



Department of Energy
Washington, DC 20585

GOVERNMENT-CREDITOR AGREEMENT

Between

The United States of America, acting through the United States Department of Energy (“**DOE**”),

and

[INSERT CREDITOR NAME] (“**Creditor**”)

Dated as of [INSERT DATE]



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GOVERNMENT-CREDITOR AGREEMENT

This GOVERNMENT-CREDITOR AGREEMENT (“**Agreement**”), dated as of [INSERT DATE], is between [INSERT CREDITOR NAME], a financial institution chartered under the laws of [INSERT JURISDICTION], in its capacity as a first lien creditor (“**Creditor**”), and the UNITED STATES OF AMERICA (the “**Government**”), acting through the United States Department of Energy (“**DOE**”) (each individually a “**Party**”; collectively, the “**Parties**”).

RECITALS

DOE issued to [INSERT RECIPIENT NAME] (“**Recipient**”) a financial assistance award [INSERT AWARD NUMBER] as authorized under [INSERT STATUTORY AUTHORITY FOR THE AWARD] to [PROVIDE BRIEF DESCRIPTION OF THE AWARD SCOPE] (“**DOE Award**”). The DOE Award includes a Government cost share as set forth in the DOE Award and as may be adjusted pursuant to Section 1.4(b) below (“**Government Cost Share**”) that gives the Government an undivided reversionary interest equivalent to the Government Cost Share percentage in any tangible property, which includes real property and equipment, acquired or improved or contributed as cost share by the Recipient or funded by DOE, in whole or in part, pursuant to the DOE Award (“**Award Property**”). The DOE Award also includes obligations for the Recipient to contribute cost share (“**Recipient Cost Share**”).

The Creditor and the Recipient are parties to a certain loan agreement (~~“(as amended from time to time, “**Loan Agreement**”)~~) and certain security agreement(s) (~~“(each as amended from time to time, “**Security Agreements**”)~~), and together with the Loan Agreement, “**Loan Documents**”), as more particularly described in Appendix A, for loan(s) to the Recipient to finance in whole or in part the Recipient Cost Share. The Recipient’s obligations under the Loan Documents are secured by certain Award Property described in Appendix B as collateral, and DOE has approved an encumbrance consistent with 2 CFR § 200.311, 2 CFR § 200.313, or 2 CFR § 910.360, as applicable, which written approval is attached in Appendix B. All the Award Property listed in Appendix B is subject to the terms of the DOE Award, the Loan Documents, and this Agreement.

DOE has authority to enter into this Agreement pursuant to the Federal Nonnuclear Energy Research and Development Act of 1974 (42 USC §§ 5901 *et seq.*); the Atomic Energy Act (42 USC §§ 2011 - 2259); and 42 USC § 7256.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:



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ARTICLE I
RIGHTS AND REMEDIES BETWEEN THE PARTIES

1.1 Right to Cure. If any event or condition occurs that could give rise to a termination of the DOE Award by DOE and DOE intends to terminate the DOE Award (a “**Termination Event**”), DOE will not terminate the DOE Award until it first gives written notice to the Creditor and affords the Creditor a period of 60 calendar days from the receipt of such notice to work with the Recipient to cure such Termination Event to the reasonable satisfaction of DOE. ~~Absent a cure reasonably satisfactory to DOE within such 60 calendar day period or written agreement from DOE to extend the cure period, at its sole discretion, provided that if DOE in its reasonable judgment determines that the Termination Event is capable of being cured but cannot reasonably be cured within such 60 calendar day period, the Creditor will be given an extended period of time approved in writing by DOE, acting reasonably and based on information and a plan for cure submitted by the Creditor, which extended cure period shall be no less than 120 calendar days from the receipt of such notice, so long as (i) the continuation of such Termination Event during such extended cure period will not materially and adversely affect DOE and (ii) the Creditor diligently pursues such cure during such extended cure period. Absent a cure reasonably satisfactory to DOE within the applicable cure period specified above, or written agreement from DOE to extend such cure period at its sole discretion,~~ DOE will have the right to proceed with termination.

1.2 Payments. DOE will pay all amounts payable by it under the DOE Award into the Recipient’s account as specified in Appendix C.

1.3 Exercise of Remedies.

- a) If the Recipient defaults on the Loan Agreement for any reason and the Creditor intends to exercise its power of sale or other similar remedies under the Loan Documents ~~in respect to~~ sell or otherwise dispose of the Award Property (either directly, or indirectly through a sale of the direct or indirect equity interests in the Recipient (the “**Equity Interests**”)), whether through a judicial or a non-judicial foreclosure, deed in lieu of foreclosure, or otherwise (an “**Enforcement Action**”), the Creditor will give DOE notice of such intention, together with ~~an expected~~ plan for executing such Enforcement Action, ~~based on information~~ reasonably available to the Creditor at such time (an “**Enforcement Action Plan**”), before commencing such Enforcement Action.
- b) The Creditor will refrain from commencing or pursuing such Enforcement Action for a period of ~~60~~30 calendar days (or 45 calendar days, if the extension below applies) from the date of receipt by DOE of such notice and ~~plan~~Enforcement Action Plan, during which time DOE will evaluate the following potential courses of action:



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- i. Whether the default is sufficient to warrant a termination of the DOE Award, in which case the provisions of paragraph (c) below will apply, or
- ii. Whether a novation or maintenance (each as defined below) of the DOE Award in accordance with the plan Enforcement Action Plan submitted by the Creditor is feasible and is the best course of action, in which case the provisions of paragraph (d) below will apply, or
- iii. ~~Whether a~~ If the Enforcement Action Plan contemplates a sale or other disposition of only a portion of the Award Property, whether such portion of the Award Property can be sold or otherwise disposed of without termination of the DOE Award, in which case the provisions of paragraph (e) below will apply.

DOE will endeavor to conclude its evaluation within the 30 calendar day period referred to above, but if such evaluation is not complete at that time then: (a) DOE will provide the Creditor with an update on such evaluation and (b) DOE will have an additional 15 calendar days to complete its evaluation (such evaluation period, including any extension pursuant to paragraph (b) above if applicable, the “Evaluation Period”). If DOE does not notify the Creditor of the result of its evaluation by the end of the Evaluation Period, the Creditor may immediately pursue commencement of such Enforcement Action at the end of such Evaluation Period.

For purposes of this Agreement, a “**novation**” occurs when the Award Property is being sold or otherwise disposed of as part of an Enforcement Action and refers to a re-issuance of the DOE Award to the Creditor or a new owner of the Award Property willing to carry on the work specified in the DOE Award (a “**New Performer**”). For purposes of this Agreement, a “**maintenance**” occurs when the Equity Interests are being sold or otherwise disposed of as part of an Enforcement Action and means the DOE Award will be maintained with the Recipient after a sale or other disposition of the Equity Interests to a new owner of the Recipient (a “**New Parent**”).

- c) If DOE elects to terminate the DOE Award as contemplated in paragraph (b)(i) of this section, DOE will vest title to the Award Property in the Recipient, the Creditor, or other successor in interest to the Recipient as applicable, subject to the following conditions:
 - i. The Creditor sells or disposes of the Award Property or the Equity Interests pursuant to the provisions of 2 CFR § 200.311, 2 CFR § 200.313, or 2 CFR § 910.360 as applicable (for purposes of this Agreement, sales of Equity Interests



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will follow the disposition procedures set forth in 2 CFR § 910.360), and DOE receives its share of the disposition proceeds as required pursuant to such regulations and Section 1.4 below; and

~~ii. The Creditor uses commercially reasonable efforts to dispose of the Award Property or the Equity Interests to an entity that will agree in the disposition agreements to continue to construct and use (or cause the continued construction and use of) the Award Property for the purposes set forth and described in the terms of the DOE Award and DOE is made a third party beneficiary of any such undertaking if obtained; and~~

~~iii.ii.~~ In no event will the Creditor sell or dispose of the Award Property or the Equity Interests to a Restricted Entity (as defined below); and any disposition agreements entered into by the Creditor or under the direction of the Creditor with respect to the Award Property must (x) contain a corresponding commitment by the entity that will own the Award Property and (y) provide that DOE is made a third-party beneficiary of such undertaking. As used herein, “**Restricted Entity**” means the government of a DOE Country of Risk (currently the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, and the Democratic People’s Republic of Korea, as such list may be modified from time to time pursuant to applicable law or policy), a company incorporated in a DOE Country of Risk, or an entity otherwise owned or controlled by a DOE Country of Risk.

d) If DOE determines that a novation or maintenance is feasible and is the best course of action as contemplated in paragraph (b)(ii) of this section, DOE will work diligently with the Creditor to facilitate such novation or maintenance, provided (i) the Creditor, the New Performer, the New Parent, and/or the Recipient, as applicable, deliver to DOE all required documents and materials and comply with all required procedures, policies, and regulatory requirements to process such novation or maintenance, including those contemplated under 2 CFR § 910.370 as applicable, and (ii) DOE’s interest in the Award Property remains unaffected by such novation or maintenance except to the extent agreed to in writing by DOE. The Creditor will provide DOE with updates to the implementation of the Enforcement Action Plan on a monthly basis and as reasonably requested by DOE, setting out such material additional information as may become available to the Creditor as the Enforcement Action proceeds.

In evaluating whether a novation or maintenance is feasible and the best course of action, if the Creditor presents DOE with an Enforcement Action ~~plan~~Plan that DOE determines



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reasonably satisfactorily complies with the following criteria, DOE will not unreasonably withhold its consent to such ~~plan~~ Enforcement Action Plan:

- i. All existing defaults under the DOE Award are cured prior to or simultaneously with such novation or maintenance; other than such defaults that DOE reasonably determines cannot reasonably be cured until such time as the New Performer or New Parent, as applicable, takes control of the Recipient or the Award Property, as applicable, in which case DOE will not unreasonably withhold its consent to the approval of a plan for curing or otherwise dealing with such defaults once such control is obtained as long as (x) the continuation of such defaults during the period of such plan will not materially and adversely affect DOE and (y) the Recipient or the New Performer, as applicable, agrees with DOE in the DOE Award (or an amendment thereto) to continue to diligently pursue such plan in accordance with its terms.
- ii. The New Performer (in the case of a novation) or the Recipient (in the case of a maintenance):
 1. Assumes or confirms, as applicable, all the Recipient's obligations and commitments as specified in the DOE Award; (in the case of a novation, from and after the date of such assumption);
 2. Has obtained binding commitments for sufficient funds to carry out all its obligations under the DOE Award, including its cost share obligations;
 3. Acknowledges DOE's continuing interest in the Award Property pursuant to the DOE Award, 2 CFR Part 200, and 2 CFR Part 910; and
 4. Acknowledges the terms of this Agreement or any new agreement entered into between DOE and the Creditor or new lenders.
- iii. The New Performer (in the case of a novation) or the New Parent (in the case of a maintenance):
 1. Has significant experience in owning, constructing, and operating facilities similar to of a comparable size and scope to, and generally in an industry reasonably related to, the Award Property and the project to which the Award Property relates, or has entered into management and/or operating agreements



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reasonably satisfactory to DOE with one or more entities that has such experience; and

2. Is an entity eligible to receive the DOE Award pursuant to applicable law, policy, and the terms of the Funding Opportunity Announcement or Notice of Funding Opportunity pursuant to which the DOE Award was issued, including applicable research security reviews.

- e) If ~~DOE determines that~~ the Enforcement Action Plan contemplates a sale or other disposition of only a portion of the Award Property ~~should and DOE determines such portion can~~ be sold or otherwise disposed of ~~without terminating the DOE Award,~~ as contemplated in paragraph (b)(iii) of this section, DOE will ~~have the right~~ vest title to ~~issue disposition instructions under 2 CFR § 200.311, 2 CFR § 200.313, or 2 CFR § 910.360 as applicable in respect of such portion of the Award Property, in which event the Creditor will dispose of such portion of the Award Property pursuant to such regulations in the new owner, through the exercise of an applicable title vesting authority,~~ subject to the following conditions:

- i. The DOE Award will remain in place with the Recipient;
- ii. DOE's interest will remain in all Award Property that is not sold or otherwise disposed of and, as to such remaining Award Property, DOE's interest will be unaffected by such partial disposition;

DOE will vest title in the new owner

- iii. The Creditor sells or otherwise disposes of such portion of the Award Property ~~that is disposed of, through the exercise of its authority pursuant to~~ the provisions of 2 CFR § 200.311, 2 CFR § 200.313, or 2 CFR § 910.360 as applicable ~~title vesting authority, upon receipt by DOE of, and DOE receives~~ its share of the disposition proceeds as required pursuant to such regulations and Section 1.4 below; and
- iv. With respect to the portion of the Award Property that is sold or otherwise disposed of, the conditions in paragraph (c)(ii) ~~and (iii)~~ of this section are complied with.

f) For the avoidance of doubt, the Parties agree as follows:

- i. The provisions of this Section 1.3 are not intended to apply to remedies other than those included within the definition of "Enforcement Action" in Section 1.3(a) above, and are not intended to apply to other remedies such as the ability to



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accelerate loans, suspend further drawdown of loans, block the release of funds from collateral accounts, exercise step-in rights in material project documents, require enhanced reporting from the Recipient or third parties, or to the exercise of other creditor remedies customarily contained in credit documents (other than those within the definition of Enforcement Action as stated above).

- ii. Except to the extent set forth in this Agreement, (x) the Creditor shall be in control of the carrying out of an Enforcement Action, including without limitation the decision whether and when to take an Enforcement Action, the method of Enforcement Action to be taken, and when to deliver the notice of Enforcement Action contemplated in Section 1.3(a) above, (y) the Creditor shall be entitled to manage and supervise, and exercise its rights under the Loan Documents in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate, and (z) DOE shall be entitled to manage and supervise, and exercise its rights under, the DOE Award in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate.

1.4 Application of Proceeds.

- a) If the Award Property or the Equity Interests are sold or otherwise disposed of, whether pursuant to disposition instructions issued by DOE pursuant to 2 CFR Part 200 and/or 2 CFR Part 910 or in any other manner (collectively, a “**Disposition**”), and DOE is entitled to a share of the proceeds of such Disposition (the “**Proceeds**”) pursuant to the foregoing regulations and/or this Agreement, such Proceeds shall be applied as follows:
 - i. First, an amount equal to the actual and reasonable selling and handling expenses incurred in connection with such Disposition will be paid to the person or entity incurring such expenses, as permitted pursuant to 2 CFR § 200.311, 2 CFR § 200.313, or 2 CFR § 910.360 as applicable.
 - ii. Second, from the balance of the Proceeds after application pursuant to paragraph (i) above (the “**Net Proceeds**”), (x) an amount equal to the Government Cost Share Percentage (as defined below) multiplied by the Net Proceeds will be paid to DOE and (y) an amount equal to the Recipient Cost Share Percentage (as defined below) multiplied by the Net Proceeds will be paid to the Recipient (or to the Creditor on behalf of the Recipient, as directed by the Creditor pursuant to the Loan Documents), provided that if the Recipient is a for-profit entity (or if the Recipient is a “non-Federal entity” as defined in 2 CFR Part 200, to the extent such regulations provide for DOE to receive fair market value for property dispositions) and the



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amount payable to the Recipient (or Creditor) pursuant to this clause (y) exceeds the amount of secured first lien debt under the Loan Documents (after applying to such secured debt any debt service reserve funds or other collateral proceeds available to the Creditor for such secured debt), then from such excess DOE shall, if it so elects, be paid such additional amounts as may be necessary for DOE to receive under this Section 1.4 an amount equal to the Government Cost Share Percentage multiplied by the fair market value of the Award Property as contemplated by 2 CFR § 910.360(g)(2)(i)(B)-) or 2 CFR Part 200, as applicable. The Parties agree the amount of the Creditor's debt referred to in clause (ii)(y) above includes all unpaid principal, interest, default interest, fees and expenses in respect of such debt.

iii. Third, the remaining balance, if any, of the Net Proceeds after application pursuant to paragraph (ii) above will be paid to the Recipient or to such other person or entity as directed in writing by the Recipient.

- b) As used herein, (i) the “**Government Cost Share Percentage**” will be calculated at the time of the Disposition and will be equal to the aggregate amount of DOE's Government Cost Share in dollars contributed under the DOE Award as of such time divided by the total amount of DOE Government Cost Share and Recipient Cost Share in dollars contributed under the DOE Award as of such time, expressed as a percentage, and (ii) the “**Recipient Cost Share Percentage**” will be equal to 100% minus the Government Cost Share Percentage.
- c) The Parties acknowledge and agree that any casualty or condemnation proceeds received in respect of the Award Property will be treated as Proceeds to the same extent as if such casualty or condemnation proceeds had been received in respect of a Disposition of such Award Property, and DOE's interest in and rights to such casualty and condemnation proceeds will accordingly be the same as its interest in and rights to all other Proceeds. In addition,; provided that upon not less than ten (10) calendar days notice to DOE will consider in accordance with applicable regulations any request by, the Recipient (or the Creditor on behalf of the Recipient if the Loan Documents so provide) will be entitled to apply such casualty and condemnation proceeds to the purchase of replacement property, provided in such which case the replacement property will be deemed to be Award Property under the DOE Award and DOE will have the same interests in such replacement property as it had in the Award Property that was lost or damaged. DOE acknowledges that the Recipient (or the Creditor on behalf of the Recipient if the Loan Documents so provide) will have control over all negotiations with the insurance companies in respect of any lost



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or damaged property and will have the right to adjust or settle any claims for such property with such insurance companies.

d) Notwithstanding the foregoing, in the case of a Disposition of Equity Interests or a Disposition of assets that includes more than just Award Property, the Parties agree that only the portion of the proceeds that is allocable to the Award Property at the time of such Disposition as reasonably determined by the Parties ~~acting reasonably~~ or by a mutually agreeable third party, will be considered Proceeds for purposes of this Agreement.

e) For the avoidance of doubt, nothing contained in this Agreement is intended to prevent or limit the right of the Recipient (or the Creditor on behalf of the Recipient to the extent entitled to do so under the Loan Documents) to exercise the Recipient's ability to terminate the DOE Award under 2 CFR § 200.340(a)(3) and retain title to the Award Property by making the requisite payment to DOE consistent with 2 CFR § 200.311(d)(2), 2 CFR § 200.313(e)(2), or 2 CFR § 910.360(g), as applicable. Upon payment of such requisite amount, DOE will vest unconditional title in the Award Property in the Recipient pursuant to an applicable title vesting authority subject to the Recipient agreeing not to sell or dispose of the Award Property to a Restricted Entity.

1.5 No Contest of Interests. To the extent each Party holds an interest in the same Award Property or portion thereof, each Party acknowledges the other Party's interest in such Award Property, and neither Party will take any action or support any other person or entity in taking any action to challenge such other Party's interest in such Award Property, including the validity, nature, or enforceability of such interest.

1.6 Turnover. If either Party or the Recipient receives any amount in respect of a Disposition of Award Property or Equity Interests that exceeds the amount such entity is entitled to receive pursuant to Section 1.4 above, such entity will promptly notify the other entities and pay such excess amount to the other entity or entities so that the provisions of Section 1.4 are given full effect.

1.7 Filing of UCC Statements.

- a) The Parties shall each have the right to file such financing statements and continuation statements as they deem necessary to perfect or protect their interests in the Award Property.
- b) Upon both (i) the exercise by DOE of an applicable title vesting authority in the Recipient or a New Performer, as applicable, and (ii) if applicable, receipt by DOE of the amounts to which it is entitled pursuant to this Agreement and applicable regulations, DOE will, at the



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time of such exercise of such vesting authority (or, if not reasonably practicable at the time of exercise, as promptly (as practicable thereafter and in any event within 210 calendar days) either prepare and file or authorize the Recipient or New Performer, as applicable, to prepare and file in the appropriate filing records a UCC-3 termination statement with regard to its DOE's interest in the Award Property.

1.8 Bankruptcy of Recipient. If the Recipient enters bankruptcy, either voluntarily or involuntarily, the Creditor acknowledges that the DOE interest in the Award Property is not part of the bankruptcy estate and the plan of reorganization or liquidation calls for the Award Property to be sold or otherwise disposed of, DOE and the Creditor agree to cooperate to assure (a) the Award Property or Equity Interests, as applicable, are sold or disposed of for maximum value other than to a Restricted Entity as defined in Section 1.3(c)(ii), and (b) the sale proceeds are distributed among the Parties in accordance with the terms of this Agreement and applicable regulations.

1.9 Rights as to Award Property. The Creditor recognizes and acknowledges both the ongoing DOE interest in the Award Property and the right of DOE to ensure use of the Award Property for the purposes set forth in and according to the terms of the DOE Award until DOE acknowledges in writing disposition of the Award Property.

~~a) Except to the extent otherwise provided in this Agreement, each of the Creditor and DOE will be entitled to manage and supervise the Loan Documents and the DOE Award, respectively, with the Recipient in accordance with applicable law and as it may otherwise, in its sole discretion, deem appropriate in accordance with the terms of the Loan Documents and the DOE Award, respectively.~~

1.10 Transfers and Amendments.

- a) If the Creditor sells, transfers, or assigns its rights or interests under the Loan Agreement or any notes thereunder to a third party, it shall state on the face of said sale, transfer, or assignment documents and such notes that the Loan Agreement and the notes issued thereunder are subject to this Agreement. Any such sale, transfer, or assignment that does not comply with this requirement shall ~~be void and shall~~ not be entitled to the benefits of this Agreement.
- b) The ~~Loan Agreement Creditor~~ shall ensure the Loan Documents contain restrictions ~~such to the effect that at no point in time can neither~~ the Loan Agreement ~~or nor~~ any notes issued thereunder can be held by a Restricted Entity.



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~~e) If the Creditor materially alters the terms of any of the Loan Documents, the Creditor shall provide notice to DOE within seven (7) calendar days of the effective date of the revised Loan Document(s).~~

~~DOE shall provide notice to the Creditor of any material changes to the DOE Award affecting the Award Property within seven (7) calendar days of issuance of the material change.~~

ARTICLE II
NOTICE

2.1 Notice. All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be given or made in writing via email and delivered to the intended recipient via the contacts specified below.

U.S. DEPARTMENT OF ENERGY

[NAME OF CREDITOR]

Name: _____
Title: _____
Office: _____
Email: _____
Phone: _____

Name: _____
Title: _____
Office: _____
Email: _____
Phone: _____

These designated contacts may be changed if the Party making the change provides written notice to the other Party at least seven (7) calendar days prior to the effective date of the change.

2.2 Notice of Communications to the Recipient. The Creditor shall provide DOE with a copy of any notice of default or event of default (or words of similar import) or suspension of funding under the Loan Agreement as and when given to the Recipient.

ARTICLE III
MISCELLANEOUS

3.1 Term. This Agreement shall continue only so long as both the Creditor or its permitted successor in interest to the Loan Agreement and DOE hold an interest in any portion of the Award Property or until the Parties agree to terminate this Agreement upon mutual, written consent, provided DOE may terminate this Agreement as a result of a finding of fraud or willful misconduct



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of the Creditor or its permitted successor in interest.

3.2 Confirmation as to Restricted Entity. The Creditor confirms that it is not a Restricted Entity and that no note issued under the Loan Agreement is held by a Restricted Entity.

3.3 Enforcement Costs. No Party is entitled to attorney's or other fees or expenses from the other Party in the event of an action to enforce the terms of this Agreement.

3.4 Successors and Assigns. All the agreements, covenants, stipulations, undertakings, and promises herein that are made for the benefit of the Creditor shall pass to and inure to the benefit of any successors and assigns of the Creditor who become a successor or assign in compliance with the terms of this Agreement and the DOE encumbrance approval attached as Appendix B. Prior to becoming a successor or assign, such entity must execute and deliver to DOE an assumption or binder agreement in form and substance reasonably satisfactory to DOE agreeing to be bound by the terms of this Agreement as the "Creditor".

3.5 Headings. The descriptive headings of the various sections and articles of this Agreement were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

3.6 Modifications and Waivers. Any modification or waiver of any provision of this Agreement, or any consent to any departure by either Party from the terms hereof, shall only be effective when made in writing and signed by the Parties, and then such modification, waiver, or consent shall be effective only in the specific instance and for the specific purpose given, ~~provided that.~~ Notwithstanding the foregoing, DOE may unilaterally require a contractual change to accommodate a statutory or regulatory change when required by law. No failure or delay in exercising any right hereunder shall impair any such right that a Party may have.

3.7 Further Acts. The Parties agree to promptly execute and deliver such further documents and do such further acts and things as may be reasonably required to achieve fully the intent of this Agreement.

3.8 Remedies for Non-Compliance. Upon the occurrence of a breach of this Agreement by either Party, the other Party may pursue all rights and remedies available to it under applicable law or that are otherwise contemplated by this Agreement in the manner, upon the conditions, and with the effect provided therein or herein, including, but not limited to, a suit for specific performance or injunctive relief.

3.9 Severability. If any provision of this Agreement shall for any reason be found or held



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invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity, legality, and enforceability of the remainder of such provision, nor any other provision hereof, and this Agreement shall survive and be construed as if such invalid or unenforceable provision had not been contained therein.

3.10 Counterparts. This Agreement may be executed and delivered in two or more counterparts, each of which so executed and delivered shall be deemed an original and shall constitute but one and the same instrument.

3.11 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with federal law, without regard to any conflict or choice of law provisions. To the extent state law supplies the federal rule of decision, the law of ~~Virginia~~ the State of New York shall provide the applicable state law without regard to any conflict of law provisions. Any action by the Creditor against the United States that is within the exclusive jurisdiction of the United States Court of Federal Claims must be brought in that Court. All other actions shall be brought in the United States District Court for the ~~Eastern~~ District of ~~Virginia~~ Columbia, and the Parties consent to personal jurisdiction and venue in that court.

3.12 Information Sharing. If the Creditor, in connection with any Enforcement Action (as defined above) over the Award Property, receives possession or control of any books and records that contain information identifying or pertaining to any of the Award Property, it shall notify DOE that it has received such books and records and if requested by DOE shall, as promptly as practicable thereafter, make duplicate copies of such books and records in the same form as the original available to the Creditor and deliver such copies to DOE.



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IN WITNESS WHEREOF, the Parties have executed this Agreement.

U.S. DEPARTMENT OF ENERGY

[NAME OF CREDITOR]

By: _____
[DIRECTOR NAME]
[DIRECTOR TITLE]

By: _____
[NAME]
[TITLE]
[COMPANY NAME]

Dated: _____

Dated: _____

Acknowledged **and Agreed** by:

[NAME OF RECIPIENT]

By: _____
[NAME]
[TITLE]
[COMPANY NAME]

Dated: _____

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Appendix A: Description of Loan Documents

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Appendix B: Encumbrance Approval and Award Property Description

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Appendix C: Recipient Account Information

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