03(b).

“Majority Facility Agents” means, at any time, Facility Agents whose Lender Group Limits together exceed fifty percent (50%) of the Facility Limit at such time; provided, that, if any Lender Group includes a Committed Lender that is a Defaulting Committed Lender, the Lender Group Limit of such Lender Group (including as part of the Facility Limit) shall not be included for purposes of this definition; provided, further, that, if there are only two Facility Agents of which the Lender Group does not include a Defaulting Committed Lender, “Majority Facility Agents” means both Facility Agents.

“Material Adverse Effect” means a material adverse effect on:

- (a) the business, financial condition, results of operations or properties of the Borrower;

- (b) the business, financial condition, results of operations or properties of the Transaction Parties, taken as a whole;
- (c) the ability of any Loan Party to perform its obligations under any Facility Document to which it is a party;
- (d) the legality, validity or enforceability of any Facility Document;
- (e) the collectability of all or any material portion of the Pool Receivables;
- (f) the rights or interests of the Administrative Agent, the Facility Agents, the Lenders or the Liquidity Providers hereunder or with respect to the Collateral; or
- (g) the perfection, priority or enforceability of the Administrative Agent's security interest in the Collateral.

“Modification Date” means the date on which a Letter of Credit is amended, renewed or extended in accordance with the terms of Section 2.04.

“Monthly Report” means a report, in substantially the form of Exhibit C, furnished by the Servicer to the Facility Agents pursuant to Section 5.05(e).

“Monthly Reporting Date” means the twentieth (20th) day of each calendar month (or, if such day is not a Business Day, the next succeeding Business Day).

“Moody's” means Moody's Investors Service, Inc., and its successors.

“MUFG Lender Group” means the MUFG Bank, Ltd. Lender Group as defined on Schedule I.

“Multiemployer Plan” means a multiemployer plan within the meaning of Section 3(37) of ERISA to which any Transaction Party or any of its ERISA Affiliates makes or is obligated to make contributions.

“Net Receivables Balance” means at any time of calculation hereunder, an amount equal to the sum of the amount equal to the Outstanding Balances of all Pool Receivables that are Eligible Receivables at such time, minus, without duplication, (i) the aggregate Obligor Excess Concentration Amounts at such time, (ii) the Federal Governmental Excess Concentration Amount at such time, (iii) the Unbilled Receivables Excess Concentration Amount at such time, (iv) the Customer Deposit Amount at such time, (v) the Direct Taxes Amount at such time, (vi) the Deferred Payment Plan Excess Concentration Amount at such time and (vii) the Unbilled 31-60 Day Excess Concentration Amount.

“No Petition Agreement” means that certain no proceedings letter agreement, dated as of the Effective Date, among the Servicer, the Administrative Agent and the Subordinated Note Financier, as such agreement may be amended, supplemented or otherwise modified from time to time.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all or all affected Lenders in accordance with the terms of Section 10.01 hereof and (ii) has been approved by a majority of the Lenders (measured by reference to the commitments of such Lender’s Lender Group and in accordance with the same logic used to determine “Majority Facility Agents”).

“Non-Renewing Lender Group” means, any Lender Group that has not agreed to extend the Scheduled Termination Date.

“Non-Seasonal Reduction” has the meaning set forth in Section 2.01(e).

“Obligor” means any Person obligated to make payments pursuant to a Contract.

“Obligor Excess Concentration Amount” means, at any time, the amount by which the aggregate Outstanding Balance of all Eligible Receivables owing by an Obligor or one or more of its Affiliates exceeds the applicable Concentration Limit for such Obligor at such time.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Originator” means any retail energy subsidiary of NRG Energy, Inc. party to the Receivables Sale Agreement in accordance with the terms thereof and as consented to by the Administrative Agent and the Majority Facility Agents in their sole discretion. As of the Effective Date, the Originators are Reliant Energy Retail Services, LLC, Reliant Energy Northeast LLC, Green Mountain Energy Company, US Retailers LLC, Stream SPE, Ltd., and XOOM Energy Texas, LLC.

“Other Connection Taxes” means with respect to any Affected Person, Taxes imposed as a result of a present or former connection between such Affected Person and the jurisdiction imposing such Tax (other than connections arising from such Affected Person 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 Facility Document, or sold or assigned an interest in any portion of the Aggregate Exposure Amount).

“Other Fees” means amounts owed by the Borrower hereunder pursuant to Sections 2.04, 2.11, 2.12, 2.13, 2.14, 8.01 and 10.10.

“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 Facility Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.13(f)).

“Other LC Fees” has the meaning set forth in Section 2.04(k).

“Outstanding Balance” means, with respect to a Receivable at any time, the then outstanding principal balance thereof.

“Parent Credit Agreement” means that certain Second Amended and Restated Credit Agreement, dated as of June 30, 2016, among the Performance Guarantor, as borrower, the credit parties from time to time party thereto and Citicorp North America, Inc., as administrative agent and collateral agent, except as expressly stated otherwise herein or in any Facility Document, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

“Participant” has the meaning specified in Section 10.03(a).

“Participation Advance” means, with respect to any Reimbursement Borrowing requested in respect of any draw on any Letter of Credit, the amount that the related LC Issuer shall be deemed to have advanced to cover a Defaulting Committed Lender’s failure to fund its Lender Group Percentage of such Reimbursement Borrowing.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (commonly known as the USA PATRIOT Act).

“Payment Processor” means any third party service provider (including, if applicable, any Deposit Account Bank maintaining Lock-Boxes on behalf of the Borrower) administering or processing payments or Collections on behalf of the Servicer or the Borrower.

“PBGC” means the Pension Benefit Guaranty Corporation and any successor entity performing similar functions.

“Performance Guarantor” means NRG Energy, Inc., a Delaware corporation.

“Performance Guaranty” means that certain Performance Guaranty, dated as of the Effective Date, by the Performance Guarantor in favor of the Administrative Agent, on behalf of the Secured Parties, and the Borrower.

“Period” means Period 1, Period 2, Period 3 and Period 4.

“Period 1” means, for each calendar year, the period beginning on and including the Settlement Date occurring in September of each calendar year or, with respect to the calendar year of 2020, the period beginning on and including the Effective Date, and ending on but not including, the Settlement Date occurring in November of the same calendar year.

“Period 2” means, for each calendar year, the period beginning on and including the Settlement Date occurring in November of each calendar year and ending on but not including, the Settlement Date occurring in February of the following calendar year.

“Period 3” means, for each calendar year, the period beginning on and including the Settlement Date occurring in February of each calendar year and ending on but not including, the Settlement Date occurring in July of the same calendar year.

“Period 4” means, for each calendar year, the period beginning on and including the Settlement Date occurring in July of each calendar year and ending on but not including, the Settlement Date occurring in September of the same calendar year.

“Permitted Liens” means any of the following:

- (a) Liens for taxes and assessments (i) which are not yet due and payable or (ii) the validity of which are being contested in good faith by appropriate proceedings and with respect to which the Borrower is maintaining adequate reserves in accordance with GAAP;
- (b) Liens in favor of the Administrative Agent or any Secured Party, including any Liquidity Providers (but only in connection with this Agreement); and
- (c) Liens in favor of the Borrower arising pursuant to the Receivables Sale Agreement.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, limited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Performance Guarantor or any of its ERISA Affiliates contributes or has an obligation to contribute (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to contribute or have an obligation to contribute).

“Pool Receivable” means each Receivable in which an interest has been transferred or purported to be transferred to the Borrower by an Originator pursuant to the Receivables Sale Agreement.

“POR Receivable” means a payment obligation of a Utility to an Originator arising from the sale of a Purchased-by-Utility Receivable by such Originator to such Utility.

“Potential Event of Termination” means any event which, with the giving of notice or lapse of time or both, would constitute an Event of Termination.

“Potential Servicer Default” means any event which, with the giving of notice or lapse of time or both, would constitute a Servicer Default.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by The Wall Street Journal as the “base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks” (or, if The Wall Street Journal ceases quoting a base rate of the type described, the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled “Selected Interest Rates” as the Bank prime loan rate or its equivalent); each change in the Prime Rate shall be effective as of the opening of business on the date such change is publicly announced as being effective. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually available.

“Principal Balance” means, with respect to any Lender, the aggregate principal amount of all Loans made to the Borrower and to fund Reimbursement Borrowings, as such amount may be reduced by Collections and other amounts received by such Lender pursuant to Section 2.06 or Section 2.07, as applicable, that have been applied to reduce such amount; provided, that if such Principal Balance shall have been reduced by any distribution and thereafter all or a portion of such distribution is rescinded or must otherwise be returned for any reason, such Principal Balance shall be increased by the amount of such rescinded or returned distribution, as though it had not been received by such Lender.

“Proceeds” has the meaning ascribed thereto in Article 9 of the UCC in effect in the State of New York.

“Program Administration Agreement” means any administration agreement between any Conduit Lender and Program Administrator governing certain aspects of the administration of such Conduit Lender’s commercial paper facility or any other agreement having similar purposes, as in effect from time to time.

“Program Administrator” means the administrator designated for Lender under the Program Administration Agreement.

“Program Support Agreement” means and includes any Liquidity Agreement and any other agreement entered into by any Program Support Provider providing for: (a) the issuance of one or more letters of credit for the account of any Conduit Lender, (b) the issuance of one or more surety bonds for which the such Conduit Lender is obligated to reimburse the applicable Program Support Provider for any drawings thereunder, (c) the sale by such Conduit Lender to any Program Support Provider of the rights of such Conduit Lender hereunder (including to the Loans) and/or (d) the making of loans and/or other extensions of credit to any Conduit Lender in connection with such Conduit Lender’s securitization program contemplated in this Agreement, together with any letter of credit, surety bond or other instrument issued thereunder.

“Program Support Provider” means and includes with respect to each Conduit Lender any Liquidity Provider and any other Person (other than any customer of such Conduit Lender) now or hereafter extending credit or having a commitment to extend credit to or for the account of, or to make purchases from, such Conduit Lender pursuant to any Program Support Agreement.

“Purchased-by-Utility Program” means a “purchase of receivables” or similar program pursuant to which a Utility agrees to purchase Retail Receivables from an Originator.

“Purchased-by-Utility Receivable” means any Retail Receivable sold or contracted to be sold, by an Originator to a Utility pursuant to a Purchased-by-Utility Program.

“RBC” means Royal Bank of Canada.

“RBC Lender Group” means the Royal Bank of Canada Lender Group as defined on Schedule I.

“Receivable” means any (i) Retail Receivable other than any Purchased-by-Utility Receivable or (ii) POR Receivable, in each case that is registered on the CCS Billing Platform or is included in any Borrowing Base Certificate or Monthly Report.

“Receivables Sale Agreement” means that certain Receivables Sale Agreement dated as of the Effective Date between the Originators and the Borrower.

“Records” means all Contracts and all other material agreements, documents, instruments, books, records and other information (including, without limitation, computer programs, tapes, discs, punch cards, data processing software and related property and rights) maintained by or on behalf of the Borrower or the Servicer with respect to the Pool Receivables, the related Obligors and the Related Security.

“Register” has the meaning set forth in Section 10.03(e).

“Regulatory Change” means any treaty, law, rule, regulation or guideline of any jurisdiction or any directive or request of any Governmental Authority (whether or not having the force of law).

“Reimbursement Borrowing” has the meaning set forth in Section 2.04(f)(i).

“Reimbursement Obligations” means all outstanding matured reimbursement or repayment obligations of the Borrower to any LC Issuer (and the participating Lenders) with respect to amounts drawn on a Letter of Credit, whether pursuant to Section 2.04 or otherwise.

“Related Security” means, with respect to any Pool Receivable: (i) all instruments and chattel paper that may evidence such Pool Receivable, (ii) all security interests or liens and property subject thereto from time to time purporting to secure payment of such Pool Receivable, whether pursuant to the related Contract or otherwise, (iii) all UCC financing statements or other filings covering any collateral securing payment of such Pool Receivable (it being understood that such UCC financing statements will not be assigned of record to the Administrative Agent unless requested by the Administrative Agent after an Event of Termination), (iv) (x) with respect to a Retail Receivable, all of the Borrower’s rights, interests and claims to receive payment under the Contract(s) with respect to such Retail Receivable or (y) with respect to a POR Receivable, all of the Borrower’s rights, interests and claims to receive payment from the applicable Utility under the Contract(s) with respect to such POR Receivable and, in each case, all guaranties, indemnities, insurance and other agreements (including under the related Contract), supporting obligations (as defined in the UCC), letters of credit or arrangements of whatever character from time to time, supporting or securing payment of such Pool Receivable or otherwise relating to such Pool Receivable, whether pursuant to the Contract related to such Receivable or otherwise, (v) all books and records (excluding the Contracts) relating to such Pool Receivable or any of the foregoing (it being understood that such books and records will be maintained by the Servicer), (vi) all of the Borrower’s right, title and interest in and to the Receivables Sale Agreement, including (x) all monies due or to become due thereunder to the Borrower from any Originator and (y) all rights, remedies, powers, claims and privileges of the Borrower against any Originator thereunder or in connection therewith, and (vii) all proceeds of the foregoing; provided that, notwithstanding the foregoing, any of the foregoing for which an assignment from the applicable Originator to the Borrower or the granting of a security interest from Borrower to Administrative Agent would violate any law, regulation or agreement binding upon such Originator or the Borrower (but, in the case of any agreement, only to the extent no law or regulation exists which would render such anti-assignment provision unenforceable), shall not be deemed to be Related Security; and provided, further, that the applicable Originator and the Borrower shall not be required to notify the related Obligor or to record the assignment to the Administrative Agent of any Related Security unless requested by the Administrative Agent after an Event of Termination.

“Release” has the meaning specified in Section 2.07(a)(viii).

“Release Suspension Notice” has the meaning specified in Section 2.07(a)(viii).

“Required LC Cash Collateral Amount” means, with respect to all Letters of Credit then outstanding, (A) prior to the LC Cash Collateral Date, the sum of (i) any amount necessary to Cash Collateralize any outstanding Participation Advances and any Interest thereon in connection with a Defaulting Committed Lender’s failure to fund its portion of Reimbursement Borrowings in respect of prior drawings on any such Letter of Credit, (ii) any amount necessary to Cash Collateralize the Lender Group Percentage of each Early Terminating Lender Group of the Stated Amount of each Letter of Credit, in an amount equal to each such Early Terminating Lender Group’s ratable share (in accordance with such Lender Group’s share of the Aggregate Exposure Amount) of the balance of such Collections (such ratable share to be determined on each Business Day, solely for the purposes of this clause (ii)), based upon the outstanding Aggregate Exposure Amount and the Lender Group Percentages with respect to the LC Undrawn Amount immediately preceding such Early Termination Date), (iii) the amount of any unpaid Borrowing Base Deficiency required to be held in the LC Collateral Account and (iv) the amount of fees accrued or to accrue on such Letters of Credit through the stated expiration thereof, including, without limitation, Used Fees, Fronting Fees and Other LC Fees; and (B) on or after the LC Cash Collateral Date, the sum of (i) the Stated Amount of all such Letters of Credit, (ii) any amount necessary to Cash Collateralize any outstanding Participation Advances and any Interest thereon in connection with a Defaulting Committed Lender’s failure to fund its portion of Reimbursement Borrowings in respect of prior drawings on any such Letter of Credit, (iii) the amount of any unpaid Borrowing Base Deficiency required to be held in the LC Collateral Account and (iv) the amount of fees accrued or to accrue on such Letters of Credit through the stated expiration thereof, including, without limitation, Used Fees, Fronting Fees and Other LC Fees.

“Responsible Officer” means, with respect to any Person, the chief executive officer, the president, any vice president, the chief financial officer or the treasurer of such Person, any other officer having substantially the same authority and responsibility.

“Retail Receivable” means any indebtedness and other obligations of any Obligor, whether constituting an account, chattel paper, instrument or general intangible, representing part or all of the sales price of the non-wholesale sale of goods and/or the rendering of services by or for energy provided by any Originator to such Obligor, and includes the obligation of the Obligor thereon to pay any finance charges, fees and other charges with respect thereto, including, without limitation, with respect to any Unbilled Receivables, 100% of the amount to be or thereafter invoiced to the Obligor.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor.

“Sanctioned Country” means, at any time, a country or territory that is subject to comprehensive Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“Scheduled Termination Date” means September 21, 2021, unless such date is extended with the consent of the parties hereto; provided, that if any Lender Group has agreed to an extension of the Scheduled Termination Date, then the Scheduled Termination Date shall be the date agreed to by the Borrower and such Lender(s) or LC Issuer(s) as the termination date for such extension; provided, further, that, for purposes of commitment to make Credit Extensions or to fund Reimbursement Borrowings hereunder, the “Scheduled Termination Date” for any Early Terminating Lender Group, shall be the applicable Early Termination Date.

“SEC” means the United States Securities and Exchange Commission.

“Secured Parties” means, collectively, the Lenders, each Facility Agent, each LC Issuer, the Administrative Agent and each other Indemnified Party.

“Servicer” means NRG Retail LLC, or such other Person(s) then authorized pursuant to Section 6.01 to service, administer, bill and collect Pool Receivables.

“Servicer Default” means the occurrence of any of the following with respect to the Servicer:

(a) the Servicer shall fail to make any payment or deposit required to be made by it hereunder or under any other Facility Document to the Borrower, the Administrative Agent or any Secured Party when due; or

(b) the Servicer shall fail to deliver the Monthly Report on or prior to the second Business Day after the Monthly Reporting Date;
or

(c) the Servicer shall breach any term, covenant or agreement contained in this Agreement or any other Facility Document on its part to be performed or observed; or

(d) any representation or warranty made or deemed to be made by the Servicer under this Agreement, any other Facility Document, any Monthly Report, any Borrowing Request, and Borrowing Base Certificate or any Letter of Credit Request or other written information or report delivered pursuant hereto shall, after expiration of any applicable cure period, prove to have been false or incorrect in any material respect when made or deemed made or delivered (or any representation or warranty qualified by materiality shall prove to have been false or incorrect); or

(e) an Event of Bankruptcy shall have occurred with respect to the Servicer; or

(f) a Material Adverse Effect with respect to the Servicer.

“Servicer Fee” means a fee with respect to each Calculation Period, payable in arrears on each Interest and Fee Payment Date for the account of the Servicer, in an amount equal to the product of (i) the aggregate Outstanding Balances of all Pool Receivables as of the last day of such Calculation Period, (ii) the Servicer Fee Rate and (iii) a fraction equal to the number of actual days elapsed in such Calculation Period divided by 360, or such other amount agreed to between the Servicer (including a successor servicer) and the Facility Agents.

“Servicer Fee Rate” means a rate per annum equal to one percent (1.00%).

“Servicer Fee Reserve Amount” means, at any time, an amount equal to the product of (i) the Servicer Fee Reserve Percentage at such time and (ii) the Net Receivables Balance at such time.

“Servicer Fee Reserve Percentage” means, at any time, the product of (i) the Servicer Fee Rate, (ii) 1.5, (iii) a percentage expressed as a fraction, the numerator of which is the highest Days’ Sales Outstanding for the prior twelve (12) Calculation Periods, and the denominator of which is 360.

“Settlement Date” means, the Business Day immediately following the Monthly Reporting Date.

“Specified Matter” means this Agreement, any other Facility Document, the ownership, maintenance or financing of any portion of the Aggregate Exposure Amount, the Pool Receivables, the payment of any amount due thereunder, or any obligation to advance or otherwise remit funds hereunder or to or for the benefit of a Lender under a Liquidity Agreement or other Program Support Agreement.

“Stated Amount” means, with respect to any Letter of Credit at any time, the maximum amount that remains available to be drawn thereunder in accordance with its terms at such time.

“Stress Factor” means 2.25.

“Subordinated Note” means the Subordinated Note specified in Section 3.1 of the Receivables Sale Agreement.

“Subordinated Note Financier” means MUFG Bank, Ltd. or any Affiliate thereof that is a party to any Subordinated Note Financing Document.

“Subordinated Note Financing” means any transaction or series of transactions that may be entered into by one or more Originators and/or the Servicer and the Subordinated Note Financier, pursuant to which one or more Originator and/or the Servicer may (a) sell, transfer, assign or convey the Subordinated Note to the Subordinated Note Financier and/or (b) grant a security interest in the Subordinated Note to the Subordinated Note Financier.

“Subordinated Note Financing Documents” means each purchase agreement, sale agreement, credit agreement, loan agreement, repurchase agreement, security agreement and/or other financing agreement entered into from time to time between the Subordinated Note Financier and the Originators and/or the Servicer in connection with a Subordinated Note Financing.

“Sub-Servicer” has the meaning set forth in Section 6.01(d).

“Subsidiary” means, as to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity 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); and (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earliest to occur of: (i) the Scheduled Termination Date, (ii) the declaration or automatic occurrence of the Termination Date pursuant to Section 7.01, and (iii) in the case of any Early Terminating Lender Group, the applicable Early Termination Date.

“Total Reserve Amount” means, at any time, the sum of (i) the Loss Reserve Amount, (ii) the Dilution Reserve Amount, (iii) the Carrying Cost Reserve Amount and (iv) the Servicer Fee Reserve Amount.

“Transaction Parties” means, collectively, the Borrower, each Originator, the Performance Guarantor and, so long as it is NRG Retail LLC or an Affiliate thereof, the Servicer.

“UCC” means the Uniform Commercial Code as from time to time in effect in the applicable jurisdiction.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning set forth in Section 2.14(b)(ii)(C).

“Unbilled 31-60 Day Excess Concentration Amount” means, at any time, the amount by which (a) the aggregate Outstanding Balance of all Eligible Receivables which are Unbilled Receivables that have remained unbilled for more than thirty (30) consecutive calendar days after the earlier of (i) the end of the calendar month during which the related goods were sold or the services were performed and (ii) the date on which the obligation or agreement of the related Originator to sell goods or provide services to the related Obligor is terminated exceeds (b) the product of (i) 5.0% and (ii) the aggregate Outstanding Balance of all Eligible Receivables.

“Unbilled Receivable” means a Pool Receivable that is a Retail Receivable as to which all services have been rendered in full and/or all goods have been delivered to the Obligor and is accounted for on the applicable Originator’s books and records as unbilled revenue in accordance with its current financial accounting practices but for which, at the time of determination, an invoice or any other evidence of the obligation of such Obligor thereunder has not been duly submitted to such Obligor for payment of the amount thereof.

“Unbilled Receivables Excess Concentration Amount” means, at any time, the amount by which the aggregate Outstanding Balance of all Unbilled Receivables that are Eligible Receivables exceeds the product of (a) (i) if the Performance Guarantor has (x) a long-term local issuer credit rating of at least B from S&P and (y) a long-term corporate family rating of at least B2 from Moody’s, 60.0% or (ii) if Performance Guarantor has (x) a long-term local issuer credit rating of B- or less (or no long-term local issuer credit rating) by S&P or (y) a long-term corporate family rating of B3 or less (or no long-term local issuer credit rating) from Moody’s, 35.0% and (b) the aggregate Outstanding Balance of all Eligible Receivables.

“Unused Fee” has the meaning specified in the Fee Letter.

“Used Fee” has the meaning specified in the Fee Letter.

“Utility” means an electric and/or gas utility (or affiliated captive finance company).

“Volcker Rule” has the meaning set forth in Section 4.01(q).

“Write-Down and Conversion Powers” means, 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.

SECTION 1.02. Other Terms and Constructions. Under this Agreement, all accounting terms not specifically defined herein shall be construed in accordance with GAAP as in effect in the United States, and all accounting determinations made and all financial statements prepared hereunder shall be made and prepared in accordance with GAAP. All terms used in Article 9 of the UCC in the State of New York, and not specifically defined herein, are used herein as defined in such Article 9. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole, including the exhibits and schedules hereto, as the same may from time to time be amended or supplemented and not to any particular section, subsection, or clause contained in this Agreement, and all references to Sections, Exhibits and Schedules shall mean, unless the context clearly indicates otherwise, the Sections hereof and the Exhibits and Schedules attached hereto, the terms of which Exhibits and Schedules are hereby incorporated into this Agreement. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope or intent of the provisions of this Agreement. Each of the definitions set forth in Section 1.01 hereof shall be equally applicable to both the singular and plural forms of the defined terms. Unless specifically stated otherwise, all references herein to any agreements, documents or instruments shall be references to the same as amended, restated, supplemented or otherwise modified from time to time.

SECTION 1.03. Computation of Time Periods. Unless otherwise stated in this Agreement, in the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding.”

ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

SECTION 2.01. The Loan Facility.

(a) On the terms and subject to the conditions hereof, on the Effective Date, and thereafter from time to time prior to the Termination Date, the Borrower may request that the Lenders make loans (each a “Loan”) or that the LC Issuers issue, extend, modify or renew one or more Letters of Credit for the benefit of the Borrower or its designee (an “LC Credit Extension”), in each case, subject to the terms herein. The terms and conditions of the LC Credit Extensions are set forth in Section 2.04. Subject to the terms and conditions set forth herein, each Conduit Lender may in its sole discretion, and each Committed Lender shall, only if each Conduit Lender in its Lender Group elects not to (and has notified the Borrower, the Servicer, the Administrative Agent and the related Facility Agent) or there is no Conduit Lender in a Lender Group, make such Lender Group’s share of the Loans to the Borrower in an amount, for each Lender Group, equal to its Lender Group Percentage of the amount requested by the Borrower pursuant to Section 2.02; provided that no Lender shall make any such Loan if:

- (i) the Aggregate Exposure Amount shall exceed the Facility Limit at such time;
- (ii) the aggregate Exposure Amount of the Lenders in any Lender Group would exceed such Lender Group’s Lender Group Limit at such time;
- (iii) the aggregate Exposure Amount of any Committed Lender would exceed its Commitment; or
- (iv) the Aggregate Exposure Amount shall exceed the Borrowing Base.

Each Borrowing shall be in a minimum principal amount equal to \$1,000,000 and in integral multiples of \$100,000 in excess thereof for each Lender Group party hereto. Subject to the foregoing and to the limitations set forth in Section 2.05, the Borrower may borrow, prepay and reborrow the Loans hereunder.

(b) Rebalancing of Lender Group Percentages. On each Settlement Date on which the Lender Group Percentages of any Lender Groups change in connection with the start of a new Period as set forth on Schedule I, the Borrower shall be deemed to have requested a non-ratable reduction of the Principal Balance of the Loans owing to each Assigning Lender Group and a non-ratable Loan from each Assignee Lender Group, in amounts with respect to each Assigning Lender Group and Assignee Lender Group, as applicable, such that, after giving effect to such reductions and Loans, the outstanding aggregate Principal Balance of the Loans owing to each Lender Group shall be equal to such Lender Group's Lender Group Percentage (after giving effect to the adjustments set forth on Schedule I of this Agreement, as applicable) times the Aggregate Principal Balance. For administrative convenience, the Borrower may instruct Assignee Lender Groups to fund the foregoing Loans by paying the proceeds thereof directly to the Assigning Lender Groups as the foregoing reduction in the Principal Balance owing to the Assigning Lending Groups on the Borrower's behalf and such Assignee Lender Groups shall fund such rebalancing Loans to the Assigning Lender Groups regardless of whether the conditions precedent to a Loan set forth in Section 3.02 or otherwise in this Agreement are satisfied. For purposes of this paragraph the following terms shall have the following meanings:

"Assignee Lender Group" means a Lender Group for which the Lender Group Percentage of such Lender Group (after giving effect to such adjustments occurring on such Settlement Date, as applicable) *times* the Aggregate Principal Balance exceeds the outstanding Principal Balance of the Loans owing to such Lender Group at such time.

"Assigning Lender Group" means a Lender Group for which the Lender Group Percentage of such Lender Group (after giving effect to such adjustments occurring on such Settlement Date, as applicable) *times* the Aggregate Principal Balance is less than the outstanding Principal Balance of the Loans owing to such Lender Group at such time.

(c) Permanent Reduction of the Facility Limit. The Borrower may, from time to time upon at least fifteen (15) calendar days' prior written notice to each Facility Agent, elect to reduce the Facility Limit in whole or in part (a "Non-Seasonal Reduction"), provided that (x) any such Non-Seasonal Reduction shall be in a minimum amount of \$5,000,000 and in integral multiples of \$1,000,000 in excess thereof, (y) any such Non-Seasonal Reduction shall not decrease the Facility Limit to an amount that is less than \$500,000,000 and (z) after giving effect to any such Non-Seasonal Reduction and any principal payments on such date, the Aggregate Exposure Amount shall not exceed the Facility Limit. Each Non-Seasonal Reduction shall reduce each Lender Group Limit hereunder ratably in accordance with their respective Lender Group Percentages. Following any Non-Seasonal Reduction, (x) the Facility Limit shall be reduced in accordance with Schedule I for any subsequent Period for which the Commitments are to be reduced as set forth in Schedule I and (y) the Facility Limit shall not be increased in any subsequent Period, notwithstanding that Schedule I sets forth an increase in Commitments for such Period.

(d) Committed Lender's Commitment.

(i) If a Conduit Lender chooses not to fund a Loan or a Reimbursement Borrowing under Section 2.04, its ratable share of the Loan or the Reimbursement Borrowing (in accordance with its Lender Group Percentage) shall be funded by the related Committed Lenders in its Lender Group.

(ii) The obligations of any Committed Lender to make Loans and fund Reimbursement Obligations hereunder are several from the obligations of any other Committed Lenders. The failure of any Committed Lender to make Loans or to fund Reimbursement Borrowings hereunder shall not release the obligations of any other Committed Lender to make Loans or to fund Reimbursement Borrowings hereunder, but no Committed Lender shall be responsible for the failure of any other Committed Lender to make any Loan or to fund a Reimbursement Borrowing hereunder.

SECTION 2.02. Borrowing Procedures.

(a) Borrowing Requests. The Borrower shall request a Borrowing hereunder by submitting to the Administrative Agent and each Facility Agent a written notice, substantially in the form of Exhibit A (each, a "Borrowing Request") by 12 noon (New York City time) at least one (1) Business Day prior to the date of the proposed Borrowing (each, a "Borrowing Date"), which Borrowing Request shall: (A) specify (1) the amount of the requested Borrowing and the allocation of such amount among the Lender Groups (which shall be proportional in accordance with the Lender Group Percentages of each Lender Group), (2) the Aggregate Principal Balance after giving effect to such Borrowing, (3) the Aggregate Exposure Amount after giving effect to such Borrowing, (4) the desired Borrowing Date, and (5) the account of the Borrower to which the proceeds of such Borrowing are to be remitted and (B) certify that, after giving effect to the proposed Borrowing, no Borrowing Base Deficiency shall exist and including a Borrowing Base Certificate containing a pro forma calculation demonstrating the lack of a Borrowing Base Deficiency after giving effect to such Loan.

(b) Disbursement of Funds. On each Borrowing Date, each applicable Lender shall, upon satisfaction of the applicable conditions precedent set forth in Section 3.02, make available to the Borrower in same day funds, at the account designated in writing by the Borrower to the Administrative Agent and each Facility Agent, an amount equal to the portion of the Loan to be funded by such Lender.

SECTION 2.03. Borrowing Base Computation; Selection and Allocation of Interest Rates; Inability to Determine Rates; Changes in Legality; LIBO Successor Rates.

(a) Borrowing Base Computation. The Borrowing Base shall be initially computed on the date of the Initial Credit Extension hereunder. Thereafter, until the Termination Date, (i) the Servicer shall deliver a certificate in the form set forth on Exhibit D hereto (each such certificate, a "Borrowing Base Certificate") to the email addresses specified for such certificate on Schedule II setting forth a calculation of the Borrowing Base (A) on or before the second Business Day following each Monthly Reporting Date, (B) within two (2) Business Days after a request therefor has been delivered to the Servicer at the email address specified for such requests on Schedule II by the Administrative Agent or any Facility Agent (it being understood that any request by a Facility Agent shall be directed through the Administrative Agent) and (C) in connection with each Credit Extension hereunder and (ii) the Borrowing Base shall be automatically deemed recomputed on each other Business Day prior to the Termination Date, it being understood that the Servicer shall not be required to provide reports or evidence of such automatic computation but shall only be required to deliver computations of the Borrowing Base as provided above in this Section and in Section 3.02, and further understood that a deemed recomputation of the Borrowing Base shall not give rise to any Advance Suspension Event, Event of Termination or Potential Event of Termination hereunder or under any Facility Document. With respect to each calculation of the Borrowing Base, the Total Reserve Amount used in such calculation shall be measured using the information reported in the most recent Monthly Report.

(b) Allocation of Interest Rates. Subject to the requirements set forth in this Agreement, the Administrative Agent and the Facility Agents shall from time to time, only for purposes of computing Interest with respect to each Lender, account for such Lender's portion of the Aggregate Principal Balance in terms of one or more portions (or tranches), and the applicable Interest Rate may be different for each portion of such Aggregate Principal Balance. Each Lender's Loans shall be allocated to each portion of the Aggregate Principal Balance by the Administrative Agent or the applicable Facility Agent to reflect the funding sources for each such portion of such Loan, so that:

(i) there will be an Interest Rate for the portion of Aggregate Principal Balance funded or maintained through the issuance of Commercial Paper Notes; and

(ii) there will be an Interest Rate for the portion of Aggregate Principal Balance not funded or maintained through the issuance of Commercial Paper Notes (including by outstanding Liquidity Advances or by funding under any Program Support Agreement);

provided, that, notwithstanding the foregoing, following an Event of Termination, all portions of the Aggregate Principal Balance funded or maintained hereunder shall accrue at the Default Rate.

(c) Inability to Determine Rates; Inadequacy of Rates. If any Facility Agent shall have determined (which determination shall be conclusive and binding upon the parties hereto) before the first day of any Interest Period, by reason of circumstances affecting the interbank Eurodollar market, either that: (i) dollar deposits in the relevant amounts and for the relevant Interest Period or day, as applicable, are not available, (ii) adequate and reasonable means do not exist for ascertaining the LIBO Rate for such Interest Period or day, as applicable, or (iii) the LIBO Rate determined pursuant hereto does not accurately reflect the cost to the applicable Affected Person (as conclusively determined by such Facility Agent) of maintaining any Loan during such Interest Period or day, as applicable, such Facility Agent shall promptly give telephonic notice of such determination, confirmed in writing, to the Borrower before the first day of any Interest Period. Upon delivery of such notice: (i) no Loan shall be funded thereafter at the Base Rate determined by reference to the LIBO Rate unless and until such Facility Agent shall have given notice to the Borrower that the circumstances giving rise to such determination no longer exist, and (ii) with respect to any outstanding Loan then funded at the Base Rate determined by reference to the LIBO Rate, such Base Rate shall automatically be converted to the Base Rate determined without reference to the LIBO Rate on the last day of the then-current Interest Period.

(d) Changes in Legality. If, on or before the first day of any Interest Period, any Facility Agent shall have been notified by any Affected Person that such Affected Person has determined (which determination shall be final and conclusive) that any Regulatory Change, or compliance by such Affected Person with any Regulatory Change, shall make it unlawful or impossible for such Affected Person to fund or maintain any Loan at or by reference to the LIBO Rate, such Facility Agent shall notify the Borrower, the Administrative Agent and each other Facility Agent thereof. Upon receipt of such notice, until the applicable Facility Agent notifies the Borrower, the Administrative Agent and each other Facility Agent that the circumstances giving rise to such determination no longer apply, (i) no portion of any Loan shall be funded at or by reference to the LIBO Rate and (ii) the Interest Rate for any outstanding Loan then funded at the Base Rate determined by reference to the LIBO Rate shall be converted to the Base Rate determined without reference to the LIBO Rate either (x) on the last day of the then-current Interest Period, only if such Affected Person may lawfully continue to maintain such Loans at or by reference to the LIBO Rate prior to such conversion, or (y) immediately, if such Affected Person may not lawfully continue to maintain Loans at or by reference to the LIBO Rate during such period.

(e) Alternative LIBO Rate. (i) Notwithstanding anything to the contrary in this Agreement or any other Facility Document, if the Administrative Agent determines in good faith (which determination shall be conclusive absent manifest error) or the Borrower or the Majority Facility Agents notify the Administrative Agent (with, in the case of the Majority Facility Agents, a copy to the Borrower) that the Borrower or the Majority Facility Agents, as applicable, have determined, that: (A) the circumstances set forth in Section 2.03(c) have arisen and are unlikely to be temporary or (B) the circumstances set forth in Section 2.03(c) have not arisen but either (x) the administrator of the LIBO Rate has made a public statement identifying a specific date after which the LIBO Rate will permanently or indefinitely cease to be published by it, (y) a rate other than the LIBO Rate has become broadly accepted as the benchmark rate for newly originated loans in Dollars in the U.S. market, or (z) the administrator of the LIBO Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Rate may no longer be used for determining interest rates for loans (any such date, a "LIBOR Termination Date"), then after such determination by the Administrative Agent or receipt by the Administrative Agent of such notice, as applicable, the Administrative Agent and the Borrower shall amend this Agreement to (I) replace the LIBO Rate with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) that has been broadly accepted by the syndicated loan market in the United States in lieu of the LIBO Rate (any such proposed rate, a "LIBOR Successor Rate"), provided that at no time shall the LIBOR Successor Rate be less than zero for purposes of this Agreement, and (II) make LIBOR Successor Rate Conforming Changes and, notwithstanding anything to the contrary in Section 10.01, any such amendment shall become effective at 5:00 p.m. (New York time) on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Facility Agents and the Borrower unless, prior to such time, Facility Agents comprising the Majority Facility Agents have delivered to the Administrative Agent notice that such Majority Facility Agents do not accept such amendment.

(ii) If no LIBOR Successor Rate has been determined and the circumstances under clause (e)(i) above exist, (A) the obligation of any Lender to fund or maintain Loans at the LIBO Rate shall forthwith be suspended and (B) all then outstanding Loans at the LIBO Rate, if any, shall be converted on the last day of the Interest Period or within such earlier period as required by Law into Loans at the Base Rate. In the event of the foregoing, the Borrower may revoke any pending Borrowing Request for any Loan to be made at the LIBO Rate by written notice to the Administrative Agent and the Facility Agents, it being understood that if the Borrower does not revoke such Borrowing Request, the Borrower shall be deemed to have made a Borrowing Request for a Loan to be made at the Base Rate.

SECTION 2.04. Letter of Credit Subfacility.

(a) Generally. Subject to the terms and conditions set forth herein, the LC Issuers shall make LC Credit Extensions requested by the Borrower from time to time; provided, that no LC Credit Extension shall be made if, after giving effect to such LC Credit Extension (i) a Borrowing Base Deficiency would exist, (ii) the LC Obligations would exceed the LC Sublimit or (iii) the portion of the LC Obligations attributable to Letters of Credit issued by any LC Issuer would exceed its LC Commitment.

(b) Letter of Credit Requests. To request an LC Credit Extension from an LC Issuer, the Borrower shall deliver a written request therefor, substantially in the form of Exhibit B hereto (each such request, a "Letter of Credit Request") to Administrative Agent and the related Facility Agent of the applicable LC Issuer not later than 12 noon (New York City time) on the date that is at least three (3) Business Days prior to the requested Issuance Date or the Modification Date of such Letter of Credit and include a Borrowing Base Certificate containing a pro forma calculation demonstrating the lack of a Borrowing Base Deficiency after giving effect to such LC Credit Extension. Such Letter of Credit Request shall, unless otherwise agreed by the applicable LC Issuer, be irrevocable and shall specify the face amount of the requested Letter of Credit, the account party (which shall be an Originator or an Affiliate thereof) and beneficiary for the requested Letter of Credit, the requested expiration date of such Letter of Credit and the requested Issuance Date or Modification Date, as applicable, thereof; provided, that each Letter of Credit issued hereunder shall have a face amount of not less than \$1,000,000; provided, further, that no LC Issuer shall have any obligation to issue, modify or extend a Letter of Credit if any Committed Lender is at that time a Defaulting Committed Lender, unless such LC Issuer is satisfied that the actual fronting exposure with respect to the Defaulting Committed Lender's related Lender Group Percentage of any LC Obligations in respect of issued Letters of Credit or any potential fronting exposure arising from the Letter of Credit then proposed to be issued will be entirely covered by Cash Collateral (or other satisfactory arrangements with respect thereto in the sole discretion of such LC Issuer shall have been made) provided to such LC Issuer in accordance with this Agreement. Each LC Credit Extension by an LC Issuer of any Letter of Credit shall be, in addition to the conditions precedent set forth in Article III, subject to the conditions precedent that (1) the LC Cash Collateral Date shall not have occurred, (2) the form of such Letter of Credit shall be reasonably acceptable to such LC Issuer, (3) such Letter of Credit shall not be issued to a Sanctioned Person or for the benefit of, or to make funds available to, any Person to fund, finance or facilitate any activities or business of or with any Person that is, at the time of such funding, a Sanctioned Person or in any country or territory that is at the time of such funding a Sanctioned Country or in any other manner that would result in a violation of Sanctions or any other applicable Law by any Person (including such LC Issuer or any other Secured Party), (4) the Borrower (and, to the extent required by the applicable LC Issuer, the applicable Originator or such Affiliate thereof which is to be the "Account Party" with respect thereto) shall have executed and delivered such application agreement and/or such other documentation, information, instruments and agreements relating to such Letter of Credit as the applicable LC Issuer shall have reasonably requested, including all applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act (collectively, "Letter of Credit Application"), and (5) the Borrower shall have paid, prior to the issuance, amendment, modification, renewal or extension thereof, to the applicable LC Issuer, any accrued and unpaid Fronting Fees then owing to such LC Issuer and any Other LC Fees due and owing with respect to such Letter of Credit. Each Letter of Credit issued or modified in connection with an LC Credit Extension or otherwise shall comply with the provisions of Section 2.04 and the related Letter of Credit Application. The Borrower shall have the right to give instructions and make agreements with respect to any Letter of Credit Application and the disposition of documents, and to agree with Administrative Agent, the applicable Facility Agent and the applicable LC Issuer upon any amendment, extension or renewal of any Letter of Credit. In no event shall an LC Issuer be obligated to issue a modification in respect of a Letter of Credit if, on the proposed Modification Date, the applicable LC Issuer would not be obligated to issue new Letters of Credit under the terms hereof if requested or if the beneficiary does not consent to the proposed terms of the modification.

(c) LC Credit Extensions. The related Facility Agent for an LC Issuer shall promptly notify such LC Issuer and Lenders in its Lender Group of the request by the Borrower for an LC Credit Extension hereunder, and shall provide the related LC Issuer with the applicable Letter of Credit Application delivered to Administrative Agent and the applicable Facility Agent by the Borrower pursuant to clause (b) above, by the close of business on the day received or if received on a day that is not a Business Day or on any Business Day after 2:00 p.m. (New York City time) on such day, on the next Business Day.

(d) Participation Commitment. Immediately upon the issuance of each Letter of Credit by an LC Issuer (or an amendment to a Letter of Credit increasing the Stated Amount thereof), the Committed Lenders of each Lender Group shall be deemed to, and hereby irrevocably and unconditionally agree to, purchase from such LC Issuer, a participation in such Letter of Credit (as it may be so amended) and each drawing thereunder in an amount equal to their respective Lender Group Percentages of the Stated Amount of such Letter of Credit and the amount of such drawing, respectively. Such participations in such LC Credit Extensions by each Committed Lender shall constitute an agreement by such Committed Lender to make a Loan under Section 2.02 only in the event that (i) the related Letter of Credit is subsequently drawn upon and (ii) the Conduit Lenders in its Lender Group do not fund the Lender Group Percentage of a Reimbursement Borrowing in connection with such draw. In the event any Letter of Credit expires or is surrendered to the applicable LC Issuer in accordance with its terms without being drawn (in whole or in part) then, in such event, the foregoing obligation of the Committed Lenders to make such Loan in respect of such Letter of Credit shall expire to the extent of the face amount thereof which has expired or been so surrendered.

(e) Issuance of Letters of Credit. (i) Each Letter of Credit shall, among other things, (A) provide for the payment of sight drafts or other written demands for payment when presented for honor thereunder in accordance with the terms thereof and when accompanied by the documents described therein, (B) expire at or prior to the close of business on the date that is one year after the Issuance Date or the Modification Date (if such Letter of Credit has been renewed or extended); provided, however, that in accordance with clause (ii) of this subsection (e), a Letter of Credit may provide for the automatic renewal thereof for additional periods which shall not extend beyond the date that is one year after its then current expiration date; provided, further, that no Letter of Credit may be renewed or extended (automatically or otherwise) on or after the LC Cash Collateral Date, and (C) be in form and substance reasonably acceptable to the applicable LC Issuer in its sole discretion.

(ii) If the Borrower so requests in any applicable Letter of Credit Request or Letter of Credit Application, each LC Issuer may, in its sole discretion, 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 the LC Issuer which issued such Letter of Credit to prevent any such extension at least once in each twelve-month period (commencing with the Issuance Date of such Letter of Credit) by giving prior notice to the beneficiary thereof and the Borrower not later than the Business Day prior to the then-current LC Cash Collateral Date (the “Non-Extension Notice Date”). Unless otherwise directed by an LC Issuer, the Borrower shall not be required to make a specific request to the applicable LC Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the LC Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than one year after the earlier of (x) its then current expiration date and (y) the day before the LC Cash Collateral Date; provided, however, that no LC Issuer shall permit any such extension if (A) such LC Issuer 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, or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Lender or any Transaction Party that one or more of the applicable conditions specified in Section 3.02 is not then satisfied and directing such LC Issuer not to permit such extension.

(iii) Each LC Issuer may, at its election, or as directed in writing by the Administrative Agent or any Facility Agent (with a copy to the Administrative Agent), deliver any notices of termination or other communications to any Letter of Credit beneficiary, and take any other action as necessary or appropriate, at any time and from time to time, in order to cause the expiry date of any Auto-Extension Letter of Credit issued by such LC Issuer to be a date not later than one year after the earlier of (x) its then current expiration date and (y) the day before the LC Cash Collateral Date.

(iv) The Borrower hereby authorizes and directs each LC Issuer to name any Originator or any Affiliate of any Originator as designated by an Originator pursuant to the Receivables Sale Agreement and specified to the applicable LC Issuer in the Letter of Credit Request as the “Account Party” of each Letter of Credit.

(f) Letter of Credit Participations; Disbursements, Reimbursement. (i) In the event of any request for a drawing under a Letter of Credit issued by an LC Issuer by the beneficiary thereof, the applicable LC Issuer will promptly notify Administrative Agent, each Facility Agent, the Servicer and the Borrower of such request (the date of such notice, if such notice is delivered prior to 2:00 p.m. (New York City time) or the following Business Day, if such notice is delivered after such time, the “Drawing Date”). Unless (A) the Borrower has notified the LC Issuer, the Administrative Agent and the Facility Agents that it has deposited an amount equal to the Reimbursement Obligations with respect to such drawing in the LC Collateral Account (and the Administrative Agent has confirmed receipt of such funds) or (B) the LC Issuer notifies the Administrative Agent and the Facility Agents that the Borrower has otherwise settled such Reimbursement Obligations to the satisfaction of the LC Issuer, upon the delivery of such notice, the Borrower shall be deemed to have requested that a Loan be made ratably by the Lender Groups on such date with respect to such Letter of Credit in accordance with Section 2.02 (the funding of such Loan, a “Reimbursement Borrowing”). Any notice given pursuant to this Section 2.04(f) may be oral if immediately confirmed in writing by the party giving such notice (or by the Administrative Agent on its behalf following delivery of written confirmation to the Administrative Agent); provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) If a Reimbursement Borrowing has been requested (or deemed requested) pursuant to clause (i) above, the Conduit Lenders may, each at their option, and the related Committed Lenders shall if such Conduit Lenders decline to, make available to the applicable LC Issuer an amount in immediately available funds equal to the related Lender Group Percentage of the amount of such Reimbursement Borrowing. If any Committed Lender so notified fails to (and its related Conduit Lender(s) have elected not to) make available to such LC Issuer the amount of such Lender Group’s Lender Group Percentage of the Reimbursement Borrowing by 12 noon (New York City time) on the Drawing Date, the LC Issuer shall be deemed to have made a Participation Advance with respect to such amount, and interest shall accrue on such Participation Advance, from such date to the date on which such LC Issuer is reimbursed at a rate per annum equal to the Base Rate. From and after the Drawing Date on which the Defaulting Committed Lender failed to fund its Lender Group Percentage of the Reimbursement Borrowing, any payment of principal, Interest or other amounts received by the Administrative Agent or the Facility Agent of such Defaulting Committed Lender from the Borrower or the Servicer for the account of any Lender in the Lender Group of such Defaulting Committed Lender, shall be applied, on a pro rata basis, to the repayment of all outstanding Participation Advances that were deemed to have been made in connection with such Defaulting Committed Lender’s failure to fund its portion of Reimbursement Borrowings, together with all Interest that has accrued on such outstanding Participation Advances in accordance with this subclause (ii). Each LC Issuer will promptly give notice of the occurrence of a draw on a Letter of Credit affecting it, but failure of an LC Issuer to give any such notice upon such drawing to enable any related Committed Lender to effect such payment on such date shall not relieve any Committed Lender from its obligation under this subclause (ii), provided that such Committed Lender shall not be obligated to pay interest as provided in this subclause (ii) until and commencing from the Drawing Date. Each Committed Lender’s obligation under this Section 2.04 shall continue until the occurrence of the Termination Date.

(g) Repayment of Letter of Credit Participation Advances. (i) Upon (and only upon) receipt by an LC Issuer for its account of immediately available funds from the Borrower (A) in reimbursement of any payment made by such LC Issuer under a Letter of Credit with respect to which any Lender has made a payment pursuant to clause (f) above, or (B) in payment of Interest on the Loans made or deemed to have been made in connection with any such draw, the applicable LC Issuer will pay to the applicable Facility Agents, ratably (based on the outstanding drawn amounts funded by each such Lender Group in respect of such Letter of Credit), in the same funds as those received by such LC Issuer; it being understood that such LC Issuer shall retain the ratable amount of such funds that were not the subject of any payment in respect of such Letter of Credit by any Lender.

(ii) If an LC Issuer is required at any time to return to the Borrower, or to a trustee, receiver, liquidator, custodian, or any official in any insolvency proceeding, any portion of the payments made by the Borrower to such LC Issuer pursuant to this Agreement or any Letter of Credit issued by it in reimbursement of a payment made under any such Letter of Credit or interest or fee thereon or with respect thereto, each Facility Agent (on behalf of the Committed Lenders in its Lender Group) shall, on demand of such LC Issuer, instruct the Committed Lenders in its Lender Group to return, and such Committed Lenders shall return, to such LC Issuer the amount of its Lender Group Percentage of any amounts so returned by such LC Issuer plus interest at the Base Rate.

(h) Documentation. The Borrower agrees to be bound by the terms of the applicable Letter of Credit Application and by the applicable LC Issuer's interpretations of any Letter of Credit it issues and by such LC Issuer's written regulations and customary practices relating to Letters of Credit, though the terms of each Letter of Credit Application, each applicable LC Issuer's interpretation of its Letters of Credit and each LC Issuer's regulations and practices may be different from the Borrower's own and from that of another LC Issuer. In the event of a conflict or inconsistency between a Letter of Credit Application and this Agreement, this Agreement shall control. It is understood and agreed that, except in the case of gross negligence or willful misconduct by an LC Issuer, as determined by a final non-applicable judgment of a Court of competent jurisdiction, such LC Issuer shall not be liable for any error, breach, negligence and/or mistakes, whether of omission or commission, in following the Borrower's instructions or those contained in the Letters of Credit issued by it or any modifications, amendments or supplements thereto.

(i) Determination to Honor Drawing Request. In determining whether to honor any request for drawing under any Letter of Credit by the beneficiary thereof, each LC Issuer shall be responsible only to determine that the documents and certificates required to be delivered under such Letter of Credit have been delivered and that they comply on their face with the requirements of such Letter of Credit and that any other drawing condition appearing on the face of such Letter of Credit has been satisfied in the manner so set forth.

(j) Nature of Participation and Reimbursement Obligations. Each Committed Lender's obligation in accordance with this Agreement to fund Reimbursement Borrowings as a result of a drawing under a Letter of Credit issued by the LC Issuer under this Section 2.04 that the Conduit Lender(s) in its Lender Group do not fund, and the Reimbursement Obligations of the Borrower with respect to any draw under a Letter of Credit, shall be absolute, unconditional and irrevocable, shall not be subject to any defenses whatsoever (other than, in the case of the Committed Lenders, the occurrence of the Scheduled Termination Date or the failure of the LC Credit Extension to satisfy the terms and conditions of Section 2.04(a)), and shall be performed strictly in accordance with the terms of this Section 2.04 under all circumstances, including each of the following circumstances:

(1) any set-off, counterclaim, recoupment, defense or other right which such Committed Lender may have against an LC Issuer, any Conduit Lender, another Committed Lender, any Facility Agent, the Administrative Agent, the Borrower, the Servicer, any Originator, the Performance Guarantor or any other Person for any reason whatsoever;

(2) the failure of the Borrower or any other Person to comply with the conditions set forth in this Agreement for the making of Loans, requests for Letters of Credit or otherwise, it being acknowledged that such conditions are not required for the making of Reimbursement Borrowings hereunder;

(3) any lack of validity or enforceability of any Letter of Credit;

(4) any claim of breach of warranty that might be made by the Borrower, the Servicer, any Originator, the Performance Guarantor, the Administrative Agent, any LC Issuer, any Facility Agent, any Lender or any other Person against the beneficiary of a Letter of Credit, or the existence of any claim, set-off, defense or other right which the Borrower, the Servicer, any Originator, the Performance Guarantor, the Administrative Agent, any LC Issuer, any Facility Agent, any Lender or any other Person may have at any time against a beneficiary, any successor beneficiary or any transferee of any Letter of Credit or the proceeds thereof (or any Persons for whom any such transferee may be acting), any LC Issuer, any Conduit Lender, any Committed Lender, any Facility Agent, the Administrative Agent or any other Person, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Servicer, any Originator, the Performance Guarantor, the Borrower or any of their respective Affiliates and the beneficiary for which any Letter of Credit was procured);

(5) the lack of power or authority of any signer of, or lack of validity, sufficiency, accuracy, enforceability or genuineness of, any draft, demand, instrument, certificate or other document presented under any Letter of Credit, or any such draft, demand, instrument, certificate or other document proving to be forged, fraudulent, invalid, defective or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, even if another LC Issuer, the Administrative Agent, a Facility Agent or a Lender has been notified thereof; provided, that the foregoing shall not be construed to excuse any LC Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such LC Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; provided, further, that, in the absence of gross negligence or willful misconduct on the part of the applicable LC Issuer (as finally determined by a court of competent jurisdiction), such LC Issuer shall be deemed to have exercised care in each such determination;

(6) payment by an LC Issuer under a Letter of Credit issued by it against presentation of a demand, draft or certificate or other document which does not comply with the terms of such Letter of Credit other than as a result of the gross negligence or willful misconduct of such LC Issuer;

(7) the solvency of, or any acts or omissions by, any beneficiary of any Letter of Credit, or any other Person having a role in any transaction or obligation relating to a Letter of Credit, or the existence, nature, quality, quantity, condition, value or other characteristic of any property or services relating to a Letter of Credit;

(8) any failure by an LC Issuer or any of an LC Issuer's Affiliates to issue any Letter of Credit in the form requested by the Borrower;

(9) any Material Adverse Effect with respect to the Borrower, the Servicer, the Performance Guarantor, any Originator or any of their respective Affiliates;

(10) any breach of this Agreement or any other Facility Document by any party thereto;

(11) the occurrence and/or continuance of an Advance Suspension Event, an Event of Termination or a Potential Event of Termination;

(12) the fact that this Agreement or the obligations of the Borrower or the Servicer hereunder shall have been terminated; and

(13) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(k) Fronting Fees; Other LC Fees. With respect to each Letter of Credit, the Borrower shall pay to the applicable LC Issuer all fronting fees or similar fees with respect to such Letter of Credit in the amount and otherwise in accordance with the terms agreed in writing between the Borrower and such LC Issuer (the "Fronting Fees"). The Borrower shall pay all Fronting Fees accrued through and including the last day of each calendar month, as reflected in an invoice delivered to the Borrower in accordance with Section 2.05(a), in arrears, on the Interest and Fee Payment Date immediately succeeding the end of such calendar month. The Borrower shall pay to each LC Issuer, in addition to all other amounts due hereunder, all customary expenses incurred by each LC Issuer in connection with each Letter of Credit issued by it or the maintenance thereof and its customary drawing, amendment, renewal, extension, processing, transfer and other applicable customary fees (collectively, "Other LC Fees"). The Borrower shall pay all Other LC Fees on demand or as otherwise agreed between the Borrower and such LC Issuer.

(l) Liability for Acts and Omissions. (i) As between the Borrower, on the one hand, and each LC Issuer and each other Indemnified Party, on the other, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the respective foregoing, no Indemnified Party shall be responsible for: (A) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for an issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged (even if such LC Issuer or such other Indemnified Party shall have been notified thereof); provided, that the foregoing shall not be construed to excuse any LC Issuer from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such LC Issuer's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof; provided, further, that, in the absence of gross negligence or willful misconduct on the part of the applicable LC Issuer (as finally determined by a court of competent jurisdiction), such LC Issuer shall be deemed to have exercised care in each such determination; (B) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such 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; (C) the failure of the beneficiary of any such Letter of Credit, or any other party to which such Letter of Credit may be transferred, to comply fully with any conditions required in order to draw upon such Letter of Credit or any other claim of the Borrower against any beneficiary of such Letter of Credit, or any such transferee, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any such transferee; (D) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (E) errors in interpretation of technical terms; (F) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (G) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (H) any consequences arising from causes beyond the control of such Indemnified Party, and none of the above shall affect or impair, or prevent the vesting of, any LC Issuer's or any other Indemnified Party's rights or powers hereunder. In no event shall any of such LC Issuer or other Indemnified Party be liable to the Borrower or any other Person for any indirect, consequential, incidental, punitive, exemplary or special damages or expenses (including attorneys' fees), or for any damages resulting from any change in the value of any property relating to a Letter of Credit.

(ii) Without limiting the generality of the foregoing, each LC Issuer (A) may rely on any written communication believed in good faith by such Person to have been authorized or given by or on behalf of the applicant for a Letter of Credit; (B) may honor any presentation if the documents presented appear on their face to comply with the terms and conditions of the relevant Letter of Credit; (C) may honor a previously dishonored presentation under a Letter of Credit, whether such dishonor was pursuant to a court order, to settle or compromise any claim of wrongful dishonor, or otherwise, and shall be entitled to reimbursement to the same extent as if such presentation had initially been honored, together with any interest paid by an LC Issuer or its Affiliates; (D) may honor any drawing that is payable upon presentation of a statement advising negotiation or payment, upon receipt of such statement (even if such statement indicates that a draft or other document is being delivered separately), and shall not be liable for any failure of any such draft or other document to arrive, or to conform in any way with the relevant Letter of Credit; and (E) may pay any paying or negotiating bank claiming that it rightfully honored under the laws or practices of the place where such bank is located.

(iii) In furtherance and extension and not in limitation of the specific provisions set forth above, any action taken or omitted by an LC Issuer under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith and without gross negligence or willful misconduct, as determined by a final non-appealable judgment of a court of competent jurisdiction, shall not put such LC Issuer under any resulting liability to the Borrower, the Servicer, the Performance Guarantor, any Originator, any Lender, any Facility Agent, the Administrative Agent or any other Person.

(m) Termination of Letters of Credit. An LC Issuer shall only terminate a given Letter of Credit (in whole or in part) upon receipt of appropriate documentation from the beneficiary thereof or, upon the expiration thereof in accordance with its terms. Funds remaining in the LC Collateral Account to Cash Collateralize such terminated Letter of Credit shall be applied in accordance with clause (n) of this Section 2.04.

(n) LC Collateral Account. (i) The Administrative Agent shall maintain, in the name of the Administrative Agent, on behalf of the Secured Parties, a segregated cash collateral account (such account the "LC Collateral Account") at an Eligible Account Bank selected by the Administrative Agent into which Cash Collateral shall be deposited as and when required under the terms of this Agreement. Such deposits shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of Borrower (or, with respect to Cash Collateral deposited in respect of a Defaulting Committed Lender, such Defaulting Committed Lender) under this Agreement and the other Facility Documents. The Administrative Agent (for the benefit of the LC Issuers and the Lenders) shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account. Amounts on deposit in the LC Collateral Account shall not be invested.

(ii) Amounts on deposit in the LC Collateral Account shall be applied by the Administrative Agent to reimburse the applicable LC Issuer and for fees related to the Letters of Credit and for any Reimbursement Obligations that have not been repaid by the Borrower or through Collections and any portion of Reimbursement Borrowings that are not funded by Defaulting Committed Lenders or, if the Termination Date has occurred to satisfy other remaining Aggregate Exposure Amounts. If on any Interest and Fee Payment Date prior to the LC Cash Collateral Date, the balance in the LC Collateral Account in respect of all outstanding Letters of Credit exceeds the Required LC Cash Collateral Amount as of such Interest and Fee Payment Date, then, unless an Event of Termination, an Advance Suspension Event or a Potential Event of Termination shall exist and be continuing, the Administrative Agent shall release the excess Cash Collateral to the Borrower.

(iii) To the extent that any Letters of Credit are outstanding and undrawn on the LC Cash Collateral Date, the LC Collateral Account shall be funded in an amount up to the Required LC Cash Collateral Amount pursuant to Section 2.07(a)(vi) or Section 2.08(b)(v), as applicable, it being understood that funds on deposit in the LC Collateral Account will not be used to fund draws prior to the Termination Date. On the Interest and Fee Payment Date after the Termination Date after which all Letters of Credit have expired or been terminated, all draws on the Letters of Credit have been reimbursed, all Participation Advances have been repaid, all Used Fees, Fronting Fees and Other LC Fees due with respect to such Letters of Credit have been paid in full and the Final Collection Date has occurred, all funds in the LC Collateral Account shall be remitted to the Borrower.

SECTION 2.05. Interest and Fees.

(a) On each Interest and Fee Payment Date, in accordance with the provisions set forth in Section 2.07 or 2.08, as applicable, the Borrower shall pay to each Facility Agent on behalf of the Lenders in its Lender Group, all accrued and unpaid Interest with respect to the Loans funded and maintained by such Lender Group and the Used Fees and Unused Fees, as calculated in accordance with the Fee Letter. On or before the first Business Day after the end of each calendar month each Facility Agent shall furnish the Borrower with an invoice setting forth the amount of the accrued and unpaid Interest, Used Fees, Unused Fees and any Fronting Fees and Other LC Fees payable to the Lenders or the LC Issuer (if applicable) in such Facility Agent's Lender Group.

(b) On each Interest and Fee Payment Date, in accordance with the provisions set forth in Section 2.07 or 2.08, as applicable, the Borrower shall pay to the Administrative Agent the fees set forth in the Administrative Agent Fee Letter, if any.

SECTION 2.06. Repayment.

(a) *Repayment on the Final Maturity Date.* On or prior to the Final Maturity Date, the Borrower shall repay in full the Aggregate Principal Balance and all other Borrower Obligations and shall Cash Collateralize all outstanding Letters of Credit up to the Required LC Cash Collateral Amount.

(b) *Mandatory Prepayments.* The Borrower shall eliminate any Borrowing Base Deficiency prior to the occurrence of a Borrowing Base Default.

(c) *Optional Prepayments.* The Borrower may, at its option, prepay on any Business Day all or any portion of any Loan in accordance with this Section 2.06(e). The Borrower may do as follows:

(i) the Borrower shall deliver to the Administrative Agent, each Facility Agent and the Servicer written notice in substantially the form of Exhibit J (the “Prepayment Notice”) at least two (2) Business Days’ prior to the date of such prepayment of the Aggregate Exposure Amount, which notice shall include the amount of such proposed prepayment and the proposed date on which such prepayment will commence; and

(ii) on the proposed date of prepayment, the Servicer shall cause Collections that have been set aside pursuant to Section 2.07(b)(i) to make such prepayment;

provided, that the amount of any such prepayment as specified in the Prepayment Notice (if not a prepayment to zero of the Aggregate Principal Balance and Cash Collateral of all LC Undrawn Amounts) shall be not less than \$1,000,000 and shall be an integral multiple of \$100,000, and the entire Aggregate Exposure Amount after giving effect to such reduction shall be not less than \$10,000,000 (unless the entire Aggregate Principal Balance shall have been reduced to zero and all LC Undrawn Amounts shall have been fully Cash Collateralized).

SECTION 2.07. Application of Collections Prior to Termination Date.

(a) On each Business Day prior to the Termination Date, the Servicer shall cause all Collections received (or deemed received pursuant to Section 2.09) on such day to be applied in the following order and priority:

(i) *first*, if such day is an Interest and Fee Payment Date, on a pro rata basis, (x) to the Facility Agents, on behalf of the Lenders and LC Issuers in their respective Lender Groups, accrued and unpaid Interest, Used Fees, Unused Fees, Fronting Fees and Other LC Fees, (y) to the Administrative Agent, the fees owed to it under the Administrative Agent Fee Letter and (z) to the Servicer, all accrued and unpaid Servicer Fees;

(ii) *second*, to the Administrative Agent, an amount equal to the Borrower Obligations owing to the Administrative Agent in respect of all costs and expenses which the Administrative Agent is entitled to have reimbursed, including pursuant to Section 10.10 incurred by it in connection with the enforcement of any Facility Document or the collection of any amounts due thereunder;

(iii) *third*, to any LC Issuers holding Participation Advances, ratably based on the portion of the aggregate outstanding Reimbursement Obligations owed to each until such Participation Advances are reduced to zero;

(iv) *fourth*, in the following order of priority, *first*, (x) if a Borrowing Base Deficiency exists, an amount equal to such Borrowing Base Deficiency (such amount to be allocated *first*, to the Lenders ratably in accordance with the portion of the Aggregate Exposure Amount held by each and *second*, to the LC Collateral Account to Cash Collateralize LC Undrawn Amounts) and then *second*, (y) if the LC Obligations owing to any LC Issuers exceed the LC Commitments of such LC Issuers, the amount necessary to cause the LC Obligations owing to such LC Issuers to be less than or equal to their respective LC Commitments (such amount to be deposited into the LC Collateral Account to Cash Collateralize LC Undrawn Amounts);

(v) *fifth*, from and after any Early Termination Date, on a pro rata basis, to (x) the Facility Agents of each Early Terminating Lender Group in payment of the Principal Balance of the Loans held by the Lenders in each such Lender Group and (y) the LC Collateral Account, to Cash Collateralize the Lender Group Percentage of each Early Terminating Lender Group of the LC Undrawn Amount, in an amount equal to each such Early Terminating Lender Group's ratable share (in accordance with such Lender Group's share of the Aggregate Exposure Amount) of the balance of such Collections (such ratable share to be determined on each Business Day, solely for the purposes of this clause (y)), based upon the outstanding Aggregate Exposure Amount and the Lender Group Percentages with respect to the LC Undrawn Amount immediately preceding such Early Termination Date), until the Principal Balance of the Loans of each such Early Terminating Lender Group are reduced to zero and the Lender Group Percentage of the LC Undrawn Amount of each such Early Terminating Lender Group is fully Cash Collateralized;

(vi) *sixth*, on and after the LC Cash Collateral Date, to fund the LC Collateral Account up to the Required LC Cash Collateral Amount with respect to Letters of Credit that are scheduled to expire after the Scheduled Termination Date to the extent required under Section 2.04(n)(iii);

(vii) *seventh*, if any Borrower Obligations (other than Interest, Used Fees, Unused Fees, Fronting Fees, Other LC Fees, the Servicer Fee and the Loans) are then due and payable by the Borrower to any Secured Party, to each such Secured Party (ratably in accordance with the amounts owing to each) the Borrower Obligations so due and payable; and

(viii) *eighth*, to the Borrower for application in accordance with Section 2.07(b) below (any such remittance, a "Release"); provided that, if (x) the conditions precedent for such Release set forth in Section 3.02 are not satisfied or (y) following an Advance Suspension Event, the Administrative Agent has, (A) at the request of the Majority Facility Agents (or, at any time during which there are only two Facility Agents, at the request of either Facility Agent) or (B) with the consent of the Majority Facility Agents, notified the Borrower and the Servicer that an Advance Suspension Event has occurred and that the Releases shall no longer be permitted hereunder until such Advance Suspension Event no longer exists (such notice, a "Release Suspension Notice"), then the Servicer shall, for so long as such Advance Suspension Event remains in effect or the conditions precedent for such Release set forth in Section 3.02 are not satisfied, deposit such Collections into the Collection Account or, if the Collection Account has not been established, the Designated Deposit Account, or such other account as designated by the Administrative Agent for application on the next Business Day in accordance with this Section 2.07(a) or Section 2.08, as applicable.

(b) Any Collections remitted to the Borrower pursuant to Section 2.07(a)(viii) shall be applied by the Servicer, on behalf of the Borrower: (i) *first*, if so requested by the Borrower, to pay or prepay (or set aside for the payment or prepayment of) Loans or to Cash Collateralize outstanding Letters of Credit, (ii) *second*, to pay the purchase price for Receivables to be acquired by the Borrower from one or more Originators on such day under the Receivables Sale Agreement and (iii) *third*, in such other manner as the Borrower may specify and that is not prohibited by the terms of the Facility Documents.

SECTION 2.08. Application of Collections After Termination Date.

(a) On the Termination Date, the Servicer shall deposit to the Collection Account or, if the Collection Account has not been established, the Designated Deposit Account, all Collections held by it on such date (including amounts previously set aside or held by it pursuant to Section 2.07(b)). On each Business Day thereafter, the Servicer shall deposit to the Collection Account or, if the Collection Account has not been established, the Designated Deposit Account, within one (1) Business Day of its receipt thereof, all Collections received by it that have not previously been deposited to the Collection Account or, if the Collection Account has not been established, the Designated Deposit Account. The Servicer shall not make any withdrawals from the Collection Account or the Designated Deposit Account during such period.

(b) On each Interest and Fee Payment Date from and after the Termination Date, the Administrative Agent, in consultation with the Servicer as needed, shall cause all Collections received since the prior Interest and Fee Payment Date, and all funds, if any, on deposit in the Collection Account and the Designated Deposit Account that have not been previously applied hereunder (including, without limitation, any investment earnings received with respect to such funds) to be applied in the following order of priority:

(i) *first*, to the Administrative Agent an amount equal to the Borrower Obligations (other than those described in clause (iii) below) owing to the Administrative Agent in respect of fees due to it and all costs and expenses which the Administrative Agent is entitled to have reimbursed, including pursuant to Section 10.10 incurred by it in connection with the enforcement of any Facility Document or the collection of any amounts due thereunder;

(ii) *second*, to the Servicer the accrued and unpaid Servicer Fee;

(iii) *third*, to the Administrative Agent, to be distributed to each Facility Agent, for the benefit of the Lenders and LC Issuers in its Lender Group, and to itself in payment of all accrued and unpaid Interest, Used Fees, Unused Fees, Fronting Fees, Other LC Fees, and Other Fees and the fees owed under the Administrative Agent Fee Letter then due and payable, ratably in accordance with such amounts owed to such parties;

- (iv) *fourth*, to any LC Issuers holding Participation Advances, ratably based on the portion of the aggregate outstanding Reimbursement Obligations owed to each until such Participation Advances are reduced to zero;
- (v) *fifth*, to fund the LC Collateral Account up to the Required LC Cash Collateral Amount as required under Section 2.04(n)(iii);
- (vi) *sixth*, to the Administrative Agent, to be distributed to each Facility Agent, for the benefit of the Lenders and LC Issuers in its Lender Group, in reduction of the Aggregate Exposure Amount then due and payable (such amount to be allocated ratably in accordance with such amounts owed to such parties) until the Aggregate Principal Balance is reduced to zero;
- (vii) *seventh*, if any Borrower Obligations (other than the amounts paid pursuant to clauses (i) through (vi) above) are then due and payable by the Borrower to any Secured Party, to each such Secured Party (ratably in accordance with the amounts owing to each) the Borrower Obligations so due and payable;
- (viii) *eighth*, on the Final Collection Date, remit any remaining funds to the Borrower.

SECTION 2.09. Deemed Collections. If (a) on any day the Outstanding Balance of any Pool Receivable is either reduced or canceled as a result of a Dilution Factor, the Borrower shall be deemed to have received on such day, an amount equal to the amount of such reduction, or in the case of a cancellation, the Outstanding Balance of such Diluted Receivable and (b) if the representations and warranties made by an Originator with respect to a Receivable in Article V of the Receivables Sale Agreement is not true, the Borrower shall be deemed to have received on such day, an amount equal to the Outstanding Balance of such Receivable and the related Originator shall be obligated to pay such deemed collection to the Borrower pursuant to Section 3.3 of the Receivables Sale Agreement; provided, that such deemed Collections may be applied to the purchase price paid to the applicable Originator for newly purchased Receivables to the extent permitted under the Receivables Sale Agreement. If the Borrower on any day receives payments from the Originator or Servicer on Collections deemed to have been received pursuant to this Section 2.09 from and after the Termination Date, on such day the Borrower shall pay an amount of funds equal to such received deemed Collections to the Servicer for allocation and application in accordance with Section 2.08.

SECTION 2.10. Payments and Computations, Etc.

(a) All amounts to be paid or deposited by the Borrower or the Servicer hereunder or under any other Facility Document to the Administrative Agent or any Secured Party shall be made without reduction for offset or counterclaim and shall be paid or deposited no later than noon (New York, New York time) on the day when due in same day funds to the account for each Lender maintained by the applicable Facility Agent as may be designated from time to time by such Facility Agent to the Borrower and the Servicer. All amounts received after 4:00 p.m. (New York city time) will be deemed to have been received on the next Business Day. Except as expressly set forth herein, each Facility Agent shall distribute the amounts paid to it hereunder for the benefit of the Lenders in its Lender Group to the Lenders within its Lender Group ratably (x) in the case of such amounts paid in respect of Interest and fees, according to the Interest and fees payable to such Lenders and (y) in the case of such amounts paid in respect of the Aggregate Principal Balance (or in respect of any other obligations other than Interest and fees), according to the outstanding portions of the Aggregate Principal Balance funded by such Lenders.

(b) The Borrower (with respect to amounts payable by the Borrower) or the Servicer (with respect to amounts payable by the Servicer), as the case may be, shall, to the extent permitted by law, pay interest on any amount not paid or deposited by the Borrower or the Servicer, as the case may be, when due and payable hereunder, at the Default Rate, payable on demand; provided, that such rate shall not at any time exceed the maximum rate permitted by applicable Law.

(c) All computations of interest under clause (b) and all computations of Interest, fees and other amounts hereunder shall be made on the basis of a year of 360 days (or 365 or 366 days, as applicable, with respect to Interest or other amounts calculated by reference to the Base Rate) for the actual number of days elapsed. Whenever any payment or deposit to be made hereunder shall be due on a day other than a Business Day, such payment or deposit shall be made on the next Business Day and such extension of time shall be included in the computation of such payment or deposit.

SECTION 2.11. [Reserved].

SECTION 2.12. Increased Costs.

(a) Generally. If (A) the adoption after the date hereof of any Regulatory Change or any change therein after the date hereof, (B) any change after the date hereof in the interpretation or administration of any Regulatory Change by any Governmental Authority charged with the interpretation or administration thereof, or compliance with any request or directive (whether or not having the force of law) of any such Governmental Authority, or (c) without regard to the date of adoption, effectiveness or implementation, any of the following or any Regulatory Change promulgated by any Governmental Authority in connection with any of the following: (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (y) any accord or other pronouncement of the Bank for International Settlements, the Basel Committee on Banking Supervision or any successor or similar authority, shall:

(i) subject any Affected Person to any Taxes with respect to any Specified Matter (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes);

(ii) impose, modify or deem applicable any reserve, assessment, fee, insurance charge, special deposit, requirement for the maintenance of assets or capital, liquidity or similar requirement against assets of, deposits with or for the account of, liabilities of or credit extended by, any Affected Person or shall impose on any Affected Person or on the United States market for commercial paper or the London interbank market any other condition affecting or otherwise in respect of any Specified Matter; or

(iii) impose any other condition the result of which is to increase the cost to an Affected Person of performing its obligations under or in connection with this Agreement, or to reduce the rate of return on Affected Person's capital or assets as a consequence of its obligations under or in connection with this Agreement, or to reduce the amount of any sum received or receivable by an Affected Person, or to require any payment calculated by reference to the amount of interests or loans held or interest received by it,

then, promptly following demand by such Affected Person through the Administrative Agent, the Borrower shall pay to the Administrative Agent for the benefit of such Affected Person, such additional amount or amounts as will compensate such Affected Person for such Tax, increased cost or reduction. Notwithstanding the foregoing, no Affected Person shall be entitled to request or receive any such additional amounts for any Tax, increased cost or reduction unless such Affected Person is otherwise generally requesting similar additional amounts from other similarly situated Persons under facilities similar to the facility provided by this Agreement.

(b) [Reserved].

(c) Delay in Requests. Failure or delay on the part of any Affected Person to demand compensation pursuant to this Section shall not constitute a waiver of such Affected Person's right to demand such compensation; provided that the Borrower shall not be required to compensate an Affected Person pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Affected Person notifies the Borrower of the Regulatory Change giving rise to such increased costs or reductions and of such Affected Person's intention to claim compensation therefor (except that, if the Regulatory Change 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).

SECTION 2.13. Indemnity for Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable Law. If any applicable Law requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Affected Person receives an amount equal to the sum it would have received had no such deduction or withholding been made. Subject to Section 2.13(b), the Borrower shall indemnify each Affected Person for the full amount of any Indemnified Taxes including Indemnified Taxes imposed or asserted on or attributable to amount payable under this Section payable or paid by such Affected Person or required to be withheld or deducted from a payment to such Affected Person.

(b) Each Affected Person will promptly notify the Borrower in writing of any event of which it has knowledge, which will entitle such Affected Person to compensation pursuant to this Section 2.13; provided, however, that failure of any Affected Person to demand indemnification for any Indemnified Taxes shall not constitute a waiver of such right to indemnification, except that the Borrower shall not be required to indemnify an Affected Person for Taxes under this Section 2.13 unless such Affected Person notifies the Borrower of such claim no later than 180 days after such Affected Person has knowledge of such Taxes being imposed or arising. Any notice claiming compensation under this Section 2.13 shall set forth in reasonable detail the additional amount or amounts to be paid to it hereunder and shall be conclusive in the absence of manifest error. The Borrower shall be obligated to pay any claim for Indemnified Taxes within 10 days upon receipt of such written notice (other than Indemnified Taxes and expenses payable by reason of the action or inaction of the applicable Affected Person); provided that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, the Affected Person will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be paid in accordance with Section 2.13(c)) so long as such efforts would not, in the sole determination of the Affected Person, result in any additional costs or expenses or be otherwise disadvantageous to the Affected Person.

(c) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse for the payment of, any Other Taxes.

(d) If an Affected Person 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 by the Borrower, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.13 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of such Affected Person and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund net of any applicable Taxes payable in respect of such interest); provided, that the Borrower agrees to repay each such Affected Person, promptly after the request of such Affected Person, the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such Affected Person is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary, in no event will any Affected Person be required to pay any amount to the Borrower the payment of which would place such Affected Person in a less favorable net after-Tax position than such Affected Person would have been in if the Taxes 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 Taxes had never been paid. This Section 2.13 shall not be construed to require any Affected Person to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other Person.

(e) If any Lender requests compensation under Section 2.12, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to this Section 2.13, then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its portion of Aggregate Exposure Amount hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.12 or Section 2.13, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense, would not otherwise be disadvantageous or burdensome to such Lender and would not otherwise require such Lender to take any action inconsistent with its internal policies or legal or regulatory restrictions. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(f) (I) If any Lender requests compensation under Section 2.12, the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.13 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with paragraph (e) of this Section, (II) if any Committed Lender becomes a Defaulting Committed Lender or (III) if any Lender is a Non-Consenting Lender, then, in each case, the Borrower may, at its sole expense and effort, upon notice to the Facility Agent of such Lender Group and the Administrative Agent, require such Lender Group to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.03), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.12 or Section 2.13) and obligations under this Agreement and the related Specified Matter to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.03;

(ii) the Borrower shall have received consent from the Administrative Agent and each LC Issuer (other than any LC Issuer that is part of the Lender Group that is being replaced), which consent shall not be unreasonably withheld or delayed;

(iii) such Lender Group shall have received payment of an amount equal to the outstanding principal of its Aggregate Exposure Amount, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iv) in the case of any assignment by a Lender Group resulting from a Lender in such Lender Group becoming a Non-Consenting Lender, the applicable assignee Lender Group shall have consented to the applicable amendment, waiver or consent;

(v) in the case of any such assignment resulting from a claim for compensation under Section 2.12 or payments required to be made pursuant to Section 2.13, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Law; and

(vii) all Letters of Credit issued by the LC Issuer in such Lender Group shall have been canceled or terminated and all accrued and unpaid fees related thereto shall have been paid in full.

A Lender Group shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 2.14. Taxes; FATCA.

(a) Each Lender shall deliver to the Borrower and to the Administrative Agent, on the Effective Date (or, if later, on the date on which it becomes a Lender), or at the time or times prescribed by applicable Laws, or when reasonably requested by the Borrower, the Servicer, the Performance Guarantor or the Administrative Agent, and each Affected Person (other than the Lenders) shall deliver to the Borrower and to the Administrative Agent, on or prior to receipt of its first payment under any Facility Document, such properly completed and executed documentation prescribed by applicable Laws or by the relevant Governmental Authority of any jurisdiction and such other reasonably requested information as will permit the Borrower, the Servicer, Performance Guarantor, the Administrative Agent or the applicable Facility Agent, as the case may be, to determine (i) whether or not payments made hereunder are subject to Taxes, (ii) if applicable, the required rate of withholding or deduction, and (iii) such Lender's (or such other Affected Person's) entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender (or such other Affected Person) by the Borrower pursuant to this Agreement or otherwise to establish such Lender's (or such other Affected Person's) status for withholding Tax purposes in the applicable jurisdiction.

(b) Without limiting the generality of the foregoing:

(i) Each Lender (and each Affected Person, other than the Lenders, that receives a payment under any Facility Document) that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent executed copies of IRS Form W-9 certifying that such Lender or Affected Person is exempt from United States federal backup withholding tax; and

(ii) each Lender (and each Affected Person, other than the Lenders, that receives a payment under any Facility Document) that is organized under the Laws of a jurisdiction other than the United States (including each State thereof and the District of Columbia) (a "Foreign Lender" and a "Foreign Affected Party", respectively) that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding Tax with respect to payments hereunder shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the Borrower or the Administrative Agent) on or prior to the date on which such Foreign Lender becomes a Lender with respect to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), or in the case of a Foreign Affected Party, on or prior to receipt of its first payment under any Facility Document, whichever of the following is applicable:

(A) in the case of a Foreign Lender (or Foreign Affected Party), claiming eligibility for benefits of an income tax treaty to which the United States is a party, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable,

(B) executed originals of IRS Form W-8ECI,

(C) in the case of a Foreign Lender (or Foreign Affected Party) claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate (a “U.S. Tax Compliance Certificate” in the form contained in Exhibit L-1) to the effect that such Foreign Lender (or Foreign Affected Party) is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower within the meaning of section 871(h)(3)(A) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code, and (y) executed copies of IRS Form W 8BEN or IRS Form W-8BEN-E, as applicable, or

(D) to the extent a Foreign Lender (or Foreign Affected Party) is not the beneficial owner, executed copies of IRS Form W-8IMY and all required supporting documentation, including, without limitation, IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender (or Foreign Affected Party) is a partnership and one or more direct or indirect partners of such Foreign Lender (or Foreign Affected Party) are claiming the portfolio interest exemption, such Foreign Lender (or Foreign Affected Party) may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-4 on behalf of any such direct or indirect partner, or

(E) duly completed executed copies of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding Tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower, the Performance Guarantor or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) If a payment made hereunder to any Lender (or other Affected Person) would be subject to United States federal withholding Tax imposed by FATCA if such Lender (or such other Affected Person) were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender (or such other Affected Person) shall deliver to the Borrower, the applicable Facility Agent and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower, the applicable Facility Agent or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower, the applicable Facility Agent or the Administrative Agent as may be necessary for the Borrower, the applicable Facility Agent or the Administrative Agent to comply with its obligations under FATCA and to determine that such Lender (or such other Affected Person) has complied with such Lender’s (or such other Affected Person’s) obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this *clause (iii)*, “FATCA” shall include any amendments made to FATCA after the Effective Date.

(c) Each Lender (and each Affected Person, other than the Lenders, that receives a payment under any Facility Document) shall promptly notify the Borrower, the applicable Facility Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

SECTION 2.15. Security Interest. As security for the performance by the Borrower of all the terms, covenants and agreements on the part of the Borrower to be performed under this Agreement or any other Facility Document, including the payment when due of all Borrower Obligations, the Borrower hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in all of the Borrower's right, title and interest in, to and under the following (collectively, the "Collateral"):

(a) all Pool Receivables, whether now owned and existing or hereafter acquired or arising, together with all Related Security and Collections with respect thereto;

(b) the Collection Account, the LC Collateral Account, each Deposit Account and each Lock-Box, including, without limitation, (i) all Collections held therein and all certificates and instruments, if any, from time to time representing or evidencing any of such accounts or any Collections held therein, (ii) all investment property and other financial assets representing Collections or proceeds thereof held in, or acquired with funds from, such accounts and all certificates and instruments from time to time representing or evidencing such investment property and financial assets, (iii) all notes, certificates of deposit and other instruments from time to time hereafter delivered or transferred to, or otherwise possessed by, the Administrative Agent in substitution for any of the then existing accounts and (iv) all interest, dividends, cash, instruments, financial assets, investment property and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any and all of such accounts, in each case, related to Pool Receivables; and

(c) to the extent not included in the foregoing, all Proceeds of any and all of the foregoing.

The Borrower hereby authorizes the filing of financing statements, and continuation statements and amendments thereto and assignments thereof, describing the collateral covered thereby as "all of debtor's personal property or assets whether now owned or hereafter acquired" or words to that effect, notwithstanding that such wording may be broader in scope than the collateral described in this Section 2.15. This Agreement shall constitute a security agreement under applicable law. Each of the Borrower, each Lender, each LC Issuer and the Administrative Agent represents and warrants as to itself that each remittance of Collections and other property by the Borrower hereunder will have been (i) in payment of a debt incurred by the Borrower in the ordinary course of business or financial affairs of the Borrower, the Lenders, the LC Issuers and the Administrative Agent and (ii) made in the ordinary course of business or financial affairs of the Borrower, the Lenders, the LC Issuers and the Administrative Agent.

SECTION 2.16. Release of Security Interest. After giving effect to the distributions made pursuant to Section 2.08 on the Final Collection Date, the security interest granted pursuant to Section 2.15 shall terminate. If a Receivable has been reconveyed to an Originator pursuant to Section 3.4 of the Receivables Sale Agreement, the security interest in such Receivable and the Related Security with respect thereto shall automatically terminate. The Administrative Agent shall execute and deliver to the Borrower, at the Borrower's expense, all documents that the Borrower shall reasonably request to evidence such termination or release and shall perform such other actions reasonably requested by the Borrower to effect and document such release.

SECTION 2.17. Evidence of Debt. Each Lender shall maintain an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the outstanding principal balance of such Loans and the amount of Interest payable and paid to such Lender from time to time hereunder. The entries made in such accounts of the Lenders shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided, however, that the failure of any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

ARTICLE III
CONDITIONS OF EFFECTIVENESS AND LOANS

SECTION 3.01. Conditions Precedent to Effectiveness and Initial Credit Extension.

(a) As conditions precedent to the effectiveness of this Agreement, (i) the Facility Agents shall have received each of the documents, instruments, legal opinions and other agreements listed on Exhibit G, together with all fees due and payable on the date hereof and on the Effective Date; (ii) since December 31, 2019, no event has occurred which would have a Material Adverse Effect and (iii) each Facility Agent shall have completed satisfactory due diligence and audits with respect to each Originator, the Borrower, the Servicer, the Performance Guarantor and the Receivables and each Lender and LC Issuer shall have received all necessary credit approvals in order to consummate the transactions contemplated by this Agreement; provided that the foregoing clause (iii) shall be deemed to be satisfied with respect to each Facility Agent upon execution and delivery of this Agreement by such Facility Agent.

(b) As conditions precedent to the Initial Credit Extension hereunder, (i) all of the conditions precedent to the effectiveness of this Agreement set forth in paragraph (a) above shall have been satisfied; and (ii) since December 31, 2019, no event has occurred which would have a Material Adverse Effect.

SECTION 3.02. Conditions Precedent to All Credit Extensions and Releases. Each Credit Extension (including, without limitation, the Initial Credit Extension) made by the Lenders or one or more LC Issuers, as the case may be, to the Borrower and each Release, shall be subject to the further conditions precedent that on the date of each Credit Extension or Release, each of the following shall be true and correct both before and immediately after giving effect to such Credit Extension or Release, as applicable:

(a) each Facility Agent shall have received from the Servicer the Monthly Report most recently required to be delivered pursuant to Section 5.05.

(b) the representations and warranties contained in Article IV shall be correct in all material respects (except that the materiality standard in this clause (b) shall not apply to any such representation or warranty that is qualified by a materiality standard by its terms) on and as of such date as though made on and as of such date unless such representation and warranties by their terms refer to an earlier date, in which case they shall be correct on and as of such earlier date;

(c) no event has occurred and is continuing, or would result from such Credit Extension or Release, which constitutes an Event of Termination, a Servicer Default, a Potential Event of Termination or a Potential Servicer Default after taking into account application of Collections, prepayments and purchases of Receivables to occur on such date;

(d) with respect to any Credit Extension, no event has occurred and is continuing, or would result from such Credit Extension which constitutes an Advance Suspension Event after taking into account application of Collections, prepayments and purchases of Receivables to occur on such date;

(e) with respect to any Release, no Release Suspension Notice has been delivered with respect to any Advance Suspension Event that remains in effect;

(f) the Termination Date has not occurred; and

(g) no Borrowing Base Deficiency shall exist.

Each delivery of a Borrowing Request to the Administrative Agent and the Facility Agents or of a Letter of Credit Request to the Administrative Agent and the Facility Agent for the applicable LC Issuer, and the acceptance by the Borrower of the proceeds of any Borrowing or any Release or of any Letter of Credit as contemplated in Section 2.04, shall constitute a representation and warranty by the Borrower that, as of the date of such Credit Extension or Release, both before and after giving effect thereto and the application of the proceeds thereof, each of the applicable statements set forth in clauses (a) through (g) above are true and correct.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Borrower. The Borrower represents and warrants on and as of the Effective Date and on and as of each day until the Final Collection Date:

(a) Due Formation and Good Standing. The Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware (or such other jurisdiction pursuant to Section 5.03(g)) and is duly qualified to do business, and is in good standing, in every jurisdiction where the nature of its business requires it to be so qualified, other than where failure to be so qualified could not be reasonably expected to have a Material Adverse Effect.

(b) Due Authorization and No Conflict. The execution, delivery and performance by the Borrower of this Agreement, the Receivables Sale Agreement and all other Facility Documents to which it is a party, and the transactions contemplated hereby and thereby, are within the Borrower's limited liability company powers, have been duly authorized by all necessary limited liability company action and do not contravene or constitute a default (i) under any provision of applicable law, tariff or regulation, (ii) of the Borrower's certificate of formation or limited liability company agreement or (iii) of any agreement, judgment, injunction, decree or other instrument binding upon the Borrower, except in the case of clauses (i) or (iii) above, any contravention or default that could not be reasonably expected to have a Material Adverse Effect, or result in the creation or imposition of any Adverse Claim on any asset of the Borrower. This Agreement, the Receivables Sale Agreement and the other Facility Documents to which the Borrower is a party have been duly executed and delivered on behalf of the Borrower.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Borrower of this Agreement, the Receivables Sale Agreement or any other agreement, document or instrument to be delivered by it hereunder that has not already been given or obtained, except for filings under the UCC required under Article III.

(d) Enforceability of Facility Documents. Each of this Agreement, the Receivables Sale Agreement and each other Facility Document to be delivered by the Borrower in connection herewith, constitutes the legal, valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, subject to the Enforceability Exceptions.

(e) No Litigation. There are no actions, suits or proceedings pending, or to the knowledge of the Borrower threatened, against the Borrower or the property of the Borrower, in any court, or before any arbitrator of any kind, or before or by any Governmental Authority. The Borrower is not in default with respect to any order of any court, arbitrator or Governmental Authority.

(f) Perfection of Interest in Collateral. Each Pool Receivable is owned by the Borrower free and clear of any Adverse Claim, and the Administrative Agent, for the benefit of the Secured Parties, has a first priority perfected security interest in each Pool Receivable, and in the Related Security, Collections and other Collateral, in each case free and clear of any Adverse Claim. This Agreement creates a security interest in favor of the Administrative Agent, on behalf of the Secured Parties, in each Pool Receivable, and in the Related Security, Collections and other Collateral. No effective financing statement or other instrument similar in effect, is filed in any appropriate recording office listing the Borrower as debtor or seller, covering any Collateral except such as may be filed in favor of the Administrative Agent in accordance with this Agreement, and no effective financing statement or other instrument similar in effect, is filed in any recording office listing any Originator as a debtor or seller, covering any Collateral except (i) as may be filed in favor of the Borrower and assigned to the Administrative Agent in accordance with this Agreement or (ii) such filings in respect of which the security interests over any Collateral by such filings have been released and for which UCC-3 filings excluding the Collateral have been filed.

(g) Compliance with Laws.

(i) The Borrower is in compliance with all laws, rules and regulations applicable to it except where such non-compliance could not reasonably be expected to have a Material Adverse Effect (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) other than as set forth in clauses (ii) through (v) below with respect to Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws;

(ii) To the extent applicable, the Borrower is in compliance with Anti-Terrorism Laws in all material respects;

(iii) The Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its directors, officers and employees with Anti-Corruption Laws and applicable Sanctions;

(iv) The Borrower and, to the knowledge of the Borrower, its officers, directors and employees, are not Sanctioned Persons; and

(v) No part of the proceeds of any Credit Extension or Release will be used, directly, or to the knowledge of Borrower, indirectly (i) in violation of the Anti-Corruption Laws or (ii) in violation of Section 5.03(r).

(h) Accuracy of Information. All information heretofore furnished by the Borrower or any of its Affiliates to the Administrative Agent, any Facility Agent, any Lender or any LC Issuer for purposes of or in connection with this Agreement, any Monthly Report, any of the other Facility Documents or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by the Borrower or any of its Affiliates to the Administrative Agent, any Facility Agent, any Lender or any LC Issuer will be, true and complete in every material respect on the date such information is stated or certified and does not and will not contain any material misstatement of fact or omit to state a material fact necessary to make the statements contained therein not misleading.

(i) Location of Borrower; Location of Records. The Borrower is organized solely under the laws of the State of Delaware, and the Borrower's "location" (within the meaning of Section 9-307 of the UCC) is Delaware or such other jurisdiction pursuant to Section 5.03(g). The locations of the offices where the Borrower keeps all the Records are listed on Exhibit E or such other locations as the Borrower or the Servicer may notify the Administrative Agent from time to time.

(j) Collection Information. The names and addresses of all Payment Processors and Deposit Account Banks, together with the account numbers of the Deposit Accounts and associated Lock-Box numbers are as specified in Exhibit E. The Lock-Boxes set forth on Exhibit F are the only addresses to which Obligors and Payment Processors of Pool Receivables are directed to make payment. The Deposit Accounts set forth on Exhibit F are the only accounts to which Obligors or Payment Processors remit Collections of Pool Receivables by wire transfer or electronic funds transfer. No Transaction Party has granted any Person, other than the Administrative Agent, “control” (within the meaning of Section 9-102 of any applicable enactment of the UCC) of any Deposit Account or the right to take control of any Deposit Account at a future time or upon the occurrence of a future event.

(k) Legal Name; No Trade Names. The Borrower’s complete limited liability company name is set forth in the preamble to this Agreement (or such other name pursuant to Section 5.03(g)), and other than pursuant to Section 5.03(g), and it does not use and has not during the last year used any other limited liability company name, trade name, doing-business name or fictitious name.

(l) Investments. The Borrower does not own or hold, directly or indirectly (i) any capital stock or equity security of, or any equity interest in, any Person or (ii) any debt security or other evidence of indebtedness of any Person (other than any Deposit Accounts and the Collection Account). The Borrower has no Subsidiaries.

(m) Facility Documents. The Receivables Sale Agreement is the only agreement pursuant to which the Borrower directly or indirectly purchases Receivables or any other accounts receivable from the Originators and the Facility Documents delivered to the Administrative Agent represent all agreements between the Originators and the Borrower relating to the transfer of the Receivables except for other agreements related to the transactions that are permitted by Section 5.03(k).

(n) Business. Since its formation, the Borrower has conducted no business other than entering into and performing its obligations under the Facility Documents to which it is a party, and such other activities as are incidental to the foregoing. The Facility Documents to which it is a party, and any agreements entered into in connection with the transactions that are permitted by Section 5.03(k), are the only agreements to which the Borrower is a party.

(o) Taxes. The Borrower has filed all material Tax returns and reports required by Law to be filed by it and has timely paid all Taxes, governmental charges and energy surcharges at any time owing, except for Taxes, charges or surcharges that are being contested in good faith by appropriate proceedings and for which appropriate reserves in accordance with relevant GAAP shall have been set aside on its books.

(p) Solvency; Indebtedness; Etc. The Borrower (i) is not “insolvent” (as such term is defined in §101(32)(A) of the Bankruptcy Code), (ii) is able to pay its debts as they come due, (iii) has a tangible net worth, at all times, equal to the greater of (x) 2.00% of the Facility Limit as of such date and (y) \$16,500,000, and (iv) does not have unreasonably small capital for the business in which it is engaged or for any business or transaction in which it is about to engage. The Borrower has no Indebtedness (whether matured or unmatured) outstanding other than as permitted by or contemplated by the Facility Documents (including the Subordinated Note). Each remittance of Collections by or on behalf of the Borrower pursuant to the Facility Documents and any related accounts or amounts owing hereunder in respect of the Credit Extensions will have been (i) in payment of a debt incurred by the Borrower in the ordinary course of business or financial affairs of the Borrower and (ii) made in the ordinary course of business or financial affairs of the Borrower.

(q) Investment Company, Etc. The Borrower is neither (i) an “investment company” or a company “controlled by an investment company” within the meaning of the Investment Company Act of 1940, as amended (the “Investment Company Act”), nor (ii) a “covered fund” under Section 13 of the U.S. Bank Holding Company Act of 1956, as amended, and the applicable rules and regulations thereunder (the “Volcker Rule”). In determining that the Borrower is not a covered fund, the Borrower is entitled to rely on the exemption from the definition of “investment company” set forth in Section 3(c)(5) of the Investment Company Act.

(r) Use of Proceeds. No proceeds of any Credit Extension or Release shall be used for purposes that violate Regulations T, U or X of the Federal Reserve Board.

(s) Ownership. As of the Effective Date, all of the issued and outstanding capital stock of the Borrower are directly owned of record by NRG Retail LLC, all of which are validly issued, fully paid and nonassessable and there are no options, warrants or other rights to acquire any shares of capital stock of the Borrower by any other Person.

(t) Beneficial Ownership Certification. As of the Effective Date, the information included in the Beneficial Ownership Certification for the Borrower is true and correct in all respects.

(u) Eligibility. Each Receivable included as an Eligible Receivable in the calculation of the Net Receivables Balance satisfies the requirements of eligibility contained in the definition of “Eligible Receivable” as of the date of such inclusion.

(v) Payments to Originators. With respect to each Pool Receivable, the Borrower shall have purchased such Pool Receivable from an Originator in exchange for payment made by such Originator in accordance with the provisions of the Receivables Sale Agreement in an amount which constitutes fair consideration and reasonably equivalent value. No such sale shall have been made for or on account of an antecedent debt owed by the Originator to the Borrower and no such sale is or may be voidable or subject to avoidance under any section of the Bankruptcy Code.

(w) Material Adverse Effect. Since its most recent fiscal year end, there has been no change in the business, operations, financial condition, properties or assets of the Borrower that would have a Material Adverse Effect.

(x) No Advance Suspension Event, Event of Termination or Potential Event of Termination. No event (i) has occurred and is continuing that constitutes an Event of Termination, or (ii) if this representation is made in connection with any Credit Extension or any Release, has occurred or would result from a Credit Extension or a Release in respect of the Pool Receivables or from the application of the proceeds therefrom, that constitutes an Advance Suspension Event, an Event of Termination or a Potential Event of Termination.

(y) Compliance with Credit and Collection Policy. The Borrower has complied in all material respects with the Credit and Collection Policy with regard to the Pool Receivables and the related Contracts and has not made any change to such Credit and Collection Policy other than as permitted under Section 5.03(c).

(z) Tax Status. The Borrower is treated as an entity that is disregarded as separate from its owner (as defined in Treasury Regulation Section 301.7701-2(a)) for United States federal income tax purposes. The entity from which the Borrower is disregarded as a separate entity is a "United States person" within the meaning of Section 7701(a)(30) of the Code.

Provided, that any incorrect representation or warranty made or deemed made (other than any representation or warranty with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party) that is capable of being cured shall not be deemed to have been false or incorrect when made or deemed made unless it has not been so cured within 30 days after any Secured Party gives notice thereof to the Borrower or the Borrower otherwise obtains knowledge thereof and, provided, further, that any incorrect representation or warranty made or deemed made with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been false or incorrect when made.

SECTION 4.02. Representations and Warranties of the Servicer. The Servicer represents and warrants on and as of the Effective Date and on and as of each day until the Final Collection Date:

(a) Due Formation and Good Standing. The Servicer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has all limited liability company power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where the nature of its business requires it to be so qualified except where the failure so to qualify could not reasonably be expected to have a Material Adverse Effect.

(b) Due Authorization and No Conflict. The execution, delivery and performance by the Servicer of this Agreement are within the Servicer's limited liability company powers, have been duly authorized by all necessary limited liability company action on the part of the Servicer and do not contravene or constitute a default (i) under any provision of applicable law, tariff or regulation, (ii) of the Servicer's certificate of formation or limited liability company agreement or (iii) of any agreement, judgment, injunction, decree or other instrument binding upon the Servicer, except in the case of clause (i) or (iii), any contravention or default that could not be reasonably expected to have a Material Adverse Effect or result in the creation or imposition of any Adverse Claim on any asset of the Servicer upon or with respect to any of its properties. This Agreement and the other Facility Documents to which the Servicer is a party have been duly executed and delivered on behalf of the Servicer.

(c) Governmental Approvals. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by the Servicer of this Agreement or any other agreement, document or instrument to be delivered by it hereunder that has not already been given or obtained.

(d) Enforceability of Facility Documents. This Agreement and each other Facility Document to be delivered by the Servicer in connection herewith constitutes the legal, valid and binding obligation of the Servicer enforceable against the Servicer in accordance with its terms, subject to the Enforceability Exceptions.

(e) No Litigation. Except as publically disclosed by the Performance Guarantor in its securities filings, there is no action, suit or proceeding pending against, or to the Servicer's knowledge threatened against or affecting, the Servicer before any court or arbitrator or any Governmental Authority in which there is a reasonable possibility of an adverse decision which could reasonably be expected to have a Material Adverse Effect or that seeks to prevent the consummation of the transactions contemplated by this Agreement and the other Facility Documents. Except as publically disclosed by the Performance Guarantor in its securities filings, the Servicer is not in default with respect to any order of any court, arbitrator or other Governmental Authority, which default could reasonably be expected to have a Material Adverse Effect or prevent the consummation of the transactions contemplated by this Agreement and the other Facility Documents.

(f) Compliance with Laws.

(i) Except as publically disclosed by the Performance Guarantor in its securities filings, the Servicer is in compliance with all laws, rules and regulations applicable to it except where such non-compliance could not reasonably be expected to have a Material Adverse Effect (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy) other than as set forth in clauses (ii) through (v) below with respect to Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws;

(ii) To the extent applicable, the Servicer is in compliance with Anti-Terrorism Laws in all material respects;

(iii) The Servicer has implemented and maintains in effect policies and procedures designed to ensure compliance by the Servicer, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions;

(iv) The Servicer and its Subsidiaries and, to the knowledge of the Servicer, its officers, directors and employees, are not Sanctioned Persons; and

(v) No part of the proceeds of any Credit Extension or Release will be used, directly, or to the knowledge of Servicer, indirectly (i) in violation of the Anti-Corruption Laws or (ii) in violation of Section 5.06(e).

(g) Accuracy of Information. All information heretofore furnished by the Servicer or any of its Affiliates to the Administrative Agent, any Facility Agent, any Lender or any LC Issuer for purposes of or in connection with this Agreement, any Monthly Report, any Borrowing Base Certificate, any of the other Facility Documents or any transaction contemplated hereby or thereby is, and all such information hereafter furnished by the Servicer or any of its Affiliates to the Administrative Agent, any Facility Agent, any Lender or any LC Issuer will be, true and complete in every material respect on the date such information is stated or certified and does not and will not contain any material misstatement of fact or omit to state a material fact necessary to make the statements contained therein not misleading.

(h) Collection Information. The names and addresses of all Payment Processors and Deposit Account Banks, together with the account numbers of the Deposit Accounts and associated Lock-Box numbers are as specified in Exhibit E. The Lock-Boxes set forth on Exhibit F are the only addresses to which Obligors and Payment Processors of Pool Receivables are directed to make payment. The Deposit Accounts set forth on Exhibit F are the only accounts to which Obligors or Payment Processors remit Collections of Pool Receivables by wire transfer or electronic funds transfer. No Transaction Party has granted any Person, other than the Administrative Agent, "control" (within the meaning of Section 9-102 of any applicable enactment of the UCC) of any Deposit Account or the right to take control of any Deposit Account at a future time or upon the occurrence of a future event.

(i) Software. The Servicer has the right (whether by license, sublicense or assignment) to use all of the computer software used to account for the Pool Receivables to the extent necessary to administer the Pool Receivables.

(j) Location of Records. The locations of the offices where the Servicer keeps all the Records are listed on Exhibit E or such other locations as the Servicer or the Servicer may notify the Administrative Agent from time to time.

(k) Investment Company Act. The Servicer is not required to register as an "investment company" under the Investment Company Act.

(l) Credit and Collection Policy. The Servicer has complied in all material respects with the Credit and Collection Policy with regard to each Pool Receivable and the related Contract and has not made any change to such Credit and Collection Policy other than as permitted under Section 5.03(c).

Provided, that any incorrect representation or warranty made or deemed made (other than any representation or warranty with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party) that is capable of being cured shall not be deemed to have been false or incorrect when made or deemed made unless it has not been so cured within 30 days after any Secured Party gives notice thereof to the Servicer or the Servicer otherwise obtains knowledge thereof and, provided, further, that any incorrect representation or warranty made or deemed made with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been false or incorrect when made.

ARTICLE V
GENERAL COVENANTS

SECTION 5.01. Affirmative Covenants of the Borrower. From the Effective Date until the Final Collection Date, the Borrower shall, unless the Administrative Agent and the Majority Facility Agents shall otherwise consent in writing:

(a) Compliance with Laws, Etc. Comply with all applicable laws, rules, regulations and orders applicable to it (other than those specifically relating to any Anti-Corruption Laws, Anti-Terrorism Laws or Sanctions) (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy), and preserve and maintain its existence, rights, franchises, qualifications and privileges, except to the extent that the failure so to comply with any such laws, rules, regulations and orders or the failure so to preserve and maintain such rights, franchises, qualifications and privileges could not reasonably be expected to have a Material Adverse Effect.

(b) Preservation of Existence. (i) Observe all procedures required by its certificate of formation and limited liability company agreement and preserve and maintain its limited liability company existence, rights, franchises and privileges in the jurisdiction of its formation, and (ii) qualify and remain qualified in good standing as a foreign limited liability company in each other jurisdiction where the nature of its business requires such qualification and where, in the case of clause (ii), the failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

(c) Diligence and Inspections. At any time and from time to time during regular business hours and upon reasonable prior notice, permit the Administrative Agent, the Facility Agents or their agents or representatives:

(i) to conduct periodic audits of the Pool Receivables and the Related Security and the related Records and collection systems of the Borrower;

(ii) to examine and make copies of and abstracts from the books and records in its possession or control relating to the Pool Receivables and Related Security, including, without limitation, the related Contracts;

(iii) to visit the offices and properties of the Borrower for the purpose of examining the materials described in clause (ii) above; and

(iv) to discuss matters relating to the Receivables or the Borrower's performance hereunder with any of the officers or employees of the Borrower having knowledge of such matters;

provided that, (i) so long as no Advance Suspension Event, Potential Event of Termination or Event of Termination shall have occurred, the Borrower shall not be required to pay the expenses of more than one due diligence visit and one audit per year, (ii) the Administrative Agent and the Facility Agents shall coordinate their due diligence visits with each other and with their inspection of the Servicer pursuant to Section 5.04(c) and (iii) the Administrative Agent and the Facility Agents shall use commercially reasonable efforts to minimize disruption to the business of the Transaction Parties and to coordinate their due diligence visits with the audits to be conducted pursuant to Section 5.04(d).

(d) Keeping of Records and Books of Account and Marking of Records. Maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing the Pool Receivables in the event of the destruction of the originals thereof) and keep and maintain (or cause the Servicer to keep and maintain) all documents, books, records and other information reasonably necessary for the collection of all Pool Receivables, and in which timely entries are made in accordance with GAAP. Mark (or cause the Servicer to mark) its master data processing records relating to Pool Receivables with a legend evidencing that the ownership interest of the Borrower and the first priority security interest of the Administrative Agent, for the benefit of the Secured Parties, with regard to the Pool Receivables have been granted in accordance with this Agreement. Such books and records shall include, without limitation, records adequate to permit the daily identification of each new Pool Receivable and all Collections of and adjustments to each existing Pool Receivable, as well as the Borrower's actual experience with respect to any Dilution Factor. The Borrower shall promptly notify the Administrative Agent and each Facility Agent of any material conversion or substitution (excluding, in each case, version upgrades) of the computer software used by the Borrower (or the Servicer, as applicable) in its collection of Pool Receivables.

(e) Performance and Compliance with Pool Receivables and Contracts. At its expense, timely and fully perform and comply in all material respects with all provisions, covenants and other promises required to be observed by it with respect to the Pool Receivables and the Contracts related thereto.

(f) Credit and Collection Policy. Comply in all material respects with the Credit and Collection Policy in regard to the Pool Receivables and the related Contracts.

(g) Deposits to Deposit Accounts. Direct the Servicer to instruct all Obligor to make payments of all Pool Receivables to one or more Deposit Accounts or Lock-Boxes or Payment Processors. Direct the Servicer to instruct all Payment Processors to remit all payments of all Pool Receivables received by such Payment Processors to one or more Deposit Accounts or Lock-Boxes. Direct each Deposit Account Bank to deposit all checks received into the Lock-Box in a Deposit Account subject to a Deposit Account Control Agreement. If the Servicer fails to so instruct an Obligor or a Payment Processor, or if an Obligor or a Payment Processor fails to so deliver payments to a Deposit Account or Lock-Box, use all reasonable efforts to cause such Obligor or Payment Processor to deliver subsequent payments on Pool Receivables to a Deposit Account or Lock-Box and deposit, or cause to be deposited, any Collections received by it, into a Deposit Account subject to a Deposit Account Control Agreement not later than two (2) Business Days after receipt thereof. Only add a Payment Processor to those listed on Exhibit F to this Agreement if the Administrative Agent has received prior written notice of such addition.

(h) Posting of Collections and Pool Receivables. Apply all Collections to the Pool Receivables owed by the applicable Obligor in a timely manner in accordance with its business practices in existence as of the Effective Date.

(i) Separate Corporate Existence. Take all reasonable steps (including, without limitation, all steps that the Administrative Agent or any Facility Agent may from time to time reasonably request) to maintain the Borrower's identity as a separate legal entity from the Servicer and to make it manifest to third parties that the Borrower is an entity with assets and liabilities distinct from those of any other Transaction Party and each other Affiliate thereof. Without limiting the generality of the foregoing, the Borrower shall:

(i) be a limited liability company whose primary activities are restricted in its limited liability company agreement to (A) purchasing or otherwise acquiring, owning, holding, granting security interests in Pool Receivables, the Related Security, the Collections and the other Collateral with respect thereto, (B) entering into agreements for the selling and servicing of the Pool Receivables, and (C) conducting such other activities as it deems are related or incidental to and necessary, convenient or advisable for the accomplishment of the foregoing activities;

(ii) not engage in any business or activity, or incur any Indebtedness or liability, other than as expressly permitted by the Facility Documents;

(iii) at all times maintain at least one independent manager (the "Independent Manager"), who shall be an individual who (A) is not, and has not at any time during the five-year period prior to his or her appointment as Independent Manager been, a direct, indirect or beneficial owner, employee, director, stockholder, member, partner, attorney or counsel, officer, customer or supplier of the Performance Guarantor, the Servicer, any Originator or any their respective Affiliates (other than his or her service as an independent manager or in a similar capacity of any such Person), (B) has at least three years of employment experience with one or more entities that provide, in the ordinary course of its businesses, advisory, management or placement services to issuers of securitization or structured finance instruments, agreements or securities, and (C) shall not at any time serve as a trustee in bankruptcy for any Transaction Party or any of their respective other Affiliates;

(iv) maintain the requirement that the Borrower's limited liability company agreement at all times provide (A) that the Borrower's Board of Managers (as defined in its limited liability company agreement) shall not approve, or take any other action to cause the filing of, a voluntary bankruptcy petition with respect to the Borrower unless the Board of Managers, including the Independent Manager (as defined in its limited liability company agreement), shall approve the taking of such action in writing before the taking of such action, and (B) that such provision cannot be amended without the unanimous written consent of the Board of Managers, including the Independent Manager;

(v) maintain (A) its assets and transactions separately from those of any other Transaction Party or any Affiliate thereof and reflect such assets and transactions in financial statements separate and distinct from those of any other Transaction Party or any Affiliate thereof and evidence such assets and transactions by appropriate entries in books and records separate and distinct from those of any other Transaction Party or any Affiliate thereof and (B) records of all intercompany debits and credits and transfers of funds made by the Originators on its behalf;

(vi) (A) prepare its unaudited financial statements separately from those of any other Transaction Party or any Affiliate thereof and (B) insure that any consolidated financial statements of any other Transaction Party or any Affiliate thereof that are filed with the SEC or any other governmental agency or are furnished to any creditors of any other Transaction Party or any Affiliate thereof will include notes clearly stating that the Borrower is a separate corporate entity and that its assets are available first and foremost to satisfy the claims of the creditors of the Borrower;

(vii) maintain an arm's length relationship with unaffiliated parties, and not enter into any transaction with an Affiliate of the Borrower except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's length transaction;

(viii) pay its own operating expenses and liabilities, including the allocated expenses of services provided by employees of any of its Affiliates, if any, only out of its own funds;

(ix) conduct its business in its own name and from a clearly identified office space separate from the office space of its Affiliates, which may be located in the same facility as the offices of one or more of its Affiliates. Clearly identify its offices, if any, as its offices and, to the extent that the Borrower and its Affiliates have offices in the same location, allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including services performed by an employee of an Affiliate;

(x) at all times hold itself out to the public under its own name as a legal and economic entity separate from any Person, and strictly comply with all organizational formalities to maintain its separate existence;

(xi) have stationery and other business forms and a telephone number separate from that of NRG Retail LLC or its Affiliates;

(xii) maintain adequate capital and a sufficient number of employees, if any employees are so needed, in light of its contemplated business purposes, transactions and liabilities and in order to pay its debts as they become due;

(xiii) cause its Board of Directors to meet at least annually or act pursuant to written consent, make and retain minutes of such meetings and otherwise observe all limited liability company formalities as a distinct entity;

(xiv) not hold out its credit or assets as being available to satisfy the obligations of any other Person nor pledge its assets for the benefit of any other Person (except for Permitted Liens) nor make any intercompany loans to any Affiliate of the Borrower nor accept any intercompany loans from any Affiliate of the Borrower (except as permitted by the Facility Documents, including the Subordinated Note);

(xv) not incur, create or assume any indebtedness, or guarantee the indebtedness of any other Person, other than as expressly permitted under the Facility Documents;

(xvi) not maintain a joint account with any other Person or otherwise commingle its assets with assets of any other Person and, except as otherwise contemplated in Section 2.06, not maintain bank accounts or other depository accounts to which any Affiliate is an account party, into which any Affiliate makes deposits or from which any Affiliate has the power to make withdrawals except as otherwise contemplated hereunder or under the Receivables Sale Agreement with respect to its or the Servicer's administration of Collections;

(xvii) maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xviii) not direct or participate in the management of any other Transaction Party's operations; and

(xix) take all other actions reasonably necessary on its part to operate its business and perform its obligations under the Facility Documents in a manner consistent with the factual assumptions described in the legal opinions with respect to non-consolidation or true sale matters of Shearman & Sterling LLP delivered to the Administrative Agent and the Facility Agents pursuant to Section 3.01 hereof, or any back-up certificates related thereto.

(j) Rights under the Receivables Sale Agreement. From and after an Event of Termination, direct, instruct, or request any lawful action under the Receivables Sale Agreement, including without limitation, in connection with enforcement of its rights thereunder, as instructed by the Administrative Agent; provided, however, that both before and after the Termination Date, the Borrower shall deliver any lawful notice as directed by the Administrative Agent, the delivery of which is a condition precedent to any "Purchase Termination Event" under (and as defined in) the Receivables Sale Agreement.

(k) Location of Records. Keep its chief place of business and chief executive office and the offices where it keeps the books and records at (i) the address(es) of the Borrower referred to on Schedule II or (ii) upon 30 days' prior written notice to the Administrative Agent, at any other location in the United States where all actions reasonably requested by any Facility Agent to protect and perfect the interests of the Administrative Agent and the Lenders in the Collateral have been taken and completed.

(l) Taxes. File all material tax returns and reports required by law to be filed by it and promptly pay all Taxes and governmental charges at any time owing, except such as are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established. Pay when due, or at the option of the Administrative Agent timely reimburse it for the payment of, any Direct Taxes payable in connection with the Pool Receivables, exclusive of any Direct Taxes the validity of which are being contested in good faith by appropriate proceedings and for which adequate reserves in accordance with relevant GAAP shall have been set aside on its books.

(m) Performance and Enforcement of Receivables Sale Agreement. (i) Perform and require the Originators to perform each of their respective obligations and undertakings under and pursuant to the Receivables Sale Agreement and purchase Receivables thereunder in compliance with the terms thereof; (ii) enforce the rights and remedies accorded to the Borrower under the Receivables Sale Agreement and (iii) take all actions to perfect and enforce its rights and interests (and the rights and interests of the Administrative Agent and the Secured Parties as assignees of the Borrower) under the Receivables Sale Agreement as the Administrative Agent or any Facility Agent may from time to time reasonably request, including, without limitation, making claims to which it may be entitled under any indemnity, reimbursement or similar provision contained in the Receivables Sale Agreement.

(n) Other Information. The Borrower shall deliver such other information (including nonfinancial information) as any Lender, LC Issuer, Administrative Agent or Facility Agent may from time to time reasonably request in order to assist such persons (or any related Program Support Provider) in complying with the requirements of Regulation (EU) No. 2017/2402 of the European Parliament as may be applicable to such Lender (or Program Support Provider).

(o) Ownership. Take all necessary action to (i) vest legal and equitable title to the Pool Receivables, the Related Security and the Collections purchased under the Receivables Sale Agreement irrevocably in the Borrower, free and clear of any Adverse Claims (including, without limitation, the filing of all financing statements or other similar instruments or documents necessary under the UCC (or any comparable law) of all appropriate jurisdictions to perfect the Borrower's interest in such Pool Receivables, Related Security and Collections and such other action to perfect, protect or more fully evidence the interest of Borrower therein as the Administrative Agent or any Facility Agent may reasonably request), and (ii) establish and maintain, in favor of the Administrative Agent, for the benefit of the Lenders, a valid and perfected first priority perfected security interest in all Pool Receivables, Related Security and Collections to the full extent contemplated herein, free and clear of any Adverse Claims other than Permitted Liens (including, without limitation, the filing of all financing statements or other similar instruments or documents necessary under the UCC (or any comparable law) of all appropriate jurisdictions to perfect the Administrative Agent's (for the benefit of the Lenders) security interest in such Pool Receivables, Related Security and Collections and such other action to perfect, protect or more fully evidence the interest of the Administrative Agent for the benefit of the Lenders as the Administrative Agent or any Facility Agent may reasonably request). Without limiting the foregoing, the Borrower hereby authorizes, and will, upon the request of the Administrative Agent or any Facility Agent, at the Borrower's own expense, execute (if necessary) and file such financing or continuation statements, or amendments thereto, and such other instruments and documents, that may be necessary or desirable, or that the Administrative Agent or any Facility Agent may reasonably request, to perfect, protect or evidence any of the foregoing. The Borrower authorizes the Administrative Agent to file financing or continuation statements, and amendments thereto and assignments thereof, relating to the Pool Receivables, the Related Security and the Collections with respect thereto and the other Collateral, including with language set forth in Section 2.15(c), and without the signature of the Borrower.

(p) Other Agreements and Undertakings. Comply with, observe and perform all other terms, covenants and agreements of the Borrower contained in this Agreement or any other Facility Document.

Provided, that any failure by the Borrower to comply with any of the foregoing shall not be deemed a breach of any such covenant or this Agreement if such failure has been remedied on or before (i) thirty (30) days after any Secured Party gives notice thereof to the Borrower or the Borrower otherwise obtains knowledge thereof or (ii) two Business Days, if such term, covenant or agreement relates to the payment to any Secured Party or a deposit required to be made; provided, further, that the foregoing proviso shall not apply to any breach of Section 2.03(a), 5.01(i) or 5.03 hereof; provided, even, further, that, notwithstanding either of the above provisos, any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

SECTION 5.02. Reporting Requirements of the Borrower. From the Effective Date until the later of the Termination Date and the Final Collection Date, the Borrower shall, unless the Administrative Agent and the Majority Facility Agents shall otherwise consent in writing, furnish or cause to be furnished to the Administrative Agent and each Facility Agent:

(a) Event of Termination. As soon as reasonably practicable and in any event within three (3) Business Days after any Responsible Officer of the Borrower obtains knowledge of the occurrence of each Advance Suspension Event, Event of Termination or Potential Event of Termination (if such Advance Suspension Event or Potential Event of Termination is continuing on the date of such notice), the statement of a Responsible Officer of the Borrower setting forth the details of such Advance Suspension Event, Event of Termination or Potential Event of Termination and the action which the Borrower is taking or proposes to take with respect thereto.

(b) Financial Statements.

(i) As soon as available, and in any event within ninety (90) days after the end of each fiscal year of the Borrower, an unaudited balance sheet of the Borrower as of the end of such fiscal year and an unaudited statement of income, stockholders' equity and cash flows of the Borrower for such fiscal year, together with comparative figures for the immediately preceding fiscal year, certified by a Financial Officer of the Borrower;

(ii) As soon as is available, and in any event within ninety (90) days after the end of each fiscal year of the Performance Guarantor, a consolidated balance sheet of the Performance Guarantor and its consolidated Subsidiaries as of the end of such fiscal year and a statement of income, stockholders' equity and cash flows showing the financial condition of the Performance Guarantor and retained earnings of the Performance Guarantor and its consolidated Subsidiaries for such fiscal year, all reported in accordance with GAAP, together with comparative figures for the immediately preceding fiscal year, audited by KPMG LLP or other independent public accountants of nationally recognized standing and accompanied by an opinion of such accountants reasonably satisfactory to the Administrative Agent (which shall not be qualified in any material respect, except for qualifications as a result of maturities of Indebtedness within the following twelve-month period, and/or relating to accounting changes (with which such independent public accountants shall concur) in response to FASB releases or other authoritative pronouncements) to the effect that such consolidated financial statements fairly present the financial condition and results of operations of the Performance Guarantor and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(iii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, the Borrower's unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition as of the close of such fiscal quarter of the Borrower and the results of its operations during such fiscal quarter and the then elapsed portion of the fiscal year, and comparative figures for the same periods in the immediately preceding fiscal year, all certified by one of its Financial Officers to the effect that such financial statements, while not examined by independent public accountants, reflect in the opinion of the Borrower all adjustments necessary to present fairly in all material respects the financial condition and results of operations of the Borrower as of the end of and for such periods in accordance with GAAP consistently applied subject to normal year-end audit adjustments and absence of footnotes;

(iv) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, the Performance Guarantor's unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows showing the financial condition as of the close of such fiscal quarter of the Performance Guarantor and its consolidated Subsidiaries at such time and the results of its operations and the operations of such Subsidiaries during such fiscal quarter and the then elapsed portion of the fiscal year, and comparative figures for the same periods in the immediately preceding fiscal year, all certified by one of its Financial Officers to the effect that such financial statements, while not examined by independent public accountants, reflect in the opinion of the Performance Guarantor all adjustments necessary to present fairly in all material respects the financial condition and results of operations of the Performance Guarantor and its consolidated Subsidiaries on a consolidated basis as of the end of and for such periods in accordance with GAAP consistently applied subject to normal year-end audit adjustments and absence of footnotes.

As long as the Performance Guarantor is required or permitted to file reports under the Securities Exchange Act of 1934, as amended, a copy of its report on Form 10-K shall satisfy the requirements of Section 5.02(b)(i) of this Agreement and a copy of its report on Form 10-Q filed with the SEC shall satisfy the requirements of Section 5.02(b)(iv) of this Agreement. Information required to be delivered pursuant to clause (b) of this Section 5.02 shall be deemed to have been delivered on the date on which such information has been posted on the Internet at sec.gov/edgar/searchedgar/webusers.htm.

(c) Compliance Certificates. Concurrently with any delivery of information under clause (b) above, a certificate of a Responsible Officer of the Borrower (i) setting forth in reasonable detail the calculations required to establish whether the Event of Termination set forth in Section 7.01(g) has occurred and (ii) certifying that no Advance Suspension Event, Event of Termination or Potential Event of Termination exists on the date of such certificate or, if Advance Suspension Event, an Event of Termination or Potential Event of Termination then exists, setting forth the details thereof and the action which the Borrower is taking or proposes to take with respect thereto.

(d) [Reserved].

(e) Reporting on Adverse Effects. Promptly and in no event more than two (2) Business Days after any Responsible Officer of the Borrower obtains knowledge of any (i) matter or the occurrence of any event concerning any Transaction Party which would reasonably be expected to have a Material Adverse Effect, (ii) litigation or proceeding that may exist at any time between one or more Transaction Parties and any Governmental Authority that, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect, (iii) litigation or proceedings adversely affecting one or more Transaction Parties in which the amount involved could reasonably be expected to have a material adverse effect on such Person(s) or in which injunctive relief is sought that could reasonably be expected to have a Material Adverse Effect on such Person(s) or (iv) litigation or proceeding relating to any Facility Document, notice thereof.

(f) Adverse Claims. Promptly, notice in writing of (A) any Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Borrower, the Servicer or the Administrative Agent obtaining any rights or directing any action with respect to any Deposit Account, Lock-Box or Payment Processor or (C) any Obligor receiving any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Borrower, the Servicer or the Administrative Agent in accordance with this Agreement.

(g) Defaults. Promptly and in no event more than three (3) Business Days after any Responsible Officer of the Borrower obtains knowledge of any default by the Borrower under any agreement other than the Facility Documents to which the Borrower is a party which could reasonably be expected to have a Material Adverse Effect, the statement of a Responsible Officer of the Borrower setting forth the details of such default and the action which the Borrower is taking or proposes to take with respect thereto.

(h) Ratings. Promptly and in no event more than three (3) Business Days after any Responsible Officer of the Borrower obtains knowledge of any downgrade or withdrawal of the Debt Rating of the Performance Guarantor, notice of such downgrade or withdrawal of such Debt Rating.

(i) Copies of Notices. Promptly after receipt thereof, copies of any notice, request for consent, or certification delivered to it by any Originator under the Receivables Sale Agreement.

(j) Credit and Collection Policy. Promptly and in no event more than three (3) Business Days after any Responsible Officer of the Borrower obtains knowledge of (i) any amendment, modification, supplement or other change to the Credit and Collection Policy or (ii) the adoption, implementation or institution of any tariff, rule, regulation, ordinance or decree of a government regulator having agency authority over an Originator or the Servicer, in either case, that could have a material adverse effect on the collectibility of the Receivables, the statement of a Responsible Officer of the Borrower setting forth the details of such amendment, modification, supplement, change, tariff, rule, regulation, ordinance or decree and the action which the Borrower is taking or proposes to take with respect thereto.

(k) Other Information. As soon as reasonably practicable, from time to time, such other information, documents, records or reports respecting the Pool Receivables or the conditions or operations, financial or otherwise, of the Borrower as the Administrative Agent or any Facility Agent may from time to time reasonably request.

(l) [Reserved].

(m) Change in Beneficial Ownership. Promptly after obtaining knowledge thereof, notify the Administrative Agent and each Facility Agent of any change in the information provided in the Beneficial Ownership Certification for the Borrower that would result in a change to the list of beneficial owners identified therein.

Provided, that any failure by the Borrower to comply with any of the foregoing shall not be deemed a breach of any such covenant or this Agreement if such failure has been remedied on or before thirty (30) days after any Secured Party gives notice thereof to the Borrower or the Borrower otherwise obtains knowledge thereof; provided, further, that any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

SECTION 5.03. Negative Covenants of the Borrower. From the Effective Date until the Final Collection Date, the Borrower shall not, without the written consent of the Administrative Agent and the Majority Facility Agents:

(a) Sales, Liens, Etc. Against Collateral. Sell, assign (by operation of law or otherwise) or otherwise dispose of, or create or suffer to exist any Adverse Claim upon or with respect to, any Collateral or assign any right to receive income in respect thereof except in each case as contemplated or provided hereunder or under the Receivables Sale Agreement.

(b) Extension or Amendment of Pool Receivables. Extend, amend, waive or otherwise modify, the terms of any Pool Receivable or any Contract related thereto, except (i) in accordance with any rule, regulation, ordinance or other directive of a government regulator having agency authority over an Originator or the Servicer, (ii) in accordance with the Credit and Collection Policy or (iii) as otherwise permitted hereunder.

(c) Change in Business or Credit and Collection Policy. Make any change in (A) the Credit and Collection Policy, which change would materially and adversely affect the collectability of the Pool Receivables, the credit quality of the Pool Receivables or the enforceability of the Contracts, other than any change implemented for purposes of complying with federal, state or local laws, regulations, orders or guidelines, or (B) the character of its business.

(d) Change in Payment Instructions to Obligor. Make any change in its instructions to Obligor regarding the making of payments in respect of the Pool Receivables to any Lock-Box or Deposit Account, other than instructing Obligor to remit payments to another Lock-Box or Deposit Account.

(e) Changes to Lock-Boxes, Deposit Accounts and Deposit Account Control Agreements. Add any account as a Deposit Account, any bank as a Deposit Account Bank, or any lock-box as a Lock-Box with respect to any Collateral, in each case other than those then listed in Exhibit F, unless the Administrative Agent shall have received (i) thirty (30) days' prior written notice of such addition and (ii) prior to the effective date of such addition, (x) executed copies of Deposit Account Control Agreements (in the case of each new Deposit Account), (y) copies of all material agreements signed by the Borrower, the Servicer or the respective Deposit Account Bank with respect to any new Deposit Account, Deposit Account Bank or Lock-Box, and (z) a revised Exhibit F hereto. The Borrower shall provide the Administrative Agent and each Facility Agent with prompt written notice of any termination of any bank as a Deposit Account Bank, together with a revised Exhibit F hereto.

(f) Merger, Consolidation, Division, Etc. Sell any equity interest to any Person (other than NRG Retail LLC) or consolidate with or merge into or with any Person, or purchase or otherwise acquire all or substantially all of the assets or capital stock, or other ownership interest of, any Person or from any Subsidiary, or sell, transfer, lease or otherwise dispose of all or substantially all of its assets to any Person, or permit or suffer a plan of division (as defined in Section 18-217 of the DE LLC Act), in each case, except as expressly provided or permitted under the terms of this Agreement or as consented to in writing by the Administrative Agent.

(g) Change in Name; Jurisdiction of Organization. (i) Make any change to its name (within the meaning of Section 9-507(c) of any applicable enactment of the UCC) indicated on its certificate of formation (or equivalent organizational document), or (ii) change its form of organization or its jurisdiction of organization, unless, in either case, 30 days prior to the effective date of such change, it delivers to the Administrative Agent such financing statements or amendments to financing statements (Form UCC-1 or Form UCC-3, respectively) authorized by it which the Administrative Agent may request to reflect such name change or change in form or jurisdiction of organization, together with such other documents, legal opinions and instruments that the Administrative Agent may reasonably request in connection with the transaction giving rise thereto.

(h) ERISA Matters. Establish or be a party to any Plan or Multiemployer Plan other than any such plan established by an Affiliate of the Performance Guarantor.

(i) Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except for (i) Indebtedness to the Administrative Agent, any Lender, any Affected Person or the Servicer expressly contemplated hereunder or (ii) Indebtedness to the Originators and the Servicer pursuant to the Receivables Sale Agreement or the Subordinated Note.

(j) Guarantees. Guarantee, endorse or otherwise be or become contingently liable (including by agreement to maintain balance sheet tests) in connection with the obligations of any other Person, except endorsements of negotiable instruments for collection in the ordinary course of business and reimbursement and indemnification obligations in favor of the Administrative Agent, any Facility Agent, any Lender, any LC Issuer or any Affected Person as provided for under this Agreement.

(k) Limitation on Transactions with Affiliates. Enter into, or be a party to any transaction with any Affiliate of the Borrower, except for:

(i) the transactions contemplated hereby, by the Receivables Sale Agreement and by the other Facility Documents;

(ii) capital contributions by NRG Retail LLC to the Borrower which are in compliance with Section 5.01(i); and

(iii) to the extent not otherwise prohibited under this Agreement, other transactions in the nature of employment contracts and directors' or manager's fees, upon fair and reasonable terms materially no less favorable to the Borrower than would be obtained in a comparable arm's-length transaction with a Person not an Affiliate.

(l) Restricted Payments. The Borrower will not (A) purchase or redeem any of its membership interests; (B) declare or pay any dividend or other distribution in respect of its membership interests or set aside any funds for any such purpose; (C) prepay, purchase or redeem any Indebtedness other than Indebtedness incurred pursuant to this Agreement and the Facility Documents; (D) lend or advance any funds; or (E) repay any loans or advances to, for or from any of its Affiliates (the amounts described in clauses (A) through (E)); being referred to as "Restricted Payments"), except:

(i) Subject to the limitations set forth in clause (ii) below, the Borrower may make (A) cash payments (including prepayments) on the Subordinated Note in accordance with their terms; and (B) the Borrower may declare and pay dividends or make other distributions in respect of its membership interests.

(ii) The Borrower may make Restricted Payments only out of the funds it receives pursuant to Section 2.07(a)(viii) or Section 2.08(b)(viii).

Notwithstanding the foregoing, the Borrower shall not pay, make or declare: (A) any dividend or other distribution in respect of its membership interests if, after giving effect thereto, the Borrower's tangible net worth would be less than the greater of (x) \$16,500,00 and (y) the amount that is 2.00% of the Facility Limit as of such date; or (B) any Restricted Payment (including any dividend) if, after giving effect thereto, any Advance Suspension Event, Event of Termination or Potential Event of Termination shall have occurred and be continuing.

(m) Facility Documents. Terminate, amend or otherwise modify the Receivables Sale Agreement, the Subordinated Note, any Deposit Account Control Agreement or any other Facility Document, or grant any waiver or consent thereunder.

(n) Limitation on Investments. Make or suffer to exist any loans or advances to, or extend any credit to, or make any investments (by way of transfer of property, contributions to capital, purchase of stock or securities or evidences of indebtedness, acquisition of the business or assets, or otherwise) in, any Affiliate or any other Person other than the purchase of Receivables and related assets pursuant to the terms of the Receivables Sale Agreement.

(o) Organizational Documents. (i) Change, amend, alter or otherwise modify its limited liability company agreement in any fashion that could reasonably be expected to have a Material Adverse Effect or (ii) change, amend, alter or otherwise modify its certificate of formation.

(p) Treatment as Sales. Not account for or treat (whether in financial statements or otherwise) the transactions contemplated by the Receivables Sale Agreement in any manner other than as the sale and/or absolute conveyance of the Pool Receivables by the Originators to the Borrower.

(q) Use of Proceeds. Use the proceeds of the Credit Extensions and Releases for (i) any purpose other than the purchase of Receivables from the Originators pursuant to the Receivables Sale Agreement or as permitted under Section 2.07(b) or (ii) any purposes that violate Regulations T, U or X of the Federal Reserve Board.

(r) Sanctions; Anti-Corruption. Directly or, to the knowledge of the Borrower, indirectly use the proceeds of any Credit Extension or Release or otherwise make available such proceeds to any Person to fund, finance or facilitate any activities or business of or with any Person that is, at the time of such funding, a Sanctioned Person or in any country or territory that is at the time of such funding a Sanctioned Country or in any other manner that would result in a violation of Sanctions by any Person (including a Lender, Facility Agent, LC Issuer, Administrative Agent or otherwise).

(s) Securities. The Borrower will not issue any securities other than to (i) a Lender hereunder or (ii) NRG Retail LLC but only (x) evidencing NRG Retail LLC's ownership interest in the Borrower and (y) the Subordinated Note issued under the Receivables Sale Agreement to NRG Retail LLC on behalf of the Originators (it being understood that the Subordinated Note may be transferred in connection with the Subordinated Note Financing).

Provided, that any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

SECTION 5.04. Affirmative Covenants of the Servicer. From the Effective Date until the Final Collection Date, the Servicer shall, unless the Administrative Agent and the Majority Facility Agents shall otherwise consent in writing:

(a) Compliance with Laws, Etc. Comply with all applicable laws, rules, regulations and orders applicable to it (other than those specifically relating to any Anti-Corruption Laws, Anti-Terrorism Laws or Sanctions) (including, without limitation, laws, rules and regulations relating to public utilities, energy delivery and sales, truth in lending, fair credit billing, fair credit reporting, equal credit opportunity, fair debt collection practices and privacy), except to the extent that the failure so to comply with any such laws, rules, regulations and orders could not reasonably be expected to have a Material Adverse Effect.

(b) Preservation of Existence. (i) Observe all procedures required by its certificate of formation and limited liability company agreement and preserve and maintain its limited liability company existence, rights, franchises and privileges in the jurisdiction of its formation except where the failure to preserve and maintain such rights, franchises and privileges could not reasonably be expected to have a Material Adverse Effect, and (ii) qualify and remain qualified in good standing as a foreign limited liability company in each other jurisdiction where the nature of its business requires such qualification and where, in the case of clause (ii), failure to be so qualified could reasonably be expected to have a Material Adverse Effect.

(c) Diligence and Inspections. At any time and from time to time during regular business hours and upon reasonable prior notice, permit the Administrative Agent, the Facility Agents or their agents or representatives:

(i) to conduct periodic audits of the Pool Receivables and the Related Security and the related books and records and collection systems of the Servicer;

(ii) to examine and make copies of and abstracts from the books and records in its possession or control relating to the Pool Receivables and Related Security, including, without limitation, the related Contracts;

(iii) to visit the offices and properties of the Servicer for the purpose of examining the materials described in clause (ii) above;

(iv) to discuss matters relating to the Receivables or the Servicer's performance hereunder with any of the officers or employees of the Servicer having knowledge of such matters;

provided that, (i) so long as no Advance Suspension Event, Potential Event of Termination or Event of Termination shall have occurred, the Servicer shall not be required to pay the expenses of more than one due diligence visit per year, (ii) the Administrative Agent and the Facility Agents shall coordinate their due diligence visits with each other and with their inspection of the Borrower pursuant to Section 5.01(c) and (iii) the Administrative Agent and the Facility Agents shall use commercially reasonable efforts to minimize disruption to the business of the Transaction Parties and to coordinate their due diligence visits with the audits to be conducted pursuant to Section 5.04(d).

(d) Agreed Upon Procedures. The Servicer shall cause FTI Consulting, Inc. or another firm selected by the Administrative Agent and reasonably acceptable to the Servicer, to furnish a report to the Administrative Agent and each Facility Agent pursuant to procedures agreed upon by the Servicer and the Administrative Agent as follows: (x) no more than once per calendar year as long as no Advance Suspension Event, Event of Termination or Potential Event of Termination, has occurred and is continuing, and (y) if an Advance Suspension Event, an Event of Termination or Potential Event of Termination has occurred and is continuing, at any time upon request of the Administrative Agent or any Facility Agent. The Servicer shall pay the costs of the audits performed under this clause (d).

(e) Keeping of Records and Books of Account and Marking of Records. Maintain and implement administrative and operating procedures (including, without limitation, an ability to recreate records evidencing the Pool Receivables in the event of the destruction of the originals thereof) and keep and maintain (or cause the Originator to keep and maintain) all documents, books, records and other information reasonably necessary for the collection of all Pool Receivables, and in which timely entries are made in accordance with GAAP at least monthly reflecting the acquisitions, payment of Pool Receivables and other relevant transactions relating to such Pool Receivables during the preceding calendar month (or such other time period consistent with the Servicer's ordinary course operations). Mark its master data processing records relating to Pool Receivables and related Contracts with a legend evidencing that the ownership interest of the Borrower and the first priority security interest of the Administrative Agent, for the benefit of the Secured Parties, with regard to the Pool Receivables and related Contracts have been granted in accordance with this Agreement. Such master data processing records shall include, without limitation, records adequate to permit the daily identification of each new Pool Receivable and all Collections of and adjustments to each existing Pool Receivable, as well as the Servicer's actual experience with respect to any Dilution Factor. The Servicer shall promptly notify the Administrative Agent and each Facility Agent of any material conversion or substitution (excluding in each case, version upgrades) of the computer software used by the Servicer in its collection of the Pool Receivables.

(f) Performance and Compliance with Pool Receivables. At its expense timely and fully perform and comply in all material respects with all provisions, covenants and other promises required to be observed by it with respect to the Pool Receivables and the Contracts related thereto.

(g) Credit and Collection Policy. Comply in all material respects with the Credit and Collection Policy in regard to the Pool Receivables and the related Contracts.

(h) Collections. Comply with the provisions of Section 5.01(g) as if the obligations of the Borrower pursuant to Section 5.01(g) were the obligations of the Servicer.

(i) Posting of Collections and Pool Receivables. Apply all Collections to the Pool Receivables owed by the applicable Obligor in a timely manner in accordance with the servicing practices of the Originators in existence as of the date of this Agreement.

(j) Other Agreements and Undertakings. Comply with, observe and perform all other terms, covenants and agreements contained in this Agreement (including in Article VI hereof) or any other Facility Document.

Provided, that, any failure by the Servicer to comply with any of the foregoing shall not be deemed a breach of any such covenant or this Agreement if such failure has been remedied on or before (i) thirty (30) days after any Secured Party gives notice thereof to the Servicer or the Servicer otherwise obtains knowledge thereof or (i) two Business Days, if such term, covenant or agreement relates to the payment to any Secured Party or a deposit required to be made or the delivery of the Monthly Report; provided, further, that the foregoing proviso shall not apply to any breach of Section 2.03(a) or 5.06 hereof; provided, even, further, that, notwithstanding either of the above provisos, any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

SECTION 5.05. Reporting Requirements of the Servicer. From the Effective Date until the Final Collection Date, the Servicer will, unless the Administrative Agent and the Majority Facility Agents shall otherwise consent in writing, furnish to the Administrative Agent and each Facility Agent:

(a) as soon as reasonably practicable and in any event within three (3) Business Days after any Responsible Officer of the Servicer or the Borrower obtains knowledge of the occurrence of each Advance Suspension Event, Event of Termination or Potential Event of Termination (if such Advance Suspension Event or Potential Event of Termination is continuing on the date of such notice), the statement of a Responsible Officer of the Servicer setting forth the details of such Advance Suspension Event, Event of Termination or Potential Event of Termination;

(b) promptly and in any event within five (5) Business Days after obtaining knowledge of the occurrence or existence of any ERISA Event which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, notice of such ERISA Event setting forth the details of such ERISA Event and the action that it proposes to take with respect thereto;

(c) as soon as reasonably practicable and in any event within three (3) Business Days after any Responsible Officer of the Servicer obtains knowledge of the occurrence a Servicer Default or Potential Servicer Default (if such Potential Servicer Default is continuing on the date of such notice), the statement of a Responsible Officer of the Servicer setting forth the details of such Servicer Default or Potential Servicer Default and the action which the Servicer proposes to take with respect thereto;

(d) promptly and in no event more than two (2) Business Days after any Responsible Officer of the Servicer obtains knowledge of (i) any matter or the occurrence of any event concerning any Transaction Party which would reasonably be expected to have a Material Adverse Effect, (ii) litigation or proceeding that may exist at any time between one or more Transaction Parties and any Governmental Authority that, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect, (iii) litigation or proceedings adversely affecting one or more Transaction Parties in which the amount involved could reasonably be expected to have a material adverse effect on such Person(s) or in which injunctive relief is sought that could reasonably be expected to have a Material Adverse Effect on such Person(s) or (iv) litigation or proceeding relating to any Facility Document, notice thereof;

(e) promptly, notice in writing of (A) any Adverse Claim upon the Pool Receivables or Collections with respect thereto, (B) any Person other than the Borrower, the Servicer or the Administrative Agent obtaining any rights or directing any action with respect to any Deposit Account, Lock-Box or Payment Processor or (C) any Obligor receiving any change in payment instructions with respect to Pool Receivable(s) from a Person other than the Borrower, the Servicer or the Administrative Agent in accordance with this Agreement;

(f) as soon as reasonably practicable, from time to time, such other information, documents, records or reports within its possession respecting the Pool Receivables or the conditions or operations, financial or otherwise, of the Servicer as the Administrative Agent or any Facility Agent may from time to time reasonably request; and

(g) on or before each Monthly Reporting Date, a Monthly Report.

Provided, that, any failure by the Servicer to comply with any of the foregoing shall not be deemed a breach of any such covenant or this Agreement if such failure has been remedied on or before (i) thirty (30) days after any Secured Party gives notice thereof to the Servicer or the Servicer otherwise obtains knowledge thereof or (ii) two Business Days, if such term, covenant or agreement relates to the delivery of the Monthly Report; provided, further, that any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

SECTION 5.06. Negative Covenants of the Servicer. From the Effective Date until the Final Collection Date, the Servicer shall not, without the written consent of the Administrative Agent and the Majority Facility Agents:

(a) Extension or Amendment of Pool Receivables. Extend, amend, waive or otherwise modify, the terms of any Pool Receivable or any Contract related thereto, except (i) in accordance with any rule, regulation, ordinance or other directive of a government regulator having agency authority over an Originator or the Servicer, (ii) in accordance with the Credit and Collection Policy or (iii) as otherwise permitted hereunder.

(b) Change in Business or Credit and Collection Policy. Make any change in the character of its servicing practices or in the Credit and Collection Policy, which change would, in either case, be reasonably expected to have a Material Adverse Effect, other than any change implemented for purposes of complying with federal, state or local laws, regulations, orders or guidelines.

(c) Change in Payment Instructions to Obligors. Make any change in its instructions to Obligors regarding the making of payments in respect of the Pool Receivables to any Lock-Box or Deposit Account, other than instructing Obligors to remit payments to another Lock-Box or Deposit Account.

(d) Changes to Lock-Boxes, Deposit Accounts and Deposit Account Control Agreements. Fail to comply with the provisions of Section 5.03(e), as if the obligations of the Borrower pursuant to Section 5.03(e) were the obligations of the Servicer.

(e) Sanctions and Anti-Corruption. Directly or, to the knowledge of the Servicer, indirectly use the proceeds of any Credit Extension or Release or otherwise make available such proceeds to any Person to fund, finance or facilitate any activities or business of or with any Person that is, at the time of such funding, a Sanctioned Person or in any country or territory that is at the time of such funding a Sanctioned Country or in any other manner that would result in a violation of Sanctions by any Person (including a Lender, Facility Agent, LC Issuer, Administrative Agent or otherwise).

Provided, further, that any breach of any term, covenant or agreement with respect to any Pool Receivable that would not cause any material liability or potential material liability for the Borrower, the Administrative Agent or any other Secured Party and that, with the removal of such Pool Receivable from the calculation of Net Receivables Balance, does not cause a Borrowing Base Default shall not be deemed to have been breached.

ARTICLE VI ADMINISTRATION OF RECEIVABLES

SECTION 6.01. Designation of Servicer.

(a) The servicing, administering and collection of the Pool Receivables shall be conducted by the Person so designated from time to time in accordance with this Section 6.01. Until the Administrative Agent, with the consent or at the direction of the Facility Agents, gives notice to the Borrower and the Servicer of the designation of a new Servicer as provided in Section 6.01(b) below, NRG Retail LLC is hereby designated as, and hereby agrees to perform the duties and obligations of, the Servicer pursuant to the terms hereof. The Borrower hereby grants to Servicer an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Borrower any and all steps which are necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind in connection with any Pool Receivable or other Collateral.

(b) Upon the occurrence of any Event of Termination that has not been waived in writing, the Administrative Agent (i) shall at the request of the Majority Facility Agents or, at any time during which there are only two Facility Agents, at the request of either Facility Agent, or (ii) may with the consent of the Majority Facility Agents, (A) by written notice to the parties hereto designate as Servicer any Person to succeed NRG Retail LLC (or any successor Servicer) subject to the condition that any such Person so designated shall agree to perform the duties and obligations of the Servicer pursuant to the terms hereof and such replacement servicer shall have all required licenses and shall conduct its servicing at all times so as to not cause Borrower or any of its Affiliates to violate any applicable Law and (B) instruct the Borrower or the Servicer to give notice of the Administrative Agent's interest in the Pool Receivables to each Obligor, which notice shall direct that payments be made directly to the Administrative Agent or its designee (for the benefit of each Secured Party), and the Borrower or the Servicer, as the case may be, shall give such notice at the expense of the Borrower or the Servicer, as the case may be; provided, that if the Borrower or the Servicer, as the case may be, fails to so notify each Obligor within 30 days after receipt of such instruction, the Administrative Agent (at the Borrower's or the Servicer's, as the case may be, expense) may so notify the Obligors. The Servicer shall not resign from the obligations and duties hereby imposed on it except upon the reasonable determination by the Servicer that (x) the performance of its duties hereunder is no longer permissible under applicable law and (y) there is no reasonable action which the Servicer could take to make the performance of its duties hereunder permissible under applicable law.

(c) NRG Retail LLC and any other Servicer agrees that, upon its resignation or replacement as Servicer pursuant to Section 6.01(b), above, it will cooperate with the Borrower, the Administrative Agent and the successor Servicer in effecting the termination of its responsibilities and rights as Servicer hereunder, including, without limitation, using commercially reasonable efforts in (i) assisting the successor Servicer in enforcing all of Borrower's rights under the Pool Receivables and Related Security, (ii) transferring, promptly upon receipt, to the successor Servicer or to the Borrower, any Collections or other amounts related to the Pool Receivables received by such Servicer, (iii) transferring to the successor Servicer all books and records including the Contracts (or copies of books and records and Contracts) held by or under the control of such Servicer and (iv) permitting the successor Servicer to have access to all tapes, discs, diskettes and related property containing information concerning the Pool Receivables and the books and records (including the Contracts) and taking all commercially reasonable actions necessary in its control to permit the successor Servicer to use all computer software that may facilitate the Servicer's access to and use of such information and acting as data processing agent for such successor Servicer if requested. Upon the resignation or replacement of NRG Retail LLC as Servicer, NRG Retail LLC shall no longer be entitled to the Servicer Fee accruing from and after the effective date of such resignation or replacement.

(d) The Servicer may delegate its duties and obligations hereunder to any sub-servicer (each a "Sub-Servicer"); provided, that, in each such delegation (i) the Servicer shall remain primarily liable for the performance of the duties and obligations so delegated; (ii) the Borrower, the Administrative Agent and each Lender Group shall have the right to look solely to the Servicer for performance; (iii) unless such Sub-Servicer is a Utility that is providing invoicing services to an Originator, the terms of any agreement with any Sub-Servicer shall provide that such agreement shall terminate upon the termination of the Servicer hereunder by giving notice of its desire to terminate such agreement to the Servicer (and the Servicer shall provide appropriate notice to each such Sub-Servicer) and (iv) unless such Sub-Servicer is an Originator, another Affiliate of the Servicer or a Utility that is providing invoicing services to an Originator, the Administrative Agent shall have consented in writing in advance to such delegation. For the avoidance of doubt, this Section 6.01(d) shall not apply to any Payment Processor, any third party collection agency collecting Defaulted Receivables or any other third party service provider assisting in the servicing of the Defaulted Receivables. None of the Borrower, the Administrative Agent and the members of the Lender Groups shall have any obligations, duties or liabilities with respect to any Sub-Servicer, Payment Processor, any third party collection agency collecting Defaulted Receivables or any other third party service provider assisting in the servicing of the Defaulted Receivables

SECTION 6.02. Duties of the Servicer.

(a) The Servicer shall take or cause to be taken all such actions as it deems necessary or advisable to collect each Pool Receivable from time to time, all in accordance, in all material respects, with applicable laws, tariffs, rules, regulations and the Credit and Collection Policy. Each of the Borrower, each Lender, each LC Issuer, each Liquidity Provider, each Facility Agent and the Administrative Agent hereby appoints as its agent the Servicer, from time to time designated pursuant to Section 6.01, to enforce its respective rights and interests in and under the Pool Receivables and the Related Security. The Servicer (so long as it is NRG Retail LLC) will at all times apply the same standards and follow the same procedures with respect to the decision to commence litigation with respect to the Pool Receivables, and in prosecuting and litigating with respect to Pool Receivables, as it applies and follows with respect to trade accounts receivable serviced by it which are not Pool Receivables; provided, however, that from and after an Event of Termination, the Servicer shall commence or settle any legal action to enforce collection of any Delinquent Receivable or Defaulted Receivable as directed by the Administrative Agent; provided, further, that the Servicer shall not be required to take any action that (i) is contrary to any applicable law or (ii) any existing applicable agreement. In no event shall the Servicer be entitled to make the Administrative Agent, any Facility Agent, any Lender or any Liquidity Provider a party to any litigation without the such Person's express prior written consent.

(b) In the event the Servicer receives any Collections or other proceeds of the Collateral, it shall hold such Collections and other proceeds on behalf of the Borrower for application and remittance in accordance with Section 2.07 or 2.08, as applicable, and it shall remit the same to the Collection Account or, if the Collection Account is not established, the Designated Deposit Account to the extent required hereunder. The Borrower shall deliver to the Servicer, and the Servicer shall hold in trust for the Borrower, the Lenders and the Liquidity Providers in accordance with their respective interests, all books and records.

(c) The Servicer shall, as soon as practicable following receipt, turn over to the Person entitled thereto collections in respect of any receivable which is not a Pool Receivable less, to the extent the Servicer performed any collection or enforcement actions which it was authorized by such Person to perform, all reasonable and appropriate out of pocket costs and expenses of such Servicer incurred in collecting and enforcing such receivable.

SECTION 6.03. Deposit Account and Lock-Box Arrangements.

(a) On or prior to the Effective Date, the Borrower shall have delivered to the Administrative Agent a Deposit Account Control Agreement in respect of each Deposit Account identified on Exhibit F as of the Effective Date. Each Deposit Account Control Agreement for the Deposit Accounts shall provide the Administrative Agent with "control" within the meaning of Section 9-104 of the UCC over such Deposit Accounts. Neither the Borrower nor the Servicer shall, or shall permit, any other Person to, attempt to close any Deposit Account unless the Collections directed to such Deposit Account are redirected to another Deposit Account subject to a Deposit Account Control Agreement.

(b) If at any time, a Deposit Account Bank has a short term unsecured debt rating lower than A-1 by Standard & Poor's or P-1 by Moody's (each a "Low Ratings Deposit Account Bank"), the Administrative may (and at the direction of the Majority Facility Agents, shall) require that the Borrower open new Deposit Accounts with a new Deposit Account Bank having such ratings. Such establishment of new deposit accounts and the execution and delivery of appropriate Deposit Account Control Agreements shall be completed promptly but in any event no later than thirty (30) days following the Administrative Agent's notice. If any Deposit Account remains at the applicable Low Ratings Deposit Account Bank ninety (90) days after the Administrative Agent's delivery of such notice it shall cease to be eligible Deposit Account Bank for all purposes hereunder (but the Administrative Agent shall not be under any obligation to terminate any existing Deposit Account Control Agreements until such time as no Collections are received by such non-eligible bank).

SECTION 6.04. Rights of the Administrative Agent.

(a) Following the occurrence and during the continuation of any Event of Termination, the Administrative Agent (i) shall at the request of the Majority Facility Agents or, at any time during which there are only two Facility Agents, at the request of either Facility Agent, or (ii) may with the consent of the Majority Facility Agents, exercise its right to take exclusive ownership and control of the Collection Account, the Lock-Boxes and the Deposit Accounts (including the Designated Deposit Account), and each of the Borrower and the Servicer hereby agrees to take any further action necessary that the Administrative Agent may reasonably request to effect such control. From and after the date the Administrative Agent exercises its right to take exclusive control of the Collection Account, or if the Collection Account has not been established, the Designated Deposit Account, all withdrawals and distributions to be made from the Collection Account, the Designated Deposit Account or any other Deposit Account by the Servicer hereunder shall be made by the Administrative Agent.

(b) The Borrower hereby grants to the Administrative Agent an irrevocable power of attorney, with full power of substitution, coupled with an interest, to take in the name of the Borrower, following the occurrence and during the continuance of an Event of Termination and the Termination Date has been declared or has automatically occurred pursuant to Section 7.01, any and all steps which are necessary or advisable to endorse, negotiate or otherwise realize on any writing or other right of any kind in connection with any Pool Receivable or other Collateral.

(c) At any time after the Effective Date, the Administrative Agent may, and upon the request of the Majority Facility Agents shall, cause the Collection Account to be established. The Collection Account shall be established in the name of the Administrative Agent at an Eligible Account Bank selected by the Administrative Agent, and the Administrative Agent shall have exclusive dominion and control over the Collection Account and the authority to direct the disposition of the funds in the Collection Account without the consent of the Borrower; provided that until the Administrative Agent provides such instructions to such Eligible Account Bank (in accordance with Section 6.04(a)), such Eligible Account Bank shall be entitled to comply with instructions originated by the Servicer directing disposition of the funds in the Collection Account.

(d) Each of the Borrower and the Servicer hereby authorizes the Administrative Agent (for the benefit of each Lender Group), and irrevocably appoints the Administrative Agent (for the benefit of each Lender Group) as its attorney-in-fact with full power of substitution and with full authority in the place and stead of the Borrower or the Servicer, as applicable, which appointment is coupled with an interest, to take any and all steps in the name of the Borrower or the Servicer, as applicable, and on behalf of the Borrower or the Servicer, as applicable, as may be necessary or desirable, in the reasonable determination of the Administrative Agent to collect any and all amounts or portions thereof due under any and all Collateral, including endorsing the name of the Borrower or the Servicer, as applicable, on all checks and other instruments representing Collections and enforcing such Collateral. Notwithstanding anything to the contrary contained in this subsection, none of the powers conferred upon such attorney-in-fact pursuant to the preceding sentence shall subject such attorney-in-fact to any liability if any action taken by it shall prove to be inadequate or invalid, nor shall they confer any obligations upon such attorney-in-fact in any manner whatsoever. The Administrative Agent shall only be entitled to act as contemplated in this clause (d) while an Event of Termination is continuing or after the Termination Date has been declared pursuant to Section 7.01.

SECTION 6.05. Responsibilities of the Borrower. Anything herein to the contrary notwithstanding, the Borrower shall (i) perform all of its obligations with respect to the Pool Receivables to the same extent as if a security interest in the Pool Receivables had not been granted hereunder and the exercise by the Administrative Agent of its rights hereunder shall not relieve Borrower from such obligations and (ii) pay when due any taxes, including without limitation, sales, excise and personal property taxes payable by it in connection with the Pool Receivables. None of the Administrative Agent, the Facility Agents, the Lenders or the Liquidity Providers shall have any obligation or liability with respect to any Pool Receivables or other Collateral, nor shall any of them be obligated to perform any of the obligations of the Borrower thereunder.

SECTION 6.06. Further Action Evidencing Administrative Agent's Interest. Each of the Borrower and the Servicer agrees that from time to time, at its expense, it will promptly execute and deliver all further instruments and documents, and take all further action that the Administrative Agent, any Lender, any LC Issuer or any Facility Agent may reasonably request in order to perfect, protect or more fully evidence the interest of the Administrative Agent or the Secured Parties granted hereunder or pursuant to any other Facility Document or to enable the Administrative Agent or any LC Issuer to exercise or enforce any of its or any of the Secured Parties' rights hereunder or under any other Facility Document. Without limiting the generality of the foregoing, each of the Borrower and the Servicer will (i) code its master data processing records evidencing such Pool Receivables to evidence that a security interest therein has been granted to the Administrative Agent under this Agreement, and (ii) upon the request of the Administrative Agent, any Lender, any LC Issuer or any Facility Agent, file such financing statements, continuation statements or amendments thereto or assignments thereof, and execute and file such other instruments or notices, as may be necessary or appropriate or as the Administrative Agent, any Lender, any LC Issuer or any Facility Agent may reasonably request. If after the occurrence and during the continuation of any Event of Termination, either the Borrower or the Servicer fails to perform any of its respective agreements or obligations under this Agreement, the Administrative Agent may (but shall not be required to) itself perform, or cause performance of, such agreement or obligation, and the reasonable out-of-pocket expenses of the Administrative Agent incurred in connection therewith shall be payable by the Borrower or the Servicer, as applicable, upon the Administrative Agent's demand therefor.

ARTICLE VII
EVENTS OF TERMINATION

SECTION 7.01. Events of Termination. If any of the following events (each, an “Event of Termination”) shall occur (provided, however, that the occurrence of any of the events described in clauses (b), (c), (d) or (o) below with respect to one or more Pool Receivables shall not constitute an Event of Termination if, after such Pool Receivable(s) are removed from the calculation of Net Receivable Balance, no Borrowing Base Default shall exist):

(a) (i) Any Transaction Party shall fail to make any payment or deposit required to be made by it hereunder or under any other Facility Document to the Borrower, the Administrative Agent or any Secured Party when due and such payment shall not be deemed to have been timely made or (ii) the Servicer shall fail to deliver a Borrowing Base Certificate as required by Section 2.03(a);

(b) Any Loan Party shall breach any term, covenant or agreement contained in this Agreement or any other Facility Document (unless otherwise provided in this Section 7.01);

(c) Any representation or warranty made or deemed to be made by any Loan Party under or in connection with this Agreement or any other Facility Document (including any Monthly Report, any Borrowing Request, any Borrowing Base Certificate, any Letter of Credit Request or other information or report delivered pursuant hereto) shall, after expiration of any applicable cure period, prove to have been materially false or incorrect (except that the materiality standard in this clause (c) shall not apply to any such representation or warranty that is qualified by a materiality standard by its terms) when made or deemed made or delivered;

(d) The Administrative Agent, on behalf of the Secured Parties, shall cease to have a valid and perfected first priority security interest in the Pool Receivables and the Related Security and Collections with respect thereto or any other Collateral;

(e) An Event of Bankruptcy shall occur with respect to any Loan Party;

(f) A Material Adverse Effect shall occur with respect to any Loan Party or the Pool Receivables;

(g) A “Purchase Termination Event” shall occur under (and as defined in) the Receivables Sale Agreement with respect to (x) three or more Originators or (y) Originators whose Receivables constitute 25% or more of the aggregate Outstanding Balance of all Pool Receivables;

(h) As of the last day of any Calculation Period,

(i) the average of the Dilution Ratios for any three (3) consecutive Calculation Periods shall exceed 2.25%;

- (ii) the average of the Default Ratios for any three (3) consecutive Calculation Periods shall exceed 3.0%;
- (iii) the average of the Days' Sale Outstandings for any three (3) consecutive Calculation Periods shall exceed 55 days;
- (iv) the average of the Delinquency Ratios for any three (3) consecutive Calculation Periods shall exceed 9.0%;

(i) A Borrowing Base Default shall exist;

(j) A Servicer Default shall have occurred;

(k) (i) (A) The Borrower shall fail to make any payment in respect of any Indebtedness in an aggregate principal amount exceeding \$15,000, when and as the same shall become due and payable or (B) an event of default shall have occurred and be continuing under an agreement, or related agreements, under which the Borrower has outstanding Indebtedness; or (ii) (A) any Loan Party other than the Borrower (or any combination of Transaction Parties) shall default for a period beyond any applicable grace period (x) in the payment of any principal, interest or other amount due under any Indebtedness (other than trade payables or non-recourse indebtedness), or (y) any other event shall occur or condition shall exist under an agreement, or related agreements, under which such Loan Party has, or such Transaction Parties have, outstanding Indebtedness (other than trade payables or non-recourse indebtedness), if the effect of such event or condition is to permit the acceleration of the maturity of such Indebtedness (other than trade payables or non-recourse indebtedness), and the outstanding amount or amounts payable under all such Indebtedness under clauses (x) and (y) equals or exceeds \$150,000,000 or (B) an event of default shall have occurred and be continuing under an agreement, or related agreements, under which any Loan Party other than the Borrower (or any combination of Transaction Parties) has outstanding Indebtedness (other than trade payables or non-recourse indebtedness) of \$150,000,000 or more and, in the case of this clause (B), such debt has been accelerated by the holder of such debt, or the holder of such debt has attempted to accelerate but such acceleration was prevented by applicable Law;

(l) (i) One or more final judgments, decrees or orders for the payment of money in the aggregate amount of \$15,000 or more shall be rendered against the Borrower or (ii) one or more judgments for the payment of money in an aggregate amount in excess of \$150,000,000 (excluding therefrom any amount covered by insurance) shall be rendered against any Loan Party other than the Borrower, or any combination of Transaction Parties, and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to levy upon assets or properties of any Loan Party or any combination of Transaction Parties to enforce any such judgment;

(m) Any of this Agreement, the Receivables Sale Agreement, the Performance Guaranty, any Subordinated Note, the Fee Letter, the Administrative Agent Fee Letter or the LC Fronting Fee Letter shall cease to be in full force and effect or any of the Borrower, any Originator, the Performance Guarantor or the Servicer shall so assert in writing or otherwise seek to terminate or disaffirm its obligations under any such Facility Document at any time following the execution thereof;

(n) A Change in Control shall have occurred with respect to any Loan Party;

(o) There shall have been filed (i) notice of a Lien from the IRS pursuant to Section 6323 of the Code against any of the Collateral, (ii) notice of a Lien from the PBGC pursuant to Section 430(k) of the Code or Section 303(k) of ERISA against any Transaction Party for a failure to make a required installment or other payment to a Plan to which either of such sections applies, or (iii) a notice of any other Lien the existence of which could reasonably be expected to have a Material Adverse Effect against any Transaction Party and, in each case, such Lien shall not have been released or withdrawn within ten (10) days;

(p) The Borrower (i) shall become a “covered fund” under the Volcker Rule, or (ii) shall become or shall be required to register as an “investment company” or shall become “controlled by an investment company” (or a company required to register as an “investment company”), in each case within the meaning of the Investment Company Act or (iii) no longer be permitted to rely on the exemption set forth in Section 3(c)(5) of the Investment Company Act from the requirement to register as an “investment company” within the meaning of the Investment Company Act;

(q) The Performance Guarantor shall breach its covenant (which, as of the Effective Date, is set forth in Section 6.12 of the Parent Credit Agreement) with respect to its Consolidated Total Net Leverage Ratio under and as defined in the Parent Credit Agreement;

(r) NRG Retail LLC shall resign as Servicer, and no successor Servicer reasonably satisfactory to the Administrative Agent shall have been appointed; or

(s) The Borrower shall fail to repay in full the Aggregate Principal Balance and all other Borrower Obligations and to Cash Collateralize the outstanding Letters of Credit up to the Required LC Cash Collateral Amount on or prior to the Final Maturity Date,

then, and in any such event, the Administrative Agent (i) shall at the request of the Majority Facility Agents or, at any time during which there are only two Facility Agents, at the request of either Facility Agent, or (ii) may with the consent of the Majority Facility Agents, by notice to the Borrower, (A) declare the Termination Date to have occurred; provided, however, that, in the case of any event described in subsection (e) above, the Termination Date shall be deemed to have occurred automatically upon the occurrence of such event and (B) replace the Servicer pursuant to Section 6.01. In addition, the Administrative Agent may deliver the notices of exclusive control under any Deposit Account Control Agreement after the occurrence of an Event of Termination. Upon any such declaration or automatic occurrence, the Administrative Agent and the Secured Parties shall have, in addition to all other rights and remedies under this Agreement or otherwise but subject to the following sentence and Section 10.09 hereof, all other rights and remedies provided under the UCC of the applicable jurisdiction and other applicable laws, which rights shall be cumulative. Upon the declaration or automatic occurrence of the Termination Date in accordance with this Section 7.01, all obligations hereunder shall be immediately due and payable and all Loans shall be immediately due and payable.

ARTICLE VIII
INDEMNIFICATION

SECTION 8.01. Indemnities by the Borrower. Without limiting any other rights which any Affected Person may have hereunder or under applicable law (including, without limitation, the right to recover damages for breach of contract), the Borrower hereby agrees to indemnify and hold harmless each Affected Person and their respective Affiliates, agents, employees, officers, and directors (collectively, the "Indemnified Parties"), from and against any and all damages, losses, claims, liabilities and related costs and expenses, including reasonable external attorneys' fees and disbursements and all costs and expenses incurred, including reasonable external attorneys' fees and disbursements, in connection with the enforcement of this provision (all of the foregoing being collectively referred to as "Indemnified Amounts"), awarded against or incurred by such Indemnified Party to the extent relating to or arising from or as a result of this Agreement, the funding, issuing or maintenance of Credit Extensions hereunder, the use of the Letters of Credit, or proceeds of Loans or Releases, or any interest therein, or in respect of any Pool Receivable, Related Security or Contract, or in respect of any other Facility Document subject to the *proviso* set forth below. Without limiting the generality of the foregoing indemnification, the Borrower shall indemnify the Indemnified Parties for Indemnified Amounts to the extent relating to or resulting from any of the following:

(i) the failure of any Pool Receivable represented by the Borrower to be an Eligible Receivable hereunder to be an "Eligible Receivable" at the time of such representation;

(ii) reliance on any representation or warranty made or deemed made by the Borrower under this Agreement or any other Facility Document to which it is a party which shall have been false or incorrect when made or deemed made;

(iii) the failure by the Borrower to comply with any term, provision or covenant contained in this Agreement, the Receivables Sale Agreement or any other Facility Document to which it is party or with any applicable law, tariff, rule or regulation with respect to any Pool Receivable, the related Contract, or the Related Security, or the nonconformity of any Pool Receivable, the related Contract or the Related Security with any such applicable law, tariff, rule or regulation;

(iv) any products liability claim or personal injury or property damage suit or other similar or related claim or action of whatever sort arising out of or in connection with goods or services, the sale or provision of which gave rise to or are the subject of any Pool Receivable or Contract;

(v) the failure to pay when due any taxes, including, without limitation, sales, excise or personal property taxes payable by the Borrower in connection with the Collateral;

(vi) the payment by such Indemnified Party of taxes, including, without limitation, any taxes imposed by any jurisdiction on amounts payable and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, to the extent caused by the Borrower's actions or failure to act in breach of this Agreement;

(vii) the failure to vest and maintain vested in the Administrative Agent, on behalf of the Secured Parties, a first priority perfected security interest in the Pool Receivables, together with all Collections, Related Security and other Collateral, free and clear of any Lien except a Lien in favor of any Affected Person, whether existing at the time such Pool Receivable arose or at any time thereafter;

(viii) the failure to file, or any delay in filing, financing statements or other similar instruments or documents under the applicable UCC or other applicable laws naming the Borrower as “Debtor” with respect to any Collateral;

(ix) any dispute, claim, offset or defense (other than as a result of the bankruptcy or insolvency of the related Obligor) of an Obligor to the payment of any Pool Receivable (including, without limitation, a defense based on such Pool Receivable not being a legal, valid and binding obligation of such Obligor enforceable against it in accordance with its terms), or any other claim resulting from the sale of goods or services related to such Pool Receivable or the furnishing or failure to furnish such goods or services (other than as a result of the bankruptcy or insolvency of the related Obligor);

(x) the commingling of Collections with any other funds;

(xi) any failure by the Borrower to give reasonably equivalent value to the Originator in consideration for the transfer by the Originator to the Borrower of any Pool Receivables, or any attempt by any Person to void any such transfer under any statutory provision or common law or equitable action, including, without limitation, any provision of the Bankruptcy Code;

(xii) the failure of any Deposit Account Bank to remit any amounts or items of payment held in a Deposit Account or in a Lock-Box pursuant to the instructions of the Administrative Agent given in accordance with this Agreement, the applicable Deposit Account Control Agreement or the other Facility Documents, whether by reason of the exercise of setoff rights or otherwise;

(xiii) any investigation, litigation or proceeding related to this Agreement, or the use of proceeds of Loans made pursuant to this Agreement or any other Facility Document delivered hereunder or in respect of any of the Collateral;

(xiv) any claim brought by any Person arising from any activity by the Borrower in servicing, administering or collecting any Pool Receivable;

(xv) the grant by the Borrower of a security interest in any Receivable in violation of any applicable law, tariff, rule or regulation;

(xvi) the failure of the Borrower to furnish accurate and complete documentation (including, without limitation, a Contract or invoice) to any Obligor;

(xvii) the failure of any Payment Processor, Sub-Servicer or any other third party with a contractual relationship with the Borrower for the acceptance or processing of Collections, to remit any Collections received by it to a Lock-Box or a Deposit Account within two (2) Business Days of receipt;

(xviii) the failure of any Transaction Party to pay when due any Direct Taxes, energy surcharges or other governmental charges payable by it in connection with the Pool Receivables or the Facility Documents;

(xix) the amendment, modification or termination of any tariff or similar contract governing any Pool Receivable or the activities of the Borrower; or

(xx) the failure of the sale and pledge of any Pool Receivable under the Facility Documents to comply with the requirements of the Federal Assignment of Claims Act or any analogous State or local Laws.

provided, however, that the Borrower shall not be required to indemnify any Indemnified Party to the extent of any amounts (x) resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by final non-appealable judgment of a court of competent jurisdiction; (y) for which indemnification would constitute recourse (except as otherwise specifically provided in this Agreement to be paid by the Borrower hereunder) for uncollectible Receivables; or (z) in respect of Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Any amounts subject to the indemnification provisions of this Section 8.01 shall be paid by the Borrower to the related Indemnified Party within five (5) Business Days following demand therefor.

SECTION 8.02. Indemnities by the Servicer. Without limiting any other rights that any Affected Party may have hereunder or under applicable Law, the Servicer hereby agrees to indemnify each Indemnified Party and hold each Indemnified Party harmless from and against any and all Indemnified Amounts arising out of or resulting from a breach by the Servicer of any of its obligations or representations and warranties under this Agreement or any other Facility Document and for Indemnified Amounts to the extent arising out of or resulting from any of the following:

(i) the failure of any Pool Receivable represented by the Servicer to be an Eligible Receivable hereunder (including in any Monthly Report) to be an “Eligible Receivable” at the time of such representation;

(ii) reliance on any representation or warranty made or deemed made by the Servicer under this Agreement or any other Facility Document to which it is a party, which shall have been false or incorrect when made or deemed made;

(iii) the failure by the Servicer to comply with any term, provision or covenant contained in this Agreement, the Receivables Sale Agreement or any Facility Document to which it is party or with any applicable law, tariff, rule or regulation with respect to any Pool Receivable or the Related Security (including, without limitation, the covenants with respect to commingling of Collections set forth in Section 5.04(h));

(iv) the failure of any Payment Processor, Sub-Servicer or any other third party with a contractual relationship with the Servicer or any of its Affiliates for the acceptance or processing of Collections, to remit any Collections received by it to a Lock-Box or a Deposit Account within two (2) Business Days of receipt; or

(v) any action or omission by the Servicer which reduces or impairs the rights or interests of the Administrative Agent, the Facility Agents or any Lender with respect to any Collateral or the value of any Collateral;

(vi) any claim brought by any Person arising from any activity by the Servicer in servicing, administering or collecting any Pool Receivable;

(vii) the failure of any information provided by or on behalf of the Servicer for inclusion in any Monthly Report to be true and correct, or the failure of any other information required to be provided to such Indemnified Party by, or on behalf of, the Servicer to be true and correct;

(viii) the failure to cause the payment when due of any Direct Taxes, energy surcharges or other governmental charges payable by a Transaction Party in connection with the Pool Receivables or the Facility Documents;

(ix) any dispute, claim, offset or defense of the Obligor to the payment of any Pool Receivable in resulting from or related to the collection activities of the Servicer with respect to such Receivable; or

(x) the failure of the Servicer to furnish accurate and complete documentation (including, without limitation, a Contract or invoice) to any Obligor;

provided, however, that the Servicer shall not be required to indemnify any Indemnified Party to the extent of any amounts (x) resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final, non-appealable order of a court of law; (y) for which indemnification would constitute recourse (except as otherwise specifically provided in this Agreement to be paid by the Borrower hereunder) for uncollectible Receivables or with respect to an Obligor's financial inability to pay; or (z) in respect of Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim. Any amounts subject to the indemnification provisions of this Section 8.02 shall be paid by the Servicer to the related Indemnified Party within five (5) Business Days following demand therefor. In no event, however, shall the Servicer be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings); provided, however, that the forgoing is not intended to limit any obligation of any Transaction Party to reimburse any Indemnified Party hereunder for any special, indirect, consequential or punitive damages which such Indemnified Party is required to pay to any Person.

SECTION 8.03. Limited Liability of Indemnified Parties. No Indemnified Party shall have any liability (whether in contract, tort or otherwise) to Transaction Party or any of their security holders or creditors for or in connection with the transactions contemplated hereby, except to the extent such liability is determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnified Party's gross negligence or willful misconduct or breach of its obligations under this Agreement. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages (including, without limitation, any loss of profits, business or anticipated savings).

ARTICLE IX
THE AGENTS

SECTION 9.01. Authorization and Action.

(a) Each Lender, LC Issuer and Facility Agent hereby irrevocably designates and appoints RBC, as the “Administrative Agent” hereunder and authorizes the Administrative Agent to take such actions and to exercise such powers as are delegated to the Administrative Agent hereby and to exercise such other powers as are reasonably incidental thereto. The Administrative Agent shall have no duties or responsibilities except those expressly set forth in this Agreement or in the other Facility Documents. The duties of the Administrative Agent shall be mechanical and administrative in nature. At no time shall the Administrative Agent have any duty or responsibility to any Person to investigate or confirm the correctness or accuracy of any information or documents delivered to it in its role as Administrative Agent hereunder or any obligation in respect of the failure of any Person (other than the Administrative Agent) to perform any obligation hereunder or under any other Facility Document. The Administrative Agent shall not have, by reason of this Agreement, a fiduciary relationship in respect of any Facility Agent, Lender LC Issuer or Transaction Party. Nothing in this Agreement or any of the Facility Documents, express or implied, is intended to or shall be construed to impose upon the Administrative Agent any obligations in respect of this Agreement or any of the Facility Documents except as expressly set forth herein or therein. The Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender, LC Issuer or any Facility Agent with any credit or other information with respect to any Transaction Party or their Affiliates, whether coming into its possession before the Closing Date or at any time or times thereafter.

(b) Each Lender and LC Issuer hereby irrevocably designates and appoints the respective institution identified as the Facility Agent for such Lender’s or LC Issuer’s Lender Group on the signature pages hereto or in the Joinder Agreement or Assignment and Acceptance pursuant to which such Lender or LC Issuer becomes a party hereto, and each authorizes such Facility Agent to take such action on its behalf under the provisions of this Agreement and to exercise such powers and perform such duties as are expressly delegated to such Facility Agent by the terms of this Agreement, if any, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere in this Agreement, no Facility Agent shall have any duties or responsibilities, except those expressly set forth herein, or any fiduciary relationship with any Lender, LC Issuer or other Facility Agent or the Administrative Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on the part of such Facility Agent shall be read into this Agreement or otherwise exist against such Facility Agent.

(c) Except as otherwise specifically provided in this Agreement, the provisions of this Article IX are solely for the benefit of the Facility Agents, the Administrative Agent, the Lenders and the LC Issuers, and none of the Transaction Parties shall have any rights as a third party beneficiary or otherwise under any of the provisions of this Article IX, except that this Article IX shall not affect any obligations which any Facility Agent, the Administrative Agent, any Lender or any LC Issuer may have to any Transaction Party under the other provisions of this Agreement. Furthermore, no Lender or LC Issuer shall have any rights as a third-party beneficiary or otherwise under any of the provisions hereof in respect of a Facility Agent which is not the Facility Agent for such Lender or LC Issuer.

(d) In performing its functions and duties hereunder, the Administrative Agent shall act solely as the agent of the Lenders, LC Issuers and the Facility Agents and does not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for any Transaction Party or any of their successors and assigns. In performing its functions and duties hereunder, each Facility Agent shall act solely as the agent of its respective Lenders and LC Issuers and does not assume nor shall be deemed to have assumed any obligation or relationship of trust or agency with or for any Transaction Party, any other Facility Agent or the Administrative Agent, or any of their respective successors and assigns.

SECTION 9.02. Agents' Reliance, Etc. (a) Neither the Administrative Agent nor any Facility Agent nor any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or such Facility Agent or the Administrative Agent under or in connection with this Agreement, (i) with the consent or at the direction of the Majority Facility Agents (or in the case of any Facility Agent, the Lenders and the LC Issuers within its Lender Group that have a majority of the aggregate Commitments of such Lender Group) or (ii) in the absence of such Person's gross negligence or willful misconduct. Without limiting the generality of the foregoing, each of the Administrative Agent and the Facility Agents: (i) may consult with legal counsel (including counsel for the Performance Guarantor, the Borrower, the Servicer or any other Affiliate of the Performance Guarantor), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts; (ii) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties or representations made in or in connection with this Agreement; (iii) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement on the part of the Performance Guarantor, the Borrower, the Servicer or any other Affiliate of Performance Guarantor or to inspect the property (including the books and records) of the Performance Guarantor, the Borrower, the Servicer or any other Affiliate of Performance Guarantor; (iv) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto; and (v) shall incur no liability under or in respect of this Agreement by acting upon any notice (including notice by telephone), consent, certificate or other instrument or writing (which may be by facsimile) believed by it to be genuine and signed or sent by the proper party or parties. The Administrative Agent shall not be responsible to any Lender, LC Issuer, Facility Agent or other Person for (i) any recitals, representations, warranties or other statements made by any Transaction Party or any of their Affiliates, (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Facility Document, (iii) any failure of any Transaction Party or any of their Affiliates to perform any obligation hereunder or under the other Facility Documents to which it is a party (or under any Contract), or (iv) the satisfaction of any condition specified in Article III.

(b) Each Facility Agent and the Administrative Agent shall in all cases be entitled to rely, and shall be fully protected in relying, upon any document or other writing or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. Each Facility Agent and the Administrative Agent shall in all cases be fully justified in failing or refusing to take any action under any Facility Document unless it shall first receive such advice or concurrence of the Majority Facility Agents (or in the case of any Facility Agent, the Lenders and the LC Issuers within its Lender Group that have a majority of the aggregate Commitment of such Lender Group), and assurance of its indemnification, as it deems appropriate.

(c) The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Majority Facility Agents, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders, LC Issuers, the Administrative Agent and Facility Agents.

(d) The Lenders and LC Issuers within each Lender Group with a majority of the Commitments of such Lender Group shall be entitled to request or direct the related Facility Agent to take action, or refrain from taking action, under this Agreement on behalf of such Lenders and LC Issuers. Such Facility Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of such Lenders and LC Issuers, and such request and any action taken or failure to act pursuant thereto shall be binding upon all of such Facility Agent's Lenders and LC Issuers.

(e) Unless otherwise advised in writing by a Facility Agent or by any Lenders or LC Issuers on whose behalf such Facility Agent is purportedly acting, each party to this Agreement may assume that (i) such Facility Agent is acting for the benefit of each of the Lenders and LC Issuers in respect of which such Facility Agent is identified as being the "Facility Agent" in the definition of "Facility Agent" hereto, as well as for the benefit of each assignee or other transferee from any such Person, and (ii) each action taken by such Facility Agent has been duly authorized and approved by all necessary action on the part of the Lenders and LC Issuers on whose behalf it is purportedly acting. Each Facility Agent and its Lenders and LC Issuers shall agree amongst themselves as to the circumstances and procedures for removal, resignation and replacement of such Facility Agent.

(f) Neither any Facility Agent nor the Administrative Agent shall be deemed to have knowledge or notice of the occurrence of any Advance Suspension Event, Event of Termination or Potential Event of Termination unless the Administrative Agent and the Facility Agents have received notice from any Lender, LC Issuer or a Transaction Party stating that an Advance Suspension Event, an Event of Termination or an Potential Event of Termination has occurred hereunder and describing such Advance Suspension Event, Event of Termination or Potential Event of Termination. In the event that the Administrative Agent receives such a notice, it shall promptly give notice thereof to each Facility Agent whereupon each such Facility Agent shall promptly give notice thereof to its related Lenders and LC Issuers, if applicable. In the event that a Facility Agent receives such a notice (other than from the Administrative Agent), it shall promptly give notice thereof to the Administrative Agent. The Administrative Agent shall take such action concerning an Advance Suspension Event, an Event of Termination or an Potential Event of Termination as may be directed by the Majority Facility Agents (unless such action otherwise requires the consent of all Lenders and LC Issuers), but until the Administrative Agent receives such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, as the Administrative Agent deems advisable and in the best interests of the Lenders and the Facility Agents.

SECTION 9.03. Agents and Affiliates. Each of the Administrative Agent, the Lenders, the LC Issuers and the Facility Agents and any of their respective Affiliates may extend credit to, accept deposits from and generally engage in any kind of banking, trust, debt, equity or other business with any Transaction Party or any of their Affiliates. With respect to the acquisition of the Eligible Receivables pursuant to this Agreement, each of the Facility Agents and the Administrative Agent shall have the same rights and powers under this Agreement as any Lender or LC Issuer and may exercise the same as though it were not such an agent, and the terms “Lender,” “LC Issuer,” “Lenders” and “LC Issuers” shall include, to the extent applicable, each of the Facility Agents and the Administrative Agent in their individual capacities.

SECTION 9.04. Decision to Extend Credit. Each Lender and LC Issuer expressly acknowledges that none of the Administrative Agent, the Facility Agents nor any of their respective officers, directors, employees, agents, attorneys-in-fact or Affiliates has made any representations or warranties to it and that no act by the Administrative Agent, or any Facility Agent hereafter taken, including any review of the affairs of any Transaction Party, shall be deemed to constitute any representation or warranty by the Administrative Agent or such Facility Agent, as applicable. Each Lender and each LC Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent, any Facility Agent, any of their respective Affiliates or any other Lender, and based on such documents and information as it has deemed appropriate, made its own evaluation and decision to enter into this Agreement and, if it so determines, to make Credit Extensions hereunder. Each Lender and each LC Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Facility Agent, any of their respective Affiliates, or any other Lender or LC Issuer, and based on such documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under this Agreement. Except for items specifically required to be delivered hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Facility Agent with any information concerning any Transaction Party or any of their Affiliates that comes into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates.

SECTION 9.05. Delegation of Duties. The Administrative Agent and each Facility Agent may each execute any of its duties under this Agreement by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither the Administrative Agent nor any Facility Agent shall be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

SECTION 9.06. Indemnification. Each Facility Agent severally agrees to indemnify the Administrative Agent (to the extent not reimbursed by the Borrower, the Servicer, an Originator or the Performance Guarantor), ratably according to its related Lender Group Percentage, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Administrative Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Administrative Agent under this Agreement; provided, that no Facility Agent shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting or arising from the Administrative Agent’s gross negligence or willful misconduct to the extent such gross negligence or willful misconduct is determined by a court of competent jurisdiction in a final and non-appealable decision. Without limitation of the generality of the foregoing, each Facility Agent agrees to reimburse the Administrative Agent, ratably according to its related Lender Group Percentage, promptly upon demand, for any reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Administrative Agent in connection with the administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement; provided, that no Facility Agent shall be responsible for the costs and expenses of the Administrative Agent in defending itself against any claim alleging the gross negligence or willful misconduct of the Administrative Agent to the extent such gross negligence or willful misconduct is determined by a court of competent jurisdiction in a final and non-appealable decision.

SECTION 9.07. Successor Agents. The Administrative Agent and each Facility Agent may, upon thirty (30) days' notice to the Borrower, each Lender, each LC Issuer and each other party hereto, resign as Administrative Agent or Facility Agent, as applicable. If any such party shall resign as Administrative Agent or Facility Agent under this Agreement, then, in the case of the Administrative Agent, the Majority Facility Agents, and in the case of any Facility Agent, its related Conduit Lenders, during such thirty-day period shall appoint a successor agent, whereupon such successor agent shall succeed to the rights, powers and duties of the Administrative Agent or applicable Facility Agent and references herein to the Administrative Agent or such Facility Agent shall mean such successor agent, effective upon its appointment; and such former Administrative Agent's or Facility Agent's rights, powers and duties in such capacity shall be terminated, without any other or further act or deed on the part of such former Administrative Agent or Facility Agent or any of the parties to this Agreement. After any retiring Administrative Agent's or Facility Agent's resignation hereunder as such agent, the provisions of Article VIII, this Article IX and Section 10.09 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent or a Facility Agent under this Agreement.

ARTICLE X
MISCELLANEOUS

SECTION 10.01. Amendments, Etc.

(a) No waiver of any provision of this Agreement nor consent to any departure by the Borrower or the Servicer therefrom shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and each Facility Agent and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No amendment to this Agreement shall be effective unless the same shall be in writing and signed by each of the Borrower, the Servicer, the Administrative Agent and the Majority Facility Agents, provided, however, that, without the written consent of each affected Lender and each affected LC Issuer, no such amendment shall (i) extend the Termination Date, (ii) extend the date of any payment or deposit of Collections by the Borrower or by the Servicer or the time of payment of Interest, (iii) release the security interest in or transfer all or any material portion of the Collateral, (iv) change the outstanding Principal Balance of any of the Loans made by any Lender hereunder other than as provided herein, (v) change the amount of any Lender Group Limit, Commitment or LC Commitment other than as provided herein or increase the Facility Limit hereunder, (vi) increase the Concentration Limit, (vii) amend, modify or waive any provision of the definitions of “Eligible Receivables”, “Majority Facility Agents”, “Net Receivables Balance,” “Total Reserve Amount,” “Borrowing Base,” “Borrowing Base Deficiency,” “Period,” “Majority Facility Agents,” “Final Maturity Date” or any of the defined terms used in such definitions or this Section 10.01, (viii) consent to or permit the assignment or transfer by the Borrower or any of its rights and obligations under this Agreement or of any of its right, title or interest in or to the Pool Receivables, (ix) amend or modify any provision of Section 7.01 or Section 10.03, (x) terminate the Performance Guaranty and/or release the Performance Guarantor from its obligations thereunder, (xi) reduce any Fees payable to any Lender or Facility Agent pursuant to the Fee Letter or any Interest payable to any Lender hereunder, or (xii) modify any defined term (or any defined term used directly or indirectly in such defined term) used in clauses (i) through (xi) above in a manner which would circumvent the intention of the restrictions set forth in such clauses.

(c) Notwithstanding anything to the contrary herein, to the fullest extent permitted by Law, no Facility Agent that has a Committed Lender in its Lender Group that is currently a Defaulting Committed Lender and no Committed Lender that is currently a Defaulting Committed Lender, shall be entitled to vote in respect of waivers, amendments or modifications to any Facility Document and the Commitment and the outstanding Loans or other extensions of credit of such Defaulting Committed Lender hereunder shall not be taken into account in determining whether the Majority Facility Agents or all of the Lenders or any other class of Lenders, as required by this Section 10.01 or otherwise, have approved any such waiver, amendment or modification (and the definition of “Majority Facility Agents” will automatically be deemed modified accordingly for the duration of such period); provided that any such waiver, amendment or modification that would increase or extend the term of the Commitment of such Defaulting Committed Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Committed Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Committed Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Committed Lender or of any fee payable to such Defaulting Committed Lender hereunder, or alter the terms of this proviso, shall require the prior written consent of such Defaulting Committed Lender.

SECTION 10.02. Notices, Etc. All notices and other communications provided for hereunder shall, unless otherwise stated herein, be in writing (including communication by facsimile copy or other electronic transmission) and shall be personally delivered or sent by registered mail, return receipt requested, or by courier or by facsimile or other electronic transmission, to each party hereto, at its address set forth on Schedule II hereof or at such other address as shall be designated by such party in a written notice to the other parties hereto. All such notices and communications shall be effective, upon receipt, or in the case of overnight courier, two (2) days after being deposited with such courier, or, in the case of notice by facsimile or other electronic transmission, when electronic confirmation of receipt is obtained, in each case addressed as aforesaid.

SECTION 10.03. Assignments; Participations.

(a) Participations. Except as otherwise specifically provided herein, any Lender may sell to one or more Persons (each a "Participant") participating interests in the Loans of such Lender hereunder. Such Lender shall remain solely responsible for performing its obligations hereunder, and the Borrower, the Servicer, each Facility Agent and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder. A Lender shall not agree with a Participant to restrict such Lender's right to agree to any amendment hereto, except amendments that require the consent of all Lenders. Any such Participant shall not have any rights hereunder or under the Facility Documents. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.12 and 2.13 (subject to the requirements and limitations therein and subject to such Participant's compliance with the requirements of Section 2.14) to the same extent as if it were a Lender and acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant shall not be entitled to receive any greater payment under Sections 2.12 or 2.13, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a change in Law that occurs after the Participant acquired the applicable participation.

Each Lender (or its Facility Agent on its behalf) that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of its Participants and the amounts of each such Participant's interest in any Loans, Commitments or other rights or obligations hereunder (the "Participant Register"); provided that no Lender or Facility Agent shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in such Loans, Commitments or other rights or obligations hereunder) to any Person except to the extent that such disclosure is necessary to establish that such Loans, Commitments or other rights or obligations hereunder are in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(b) Assignments by Committed Lenders. Any Committed Lender may assign to one or more Persons (each a "Purchasing Committed Lender"), reasonably acceptable to the Administrative Agent, each LC Issuer and the related Facility Agent in their sole discretion, any portion of its Commitment pursuant to an Assignment and Acceptance with any changes as have been approved by the parties thereto, executed by each such Purchasing Committed Lender, such selling Committed Lender, such related Facility Agent and the Administrative Agent and with the consent of the Borrower (provided, that the consent of the Borrower shall not be unreasonably withheld or delayed and that no such consent shall be required if an Event of Termination has occurred and is continuing; provided, further, that no consent of the Borrower shall be required if the assignment is made by any Committed Lender to the Administrative Agent, to any other Committed Lender, to any Affiliate of the Administrative Agent or any Committed Lender or to any Program Support Provider). Any such assignment by a Committed Lender cannot be for an amount less than \$10,000,000. Upon (i) the execution of the Assignment and Acceptance with any changes as have been approved by the parties thereto, (ii) delivery of an executed copy thereof to the Borrower, the Servicer, such related Facility Agent and the Administrative Agent and (iii) payment by the Purchasing Committed Lender to the selling Committed Lender of the agreed purchase price, if any, such selling Committed Lender shall be released from its obligations hereunder to the extent of such assignment and such Purchasing Committed Lender shall for all purposes be a Committed Lender party hereto and shall have all the rights and obligations of a Committed Lender hereunder to the same extent as if it were an original party hereto. The amount of the Commitment of the selling Committed Lender allocable to such Purchasing Committed Lender shall be equal to the amount of the Commitment of the selling Committed Lender transferred regardless of the purchase price, if any, paid therefor. The Assignment and Acceptance shall be an amendment hereof only to the extent necessary to reflect the addition of such Purchasing Committed Lender as a "Committed Lender" and any resulting adjustment of the selling Committed Lender's Commitment.

(c) Assignments to Liquidity Providers and other Program Support Providers. Any Conduit Lender may at any time grant to one or more of its Liquidity Providers or other Program Support Providers, participating interests in its Loans. In the event of any such grant by such Conduit Lender of a participating interest to a Liquidity Provider or other Program Support Provider, such Conduit Lender shall remain responsible for the performance of its obligations hereunder. The Borrower agrees that each Liquidity Provider and Program Support Provider of any Conduit Lender hereunder shall be entitled to the benefits of Sections 2.12 and 2.13 (subject to the requirements and limitations therein and subject to such Participant's compliance with the requirements of Section 2.14) and Article VIII.

(d) Other Assignments by Conduit Lenders. Each party hereto agrees and consents (i) to any Conduit Lender's assignment, participation, grant of security interests in or other transfers of any portion of, or any of its beneficial interest in, its Loans (or, in each case, any portion thereof), including without limitation to any collateral agent in connection with its commercial paper program and (ii) to the complete assignment by any Conduit Lender of all of its rights and obligations hereunder to any other Person, including any Affiliate of its Facility Agent, any Lender in its Lender Group or the Administrative Agent, and upon such assignment such Conduit Lender shall be released from all obligations and duties, if any, hereunder; *provided*, that such Conduit Lender may not, without the prior consent of its Committed Lenders and the Administrative Agent, make any such transfer of its rights hereunder unless the assignee (x) is a commercial paper conduit that (i) is principally engaged in the purchase of assets similar to the assets being purchased hereunder, (ii) has as its Facility Agent the Facility Agent or an Affiliate thereof of the assigning Conduit Lender, (iii) issues commercial paper or other notes with credit ratings substantially comparable to the ratings of the assigning Conduit Lender and (iv) has been consented to by the Borrower (*provided*, that (1) the consent of the Borrower shall not be unreasonably withheld or delayed, (2) no such consent shall be required if an Event of Termination has occurred and is continuing and (3) no such consent shall be required if such assignee (x) is another commercial paper conduit administered by the same Program Administrator or an Affiliate thereof) or (y) is a Committed Lender, Liquidity Provider or Program Support Provider for such Conduit Lender. Any assigning Conduit Lender shall deliver to any assignee an Assignment and Acceptance with any changes as have been approved by the parties thereto, duly executed by such Conduit Lender, assigning any portion of its Loans to its assignee. Such Conduit Lender shall promptly (i) notify each of the other parties hereto of such assignment and (ii) take all further action that the assignee reasonably requests in order to evidence the assignee's right, title and interest in such interest in the its Loans, and to enable the assignee to exercise or enforce any rights of such Conduit Lender hereunder. Upon the assignment of any portion of its interest in its Loans, the assignee shall have all of the rights hereunder with respect to such interest (except that the Interest therefor shall thereafter accrue at the CP Rate determined with respect to the assigning Conduit Lender unless the Borrower, the related Facility Agent and the assignee shall have agreed upon a different Interest Rate).

(e) Register. The Administrative Agent, acting as non-fiduciary agent for the Borrower (such agency being solely for Tax purposes) and each Affected Person and its successors and assigns, to the extent such Person has Loans or Interest owing thereto), shall maintain at an office of the Administrative Agent, a copy of each Assignment and Acceptance delivered to and accepted by it hereunder and a register for the names and addresses of the Lenders, the Commitment of each Lender Group and the aggregate outstanding Loans and Interest and other amounts owing to each Lender or other Affected Person from time to time (and such other Affected Person) (the “Register”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Servicer, the Lenders, and such other Affected Persons shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower, any Facility Agent and any Lender (and any such other Affected Person) at any reasonable time and from time to time upon reasonable prior notice. Each Lender (and each such other Affected Person) that assigns or transfers all or part of its Loans, shall be required to provide the Administrative Agent with notice of such assignment in order for such assignee’s interests in the Loans to be reflected in the Register. Each assignor may, in connection with any permitted assignment, disclose to the applicable assignee (that shall have agreed to be bound by Section 10.12) any information relating to any Originator, the Servicer, the Borrower, the Performance Guarantor or the Pool Receivables furnished to such assignor by or on behalf of such Originator, the Servicer, the Borrower, the Performance Guarantor, any Lender or the Administrative Agent.

(f) Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to mean the successors and assigns of such party; all covenants, promises and agreements by or on behalf of any parties hereto that are contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Notwithstanding the foregoing, neither of the Borrower or the Servicer may assign its rights or delegate its obligations hereunder or under any other Facility Document or any interest herein or under any other Facility Document, in each case, without the prior written consent of the Administrative Agent and each Facility Agent.

(g) Enforcement By Agents. Without limiting any other rights that may be available under applicable Law, the rights of the Administrative Agent, each Facility Agent and each Lender may be enforced through it or by its agents.

(h) Certain Pledges. Without limiting the right of any Lender to sell or grant interests, security interests or participations to any Person as otherwise described in this Section 10.03, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement, any portion of its interest in its Loans to secure its obligations as a Lender hereunder, including any pledge or assignment to secure obligations to a Federal Reserve Bank, the United States Treasury, the Federal Deposit Insurance Corporation or a security trustee in connection with the funding by such Lender of Purchases without notice to or consent of the Borrower, the Performance Guarantor or any other Person; provided that no such pledge or grant of a security interest shall release such Lender from any of its obligations hereunder or substitute any such pledgee or grantee for such Lender as a party hereto.

SECTION 10.04. Additional Lender Groups. With the written consent of the Administrative Agent, upon the Borrower's request, Upon the Borrower's request, an additional Lender Group may be added to this Agreement at any time by the execution and delivery of a Joinder Agreement by the members of such proposed additional Lender Group, the Borrower, the Servicer, the Performance Guarantor, the Administrative Agent and each of the Facility Agents, which execution and delivery shall not be unreasonably refused by such parties. Upon the effective date of such Joinder Agreement, (i) each Person specified therein as a "Conduit Lender" shall become a party hereto as a Conduit Lender, entitled to the rights and subject to the obligations of a Conduit Lender hereunder, (ii) each Person specified therein as a "Committed Lender" shall become a party hereto as a Committed Lender, entitled to the rights and subject to the obligations of a Committed Lender hereunder, (iii) each Person specified therein as a "Facility Agent" shall become a party hereto as a Facility Agent, entitled to the rights and subject to the obligations of a Facility Agent hereunder, (iv) each Person specified therein as an "LC Issuer" shall become a party hereto as an LC Issuer, entitled to the rights and subject to the obligations of an LC Issuer hereunder, (iv) the LC Sublimit shall be increased by an amount equal to the aggregate LC Commitments of the LC Issuers party to the Joinder Agreement, and (v) the Facility Limit shall be increased by an amount equal to the aggregate Commitments of the Committed Lenders party to such Joinder Agreement.

SECTION 10.05. Consent to Jurisdiction.

(a) Each party hereto hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or Federal court sitting in New York City in any action or proceeding arising out of or relating to this Agreement, and each party hereto hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. The parties hereto hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The parties hereto agree 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.

(b) Each of the Borrower and the Servicer consents to the service of any and all process in any such action or proceeding by the mailing of copies of such process to it at its address specified in Section 10.02. Nothing in this Section 10.05 shall affect the right of any Lender or the Administrative Agent to serve legal process in any other manner permitted by law.

SECTION 10.06. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT OR ANY OTHER FACILITY DOCUMENT.

SECTION 10.07. Right of Setoff. Each Lender and each LC Issuer is hereby authorized (in addition to any other rights it may have) at any time any Borrower Obligation hereunder is due and payable, to set off, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by such Lender or such LC Issuer to, or for the account of, the Borrower against the amount of the Borrower Obligations owing by the Borrower to such Person. Each Lender and each LC Issuer is hereby authorized (in addition to any other rights it may have) at any time that any payment obligation of the Servicer hereunder is due and payable, to set off, appropriate and apply (without presentment, demand, protest or other notice which are hereby expressly waived) any deposits and any other indebtedness held or owing by such Lender or such LC Issuer to, or for the account of, the Servicer against the amount of such obligations owing by the Servicer to such Person.

SECTION 10.08. Ratable Payments. If any Lender or any LC Issuer, whether by setoff or otherwise, has payment made to it with respect to any Borrower Obligations or obligation of the Servicer in a greater proportion than that received by any other Lender or any other LC Issuer entitled to receive a ratable share of such amount, such Lender or such LC Issuer, as applicable, agrees, promptly upon demand, to purchase for cash without recourse or warranty a portion of such Borrower Obligations or Servicer obligation held by the other Lenders or the other LC Issuers so that after such purchase each Lender will hold its ratable proportion of such Borrower Obligations or Servicer obligations, as applicable; provided that if all or any portion of such excess amount is thereafter recovered from such Lender or such LC Issuer, as applicable, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

SECTION 10.09. Limitation of Liability.

(a) No claim may be made by any Transaction Party or any other Person against any Lender, any LC Issuer, any Facility Agent, the Administrative Agent or their respective Affiliates, directors, officers, employees, attorneys or agents for any special, indirect, consequential or punitive damages in respect of any claim for breach of contract or any other theory of liability arising out of or related to the transactions contemplated by this Agreement or any other Facility Document, or any act, omission or event occurring in connection herewith or therewith; and each of the Borrower and the Servicer hereby waives, releases, and agrees not to sue upon any claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(b) Notwithstanding anything to the contrary contained herein, the obligations of the Conduit Lenders under this Agreement are solely the corporate obligations of each such Conduit Lender and shall be payable only at such time as funds are actually received by, or are available to, such Conduit Lender in excess of funds necessary to pay in full all outstanding Commercial Paper Notes issued by such Conduit Lender and, to the extent funds are not available to pay such obligations, the claims relating thereto shall not constitute a claim against such Conduit Lender. Each party hereto agrees that the payment of any claim (as defined in Section 101 of Title 11 of the Bankruptcy Code) of any such party shall be subordinated to the payment in full of all Commercial Paper Notes.

(c) No recourse under any obligation, covenant or agreement of any Conduit Lender contained in this Agreement shall be had against any incorporator, stockholder, officer, director, member, manager, employee or agent of such Conduit Lender or any of its Affiliates (solely by virtue of such capacity) by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement is solely a corporate obligation of such Conduit Lender, and that no personal liability whatever shall attach to or be incurred by any incorporator, stockholder, officer, director, member, manager, employee or agent of any Conduit Lender or any of its Affiliates (solely by virtue of such capacity) or any of them under or by reason of any of the obligations, covenants or agreements of such Conduit Lender contained in this Agreement, or implied therefrom, and that any and all personal liability for breaches by any Conduit Lender of any of such obligations, covenants or agreements, either at common law or at equity, or by statute, rule or regulation, of every such incorporator, stockholder, officer, director, member, manager, employee or agent is hereby expressly waived as a condition of and in consideration for the execution of this Agreement; provided that the foregoing shall not relieve any such Person from any liability it might otherwise have as a result of fraudulent actions taken or fraudulent omissions made by them.

SECTION 10.10. Costs, Expenses and Taxes.

(a) In addition to the rights of indemnification under Article VIII hereof, the Borrower agrees to pay to the Administrative Agent and each Facility Agent within ten (10) days after demand thereof (i) all reasonable costs and expenses incurred in connection with the periodic auditing of the Borrower and the Servicer pursuant to Section 5.01(c), 5.04(c) or 5.04(d) of this Agreement, (ii) all reasonable costs and expenses of the Administrative Agent and each Facility Agent in connection with the preparation, execution and delivery (including any requested amendments, waivers or consents) of this Agreement and the other documents to be delivered hereunder, including, without limitation, all pre-closing due diligence expenses and the reasonable fees and out-of-pocket expenses of special counsel for the Administrative Agent and each Facility Agent with respect thereto and with respect to advising the Administrative Agent and each Facility Agent and the related Lenders as to their respective rights and remedies under this Agreement, and the other agreements executed pursuant hereto and (iii) all costs and out-of-pocket expenses (including fees and expenses of outside counsel), incurred by the Administrative Agent and each Facility Agent in connection with any amendment to any of the Facility Documents after the Effective Date and the enforcement of this Agreement and the other agreements and documents to be delivered hereunder after the occurrence of an Event of Termination.

(b) In addition, the Borrower shall pay any fees (including, without limitation, UCC filing fees and any penalties associated with the late payment of any UCC filing fees) payable or determined to be payable in connection with the execution, delivery, filing and recording of this Agreement or the other agreements and documents to be delivered hereunder (including any UCC financing statements) and agrees to indemnify the Administrative Agent, the Facility Agents, the Lenders and the Liquidity Providers against any liabilities with respect to or resulting from any delay by the Borrower in paying or omission to pay fees.

SECTION 10.11. No Proceedings. The Borrower, the Servicer, each Lender, each LC Issuer, each Facility Agent and the Administrative Agent each hereby agrees that it will not institute against any Conduit Lender any proceeding of the type referred to in Section 7.01(e) until one year and one day after the last outstanding Commercial Paper Note issued by such Conduit Lender has been paid in full.

SECTION 10.12. Confidentiality.

Each of the Borrower and the Servicer agrees (i) not to post to a website or publish or otherwise distribute to any other Person this Agreement and the other Facility Documents and (ii) to maintain the confidentiality of the information in this Agreement and the other Facility Documents relating to upfront fees and pricing in communications with third parties and otherwise; provided, that the Facility Documents and such information may be disclosed (a) to third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to the Administrative and each Facility Agent; (b) as required by the rules of any stock exchange; (c) to legal counsel, accountants and auditors for the Borrower and the Performance Guarantor if such counsel, accountants and auditors agree to hold it confidential or are otherwise under a professional duty to maintain the confidentiality of such information, (d) as required or requested by Law, rule, regulation, court order, subpoena, or other legal process, as reasonably determined by the Borrower (which may be in consultation with its internal or external legal counsel) and (e) if required in connection with any litigation or dispute between the parties hereto (provided that the Borrower and the Servicer will use reasonable efforts to obtain confidential treatment for such information in connection with such litigation or dispute).

The Administrative Agent, the Facility Agents, the Lenders and the LC Issuers agree to maintain the confidentiality of the Facility Documents (including pricing hereunder and thereunder) and any other non-public information regarding the Performance Guarantor, the Borrower, the Originators, the Servicer and their Affiliates; provided, that such information may be disclosed (i) to third parties to the extent such disclosure is made pursuant to a written agreement of confidentiality in form and substance reasonably satisfactory to the Borrower and the Performance Guarantor; (ii) to legal counsel, accountants and auditors of the Facility Agents, the Lenders, the LC Issuers or the Administrative Agent if such counsel, accountants and auditors agree to hold it confidential or are otherwise under a professional duty to maintain the confidentiality of such information; (iii) to any assignee or participant or potential assignee or participant (if it agrees to abide by the terms of this Section 10.12); (iv) to any regulatory or governmental authorities having jurisdiction, or claiming to have jurisdiction, over the Administrative Agent, any Facility Agent, any Lender, any LC Issuer or any Participant, (v) as required or requested by law, rule, regulation, court order, subpoena, or other legal process, (vi) as required in connection with any litigation or dispute or in connection with the exercise of any rights or remedies under the Facility Documents (provided that the Administrative Agent, the Facility Agents, the Lender and the LC Issuers will use reasonable efforts to obtain confidential treatment for such information in connection with such litigation or dispute), (vii) to any nationally recognized statistical rating organization as contemplated by Section 17g-5 of the Securities Exchange Act of 1934, (viii) to investors in Commercial Paper Notes (including potential investors in Commercial Paper Notes) as required by regulatory authorities and (ix) to any Liquidity Providers, Program Support Providers or equity investors in any Conduit Lender who agree to keep it confidential.

SECTION 10.13. No Waiver; Remedies. No failure on the part of the Administrative Agent, any Facility Agent, any LC Issuer, any Lender or any Liquidity Provider to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 10.14. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF (EXCEPT FOR SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

SECTION 10.15. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (including electronic PDF, DocuSign, Adobe "fill and sign" or such other provider as specified in writing by the applicable party) shall be effective as delivery of a manually executed counterpart hereof and shall be fully binding on the parties to the same extent as the delivery of the signed originals and shall be admissible into evidence for all purposes. 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, 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 Electronic Signatures in Global and National Commerce Act of 2000, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding the foregoing, if any party shall request manually signed counterpart signatures to this Agreement, each of the other parties hereby agrees to provide such manually signed signature pages as soon as commercially reasonable.

SECTION 10.16. Integration; Binding Effect; Survival of Termination. This Agreement and the other Facility Documents executed by the parties hereto on the date hereof contain the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof superseding all prior oral or written understandings. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns (including any trustee in bankruptcy). Any provisions of this Agreement which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Agreement shall create and constitute the continuing obligations of the parties hereto in accordance with its terms and shall remain in full force and effect until the Final Collection Date; provided, however, that the provisions of Section 2.12, 2.13, 2.14 and Article VIII and IX, and the provisions of Sections 10.05, 10.06, 10.09, 10.10, 10.11, 10.12 and 10.14 shall survive any termination of this Agreement.

SECTION 10.17. Patriot Act. Each Lender and LC Issuer hereby notifies the Borrower, each Originator, the Servicer and the Performance Guarantor that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each of the Borrower, each Originator, the Servicer and the Performance Guarantor, which information includes the name and address of each of the Borrower, each Originator, the Servicer and the Performance Guarantor and other information that will allow such Lender or LC Issuer to identify each of the Borrower, each Originator, the Servicer and the Performance Guarantor in accordance with the Patriot Act.

SECTION 10.18. Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in this Agreement or any other Facility Document, each party hereto acknowledges that any liability of any EEA Financial Institution arising under this Agreement or any other Facility Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA 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 EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Facility Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

NRG RECEIVABLES LLC,
as Borrower

By: /s/ Elizabeth Killinger
Name: Elizabeth R. Killinger
Title: President

Signature Page to Receivables Loan and Servicing Agreement

NRG RETAIL LLC,
as Servicer

By: /s/ Elizabeth Killinger
Name: Elizabeth R. Killinger
Title: President

Signature Page to Receivables Loan and Servicing Agreement

ROYAL BANK OF CANADA
as Administrative Agent, a Facility Agent and as a Committed Lender and as
an LC Issuer

By: /s/ Janine D. Marsini
Name: Janine D. Marsini
Title: Authorized Signatory

By: /s/Veronica L. Gallagher
Name: Veronica L. Gallagher
Title: Authorized Signatory

OLD LINE FUNDING, LLC, as a Conduit Lender,
as a Conduit Lender

By: /s/ Veronica L. Gallagher
Name: Veronica L. Gallagher
Title: Authorized Signatory

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a
Facility Agent and as a Committed Lender and as an LC Issuer

By: _____
Name:
Title:

ATLANTIC ASSET SECURITIZATION LLC, as a Conduit Lender

By: _____
Name:
Title:

By: _____
Name:
Title:

Signature Page to Receivables Loan and Servicing Agreement

ROYAL BANK OF CANADA

as Administrative Agent, a Facility Agent and as a Committed Lender and as an LC Issuer

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

OLD LINE FUNDING, LLC, as a Conduit Lender,
as a Conduit Lender

By: _____
Name: _____
Title: _____

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK, as a
Facility Agent and as a Committed Lender and as an LC Issuer

By: /s/ Richard McBride
Name: Richard McBride
Title: Director

ATLANTIC ASSET SECURITIZATION LLC, as a Conduit Lender

By: /s/ Richard McBride
Name: Richard McBride
Title: Director

By: /s/ Roger Klepper
Name: Roger Klepper
Title: Managing Director

Signature Page to Receivables Loan and Servicing Agreement

LA FAYETTE ASSET SECURITIZATION LLC, as a Conduit Lender

By: /s/ Richard McBride

Name: Richard McBride

Title: Director

By: /s/ Roger Klepper

Name: Roger Klepper

Title: Managing Director

MUFG BANK, LTD., as a Facility Agent and as a Committed Lender

By: _____

Name: _____

Title: _____

GOTHAM FUNDING CORPORATION, as a Conduit Lender

By: _____

Name: _____

Title: _____

Signature Page to Receivables Loan and Servicing Agreement

LA FAYETTE ASSET SECURITIZATION LLC, as a Conduit Lender

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

MUFG BANK, LTD., as a Facility Agent and as a Committed Lender

By: /s/ Eric Williams _____
Name: Eric Williams
Title: Managing Director

GOTHAM FUNDING CORPORATION, as a Conduit Lender

By: _____
Name: _____
Title: _____

Signature Page to Receivables Loan and Servicing Agreement

LA FAYETTE ASSET SECURITIZATION LLC, as a Conduit Lender

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

MUFG BANK, LTD., as a Facility Agent and as a Committed Lender

By: _____
Name: _____
Title: _____

GOTHAM FUNDING CORPORATION, as a Conduit Lender

By: /s/ Kevin J. Corrigan
Name: Kevin J. Corrigan
Title: Vice President

Signature Page to Receivables Loan and Servicing Agreement
