

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

FORM 10-Q

(Mark One)

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

For the Quarterly Period Ended September 30, 2023

Or

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

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

Commission file number **1-16811**



**United States Steel Corporation**

**United States Steel Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**25-1897152**

(IRS Employer Identification No.)

**600 Grant Street, Pittsburgh, PA**

(Address of principal executive offices)

**15219-2800**

(Zip Code)

**(412) 433-1121**

(Registrant's telephone number, including area code)

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

Title of each class	Trading Symbol	Name of each exchange on which registered
United States Steel Corporation Common Stock	X	New York Stock Exchange
United States Steel Corporation Common Stock	X	Chicago Stock Exchange

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

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

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

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company  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.

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

Common stock outstanding at October 23, 2023 – 223,038,500 shares

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### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains information that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. We intend the forward-looking statements to be covered by the safe harbor provisions for forward-looking statements in those sections. Generally, we have identified such forward-looking statements by using the words “believe,” “expect,” “intend,” “estimate,” “anticipate,” “project,” “target,” “forecast,” “aim,” “should,” “plan,” “goal,” “future,” “will,” “may” and similar expressions or by using future dates in connection with any discussion of, among other things, the construction or operation of new or existing facilities or operating capabilities, the timing, size and form of share repurchase transactions, operating or financial performance, trends, events or developments that we expect or anticipate will occur in the future, statements relating to volume changes, share of sales and earnings per share changes, anticipated cost savings, potential capital and operational cash improvements, changes in the global economic environment, including supply and demand conditions, inflation, interest rates, supply chain disruptions and changes in prices for our products, international trade duties and other aspects of international trade policy, statements regarding our future strategies, products and innovations, statements regarding our greenhouse gas emissions reduction goals, statements regarding existing or new regulations and statements expressing general views about future operating results. However, the absence of these words or similar expressions does not mean that a statement is not forward-looking. Forward-looking statements include all statements that are not historical facts, but instead represent only the Company’s beliefs regarding goals, plans and expectations about our prospects for the future and other future events, many of which, by their nature, are inherently uncertain, qualified by important factors and outside of the Company’s control. It is possible that the Company’s actual results and financial condition may differ, possibly materially, from the anticipated results and financial condition indicated in these forward-looking statements. Management believes that these forward-looking statements are reasonable as of the time made. However, caution should be taken not to place undue reliance on any such forward-looking statements because such statements speak only as of the date when made. Our Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In addition, forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from our Company’s historical experience and our present expectations or projections. These risks and uncertainties include, but are not limited to, whether the objectives of the Company’s previously announced strategic alternatives review process will be achieved; the terms, timing, structure, benefits and costs of any strategic transaction; whether any such transaction will be consummated at all; the risk that the strategic alternatives review process and its announcement could have an adverse effect on the ability of the Company to retain customers and retain and hire key personnel and maintain relationships with customers, suppliers, employees, shareholders and other business relationships and on its operating results and business generally; the risk that the strategic alternatives review process could divert the attention and time of the Company’s management, the risk of any unexpected costs or expenses resulting from the strategic alternatives review process; the risk of any litigation relating to the strategic alternatives review process; and the risks and uncertainties described in this report and in “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, and those described from time to time in our future reports filed with the Securities and Exchange Commission (SEC).

References in this Quarterly Report on Form 10-Q to (i) “U. S. Steel,” “the Company,” “we,” “us,” and “our” refer to United States Steel Corporation and its consolidated subsidiaries unless otherwise indicated by the context and (ii) “Big River Steel” refer to Big River Steel Holdings LLC and its direct and indirect subsidiaries unless otherwise indicated by the context.

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS**  
(Unaudited)

(Dollars in millions, except per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
<b>Net sales:</b>				
Net sales	\$ 3,943	\$ 4,667	\$ 12,375	\$ 15,304
Net sales to related parties (Note 19)	488	536	1,534	1,423
Total (Note 6)	4,431	5,203	13,909	16,727
<b>Operating expenses (income):</b>				
Cost of sales (excludes items shown below)	3,838	4,359	11,952	12,843
Selling, general and administrative expenses	118	95	320	324
Depreciation, depletion and amortization	230	198	675	594
Earnings from investees	(51)	(71)	(76)	(202)
Asset impairment charges	—	—	4	157
Restructuring and other charges (Note 20)	18	23	21	57
Other losses (gains), net	1	(15)	(17)	(32)
Total	4,154	4,589	12,879	13,741
<b>Earnings before interest and income taxes</b>	277	614	1,030	2,986
Interest expense	16	38	63	127
Interest income	(39)	(15)	(103)	(20)
Other financial costs	7	7	19	27
Net periodic benefit income	(42)	(60)	(125)	(182)
Net gain from investments related to active employee benefits (Note 16)	(6)	—	(36)	—
Net interest and other financial benefits	(64)	(30)	(182)	(48)
<b>Earnings before income taxes</b>	341	644	1,212	3,034
Income tax expense (Note 12)	42	154	237	684
Net earnings	299	490	975	2,350
Less: Net earnings attributable to noncontrolling interests	—	—	—	—
<b>Net earnings attributable to United States Steel Corporation</b>	\$ 299	\$ 490	\$ 975	\$ 2,350
<b>Earnings per common share (Note 13):</b>				
Earnings per share attributable to United States Steel Corporation stockholders:				
-Basic	\$ 1.34	\$ 2.07	\$ 4.33	\$ 9.33
-Diluted	\$ 1.20	\$ 1.85	\$ 3.86	\$ 8.38

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF COMPREHENSIVE INCOME**  
(Unaudited)

(Dollars in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Net earnings	\$ 299	\$ 490	\$ 975	\$ 2,350
Other comprehensive income (loss), net of tax:				
Changes in foreign currency translation adjustments	(35)	(92)	(4)	(220)
Changes in pension and other employee benefit accounts	(13)	—	(35)	(2)
Changes in derivative financial instruments	47	18	36	54
Changes in fair value of active employee benefit investments	1	—	3	—
Total other comprehensive income (loss), net of tax	—	(74)	—	(168)
Comprehensive income including noncontrolling interest	299	416	975	2,182
Comprehensive income attributable to noncontrolling interest	—	—	—	—
Comprehensive income attributable to United States Steel Corporation	\$ 299	\$ 416	\$ 975	\$ 2,182

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEET**  
(Unaudited)

(Dollars in millions)	September 30, 2023	December 31, 2022
<b>Assets</b>		
Current assets:		
Cash and cash equivalents (Note 7)	\$ 3,222	\$ 3,504
Receivables, less allowance of \$39 and \$38	1,404	1,485
Receivables from related parties (Note 19)	137	150
Inventories (Note 8)	2,304	2,359
Other current assets	328	368
Total current assets	7,395	7,866
Long-term restricted cash (Note 7)	32	31
Operating lease assets	116	146
Property, plant and equipment	23,097	21,222
Less accumulated depreciation and depletion	13,186	12,730
Total property, plant and equipment, net	9,911	8,492
Investments and long-term receivables, less allowance of \$3 and \$4	863	840
Intangibles, net (Note 9)	447	478
Deferred income tax benefits (Note 12)	—	10
Goodwill (Note 9)	920	920
Other noncurrent assets	711	675
Total assets	\$ 20,395	\$ 19,458
<b>Liabilities</b>		
Current liabilities:		
Accounts payable and other accrued liabilities	\$ 2,759	\$ 2,873
Accounts payable to related parties (Note 19)	180	143
Payroll and benefits payable	498	493
Accrued taxes	169	271
Accrued interest	52	67
Current operating lease liabilities	45	49
Short-term debt and current maturities of long-term debt (Note 15)	98	63
Total current liabilities	3,801	3,959
Noncurrent operating lease liabilities	79	105
Long-term debt, less unamortized discount and debt issuance costs (Note 15)	4,129	3,914
Employee benefits	138	209
Deferred income tax liabilities (Note 12)	712	456
Deferred credits and other noncurrent liabilities	439	504
Total liabilities	9,298	9,147
Contingencies and commitments (Note 21)		
<b>Stockholders' Equity (Note 17):</b>		
Common stock (284,962,478 and 282,487,412 shares issued) (Note 13)	285	283
Treasury stock, at cost (61,932,549 shares and 54,089,559 shares)	(1,402)	(1,204)
Additional paid-in capital	5,235	5,194
Retained earnings	6,971	6,030
Accumulated other comprehensive loss (Note 18)	(85)	(85)
Total United States Steel Corporation stockholders' equity	11,004	10,218
Noncontrolling interests	93	93
Total liabilities and stockholders' equity	\$ 20,395	\$ 19,458

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

**UNITED STATES STEEL CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENT OF CASH FLOWS**  
(Unaudited)

(Dollars in millions)	Nine Months Ended September 30,	
	2023	2022
<b>Increase (decrease) in cash, cash equivalents and restricted cash</b>		
<b>Operating activities:</b>		
Net earnings	\$ 975	\$ 2,350
Adjustments to reconcile to net cash provided by operating activities:		
Depreciation, depletion and amortization	675	594
Asset impairment charges	4	157
Restructuring and other charges (Note 20)	21	57
Pensions and other postretirement benefits	(124)	(164)
Active employee benefit investments	20	—
Deferred income taxes (Note 12)	275	561
Net gain on sale of assets	(2)	(10)
Equity investee earnings, net of distributions received	(75)	(181)
Changes in:		
Current receivables	99	(36)
Inventories	52	(697)
Current accounts payable and accrued expenses	76	188
Income taxes receivable/payable	(86)	(88)
All other, net	(199)	19
Net cash provided by operating activities	<u>1,711</u>	<u>2,750</u>
<b>Investing activities:</b>		
Capital expenditures	(1,939)	(1,138)
Proceeds from cost reimbursement government grants (Note 21)	—	53
Proceeds from sale of assets	4	28
Other investing activities	—	(8)
Net cash used in investing activities	<u>(1,935)</u>	<u>(1,065)</u>
<b>Financing activities:</b>		
Issuance of long-term debt, net of financing costs (Note 15)	241	291
Repayment of long-term debt (Note 15)	(69)	(375)
Common stock repurchased (Note 22)	(175)	(699)
Proceeds from government incentives (Note 21)	—	82
Other financing activities	(50)	(51)
Net cash used in financing activities	<u>(53)</u>	<u>(752)</u>
<b>Effect of exchange rate changes on cash</b>	(3)	(46)
<b>Net (decrease) increase in cash, cash equivalents and restricted cash</b>	(280)	887
<b>Cash, cash equivalents and restricted cash at beginning of year (Note 7)</b>	<u>3,539</u>	<u>2,600</u>
<b>Cash, cash equivalents and restricted cash at end of period (Note 7)</b>	<u>\$ 3,259</u>	<u>\$ 3,487</u>
<b>Non-cash investing and financing activities:</b>		
Change in accrued capital expenditures	\$ (82)	\$ 373
U. S. Steel common stock issued for employee/non-employee director stock plans	29	46
Capital expenditures funded by finance lease borrowings	74	43
Export Credit Agreement (ECA) financing	5	—

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

## Notes to Condensed Consolidated Financial Statements (Unaudited)

### 1. **Basis of Presentation and Significant Accounting Policies**

The year-end Consolidated Balance Sheet data was derived from audited statements but does not include all disclosures required for complete financial statements by accounting principles generally accepted in the United States of America (U.S. GAAP). The other information in these condensed financial statements is unaudited but, in the opinion of management, reflects all adjustments necessary for a fair statement of the results for the periods covered, including assessment of certain accounting matters using all available information such as consideration of forecasted financial information in context with other information reasonably available to us. However, our future assessment of our current expectations could result in material impacts to our consolidated financial statements in future reporting periods. All such adjustments are of a normal recurring nature unless disclosed otherwise. These condensed financial statements, including notes, have been prepared in accordance with the applicable rules of the SEC and do not include all of the information and disclosures required by U.S. GAAP for complete financial statements. Additional information is contained in the United States Steel Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 2022, which should be read in conjunction with these condensed financial statements.

### 2. **New Accounting Standards**

During the nine months ended September 30, 2023, there were no accounting standards and interpretations issued which are expected to have a material impact on the Company's financial position, operations or cash flows.

### 3. **Recently Adopted Accounting Standards**

In September 2022, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update 2022-04, *Disclosure of Supplier Finance Program Obligations* (ASU 2022-04). ASU 2022-04 requires that an entity disclose certain information about supplier finance programs used in connection with the purchase of goods and services. ASU 2022-04 is effective for all entities with fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, except for the amendment on roll-forward information, which is effective for fiscal years beginning after December 15, 2023. U. S. Steel adopted this guidance effective January 1, 2023, with the exception of the amendment on roll-forward information, which will be adopted in our fiscal year beginning on January 1, 2024.

The Company has a supply chain finance (SCF) arrangement with a third-party administrator which allows participating suppliers, at their sole discretion, to make offers to sell payment obligations of the Company prior to their scheduled due dates at a discounted price to a participating financial institution. The third-party administrator entered into a separate agreement with the Export Import Bank of the United States to guarantee 90 percent of supplier obligations sold for up to \$200 million. No guarantees or collateral are provided by the Company or any of its subsidiaries under the SCF program, and the Company does not benefit from any preferential payment terms or discounts as a result of supplier participation.

The Company's goal is to capture overall supplier savings and improve working capital efficiency. The agreements facilitate the suppliers' ability to sell payment obligations, while providing them with greater working capital flexibility. The Company has no economic interest in the sale of the suppliers' receivables and no direct financial relationship with the financial institution concerning these services. The Company's obligations to its suppliers, including amounts due and scheduled payment dates, are not impacted by suppliers' decisions to sell amounts under the arrangements. The SCF program requires the Company to pay the third-party administrator the stated amount of the confirmed participating supplier invoices. The payment terms for confirmed invoices range from 75 to 90 days after the end of the month in which the invoice was issued.

The underlying costs from suppliers that elected to participate in the SCF program are generally recorded in cost of sales in the Company's Condensed Consolidated Statement of Operations. Amounts due to suppliers who participate in the SCF program are reflected in accounts payable and accrued expenses on the Company's Condensed Consolidated Balance Sheet and payments on the obligations by our suppliers are included in cash used in operating activities in the Condensed Consolidated Statement of Cash Flows. As of September 30, 2023, accounts payable and accrued expenses included \$93 million of outstanding payment obligations which suppliers elected to sell to participating financial institutions.

In October 2021, the FASB issued Accounting Standards Update 2021-08, *Accounting for Contract Assets and Contract Liabilities from Contracts with Customers* (ASU 2021-08). ASU 2021-08 requires that an entity recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606, *Revenue from Contracts with Customers*. ASU 2021-08 is effective for public companies with fiscal years beginning after December 15, 2022, and interim periods within those fiscal years, with early adoption of all amendments in the same period permitted. U. S. Steel adopted this guidance effective January 1, 2023, and will apply it to any future business combinations.

### 4. **Segment Information**

U. S. Steel has four reportable segments: North American Flat-Rolled (Flat-Rolled), Mini Mill, U. S. Steel Europe (USSE); and Tubular Products (Tubular). The results of our real estate businesses are disclosed in the Other category.

The chief operating decision maker evaluates performance and determines resource allocations based on a number of factors, the primary measure being earnings (loss) before interest and income taxes. Earnings (loss) before interest and income taxes for reportable segments and the Other category does not include net interest and other financial costs (income), income taxes, stock-based compensation expense, and certain other items that management believes are not indicative of future results.

The accounting principles applied at the operating segment level in determining earnings (loss) before interest and income taxes are generally the same as those applied at the consolidated financial statement level. Intersegment sales and transfers are accounted for at market-based prices and are eliminated at the corporate consolidation level. Corporate-level selling, general and administrative expenses and costs related to certain former businesses are allocated to the reportable segments and Other based on measures of activity that management believes are reasonable.

The results of segment operations for the three months ended September 30, 2023, and 2022 are:

(In millions) Three Months Ended September 30, 2023	Customer Sales	Intersegment Sales	Net Sales	Earnings from investees	Earnings (loss) before interest and income taxes <sup>(a)</sup>
Flat-Rolled	\$ 2,749	\$ 85	\$ 2,834	\$ 39	\$ 225
Mini Mill	529	140	669	—	42
USSE	838	6	844	—	(13)
Tubular	314	—	314	12	87
Total reportable segments	4,430	231	4,661	51	341
Other	1	—	1	—	7
Reconciling Items and Eliminations	—	(231)	(231)	—	(71)
Total	\$ 4,431	\$ —	\$ 4,431	\$ 51	\$ 277
<b>Three Months Ended September 30, 2022</b>					
Flat-Rolled	\$ 3,248	\$ 104	\$ 3,352	\$ 59	\$ 518
Mini Mill	602	60	662	—	1
USSE	925	2	927	—	(32)
Tubular	425	—	425	12	155
Total reportable segments	5,200	166	5,366	71	642
Other	3	—	3	—	21
Reconciling Items and Eliminations	—	(166)	(166)	—	(49)
Total	\$ 5,203	\$ —	\$ 5,203	\$ 71	\$ 614

<sup>(a)</sup> Earnings (loss) before interest and income taxes has been updated for the three months ended September 30, 2022, for Flat-Rolled and Reconciling Items and Eliminations. This is the result of a retroactive adjustment for the reclassification of stock-based compensation expense as an item not allocated to segment results. See the schedule of reconciling items to consolidated earnings before interest and income taxes below for further details.

The results of segment operations for the nine months ended September 30, 2023, and 2022 are:

(In millions) Nine Months Ended September 30, 2023	Customer Sales	Intersegment Sales	Net Sales	Earnings from investees	Earnings (loss) before interest and income taxes <sup>(a)</sup>
Flat-Rolled	\$ 8,275	\$ 268	\$ 8,543	\$ 52	\$ 449
Mini Mill	1,701	379	2,080	—	186
USSE	2,708	19	2,727	—	25
Tubular	1,217	1	1,218	24	476
Total reportable segments	13,901	667	14,568	76	1,136
Other	8	—	8	—	(2)
Reconciling Items and Eliminations	—	(667)	(667)	—	(104)
Total	\$ 13,909	\$ —	\$ 13,909	\$ 76	\$ 1,030
<b>Nine Months Ended September 30, 2022</b>					
Flat-Rolled	\$ 9,926	\$ 303	\$ 10,229	\$ 175	\$ 1,840
Mini Mill	2,158	337	2,495	—	549
USSE	3,518	10	3,528	—	512
Tubular	1,115	5	1,120	27	339
Total reportable segments	16,717	655	17,372	202	3,240
Other	10	—	10	—	16
Reconciling Items and Eliminations	—	(655)	(655)	—	(270)
Total	\$ 16,727	\$ —	\$ 16,727	\$ 202	\$ 2,986

<sup>(a)</sup> Earnings (loss) before interest and income taxes has been updated for the nine months ended September 30, 2022, for Flat-Rolled and Reconciling Items and Eliminations. This is the result of a retroactive adjustment for the reclassification of stock-based compensation expense as an item not allocated to segment results. See the schedule of reconciling items to consolidated earnings before interest and income taxes below for further details.

A summary of total assets by segment is as follows:

(In millions)	September 30, 2023	December 31, 2022
Flat-Rolled	\$ 7,779	\$ 7,936
Mini Mill <sup>(a)</sup>	7,074	5,787
USSE <sup>(b)</sup>	2,240	2,175
Tubular	1,027	1,140
Total reportable segments	\$ 18,120	\$ 17,038
Other	\$ 136	\$ 141
Corporate, reconciling items, and eliminations <sup>(b) (c)</sup>	2,139	2,279
Total assets	\$ 20,395	\$ 19,458

<sup>(a)</sup> Includes assets of \$2.5 billion and \$1.4 billion at September 30, 2023, and December 31, 2022, respectively, related to a new technologically advanced flat rolled steelmaking facility, Big River 2 (BR2), currently under construction near Osceola, Arkansas.

<sup>(b)</sup> In the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2022, the amounts disclosed for total assets for USSE and Corporate were inadvertently misstated for an intersegment balance. Management determined the disclosure misstatement was not material to the 2022 financial statements. The revised amounts have been included in the table above.

<sup>(c)</sup> The majority of corporate, reconciling items, and eliminations is comprised of cash and the elimination of intersegment amounts.

The following is a schedule of reconciling items to consolidated earnings before interest and income taxes:

(In millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Items not allocated to segments:				
Restructuring and other charges (Note 20)	\$ (18)	\$ (23)	\$ (21)	\$ (57)
Stock-based compensation expense (Note 11)	(14)	(13)	(37)	(45)
Asset impairment charges	—	—	(4)	(157)
Environmental remediation charges	(9)	(13)	(11)	(13)
Strategic alternatives review process costs	(16)	—	(16)	—
Granite City idling costs	(14)	—	(14)	—
Other charges, net	—	—	(1)	2
<b>Total reconciling items</b>	<b>\$ (71)</b>	<b>\$ (49)</b>	<b>\$ (104)</b>	<b>\$ (270)</b>

## 5. Disposition

In January 2022, the Company informed its employees, customers, and other key stakeholders that the Company would be idling its subsidiary in Pittsburg, California, USS-UPI, LLC ("UPI"), at the end of 2023. UPI primarily produces galvanized sheet and tin mill products. In September 2023, the Company issued WARN notices to employees at UPI to notify them of employment losses resulting from the idling of operations. As of September 30, 2023, the Company had accrued a total of \$120 million for severance, exit costs and employee benefits. \$1 million of these charges were incurred during the nine months ended September 30, 2023. No payments for these charges have been made as of September 30, 2023. The Company has previously committed to, and continues to intend to, pursue the disposition of certain assets related to the UPI facility.

## 6. Revenue

Revenue is generated primarily from contracts to produce, ship and deliver steel products, and to a lesser extent, raw materials sales such as iron ore pellets and coke by-products and real estate sales. Generally, U. S. Steel's performance obligations are satisfied and revenue is recognized when title transfers to our customer for product shipped or services are provided. Revenues are recorded net of any sales incentives. Shipping and other transportation costs charged to customers are treated as fulfillment activities and are recorded in both revenue and cost of sales at the time control is transferred to the customer. Costs related to obtaining sales contracts are incidental and are expensed when incurred. Because customers are invoiced at the time title transfers and U. S. Steel's right to consideration is unconditional at that time, U. S. Steel does not maintain contract asset balances. Additionally, U. S. Steel does not maintain contract liability balances, as performance obligations are satisfied prior to customer payment for product. U. S. Steel offers industry standard payment terms.

The following tables disaggregate our revenue by product for each of the reportable business segments for the three months and nine months ended September 30, 2023, and 2022, respectively:

### Net Sales by Product (In millions):

Three Months Ended September 30, 2023	Flat-Rolled	Mini Mill	USSE	Tubular	Other	Total
Semi-finished	\$ 68	\$ —	\$ 43	\$ —	\$ —	\$ 111
Hot-rolled sheets	422	263	388	—	—	1,073
Cold-rolled sheets	916	101	61	—	—	1,078
Coated sheets	893	164	312	—	—	1,369
Tubular products	—	—	13	310	—	323
All Other <sup>(a)</sup>	450	1	21	4	1	477
<b>Total</b>	<b>\$ 2,749</b>	<b>\$ 529</b>	<b>\$ 838</b>	<b>\$ 314</b>	<b>\$ 1</b>	<b>\$ 4,431</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Three Months Ended September 30, 2022</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 48	\$ —	\$ 27	\$ —	\$ —	\$ 75
Hot-rolled sheets	622	332	389	—	—	1,343
Cold-rolled sheets	974	92	73	—	—	1,139
Coated sheets	1,127	176	376	—	—	1,679
Tubular products	—	—	20	418	—	438
All Other <sup>(a)</sup>	477	2	40	7	3	529
<b>Total</b>	<b>\$ 3,248</b>	<b>\$ 602</b>	<b>\$ 925</b>	<b>\$ 425</b>	<b>\$ 3</b>	<b>\$ 5,203</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Nine Months Ended September 30, 2023</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 204	\$ —	\$ 113	\$ —	\$ —	\$ 317
Hot-rolled sheets	1,525	926	1,243	—	—	\$ 3,694
Cold-rolled sheets	2,775	275	212	—	—	\$ 3,262
Coated sheets	2,668	496	1,009	—	—	\$ 4,173
Tubular products	—	—	40	1,203	—	\$ 1,243
All Other <sup>(a)</sup>	1,103	4	91	14	8	\$ 1,220
<b>Total</b>	<b>\$ 8,275</b>	<b>\$ 1,701</b>	<b>\$ 2,708</b>	<b>\$ 1,217</b>	<b>\$ 8</b>	<b>\$ 13,909</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

<b>Nine Months Ended September 30, 2022</b>	<b>Flat-Rolled</b>	<b>Mini Mill</b>	<b>USSE</b>	<b>Tubular</b>	<b>Other</b>	<b>Total</b>
Semi-finished	\$ 177	\$ —	\$ 90	\$ —	\$ —	\$ 267
Hot-rolled sheets	1,846	1,238	1,618	—	—	\$ 4,702
Cold-rolled sheets	3,053	307	335	—	—	\$ 3,695
Coated sheets	3,687	606	1,315	—	—	\$ 5,608
Tubular products	—	—	56	1,103	—	\$ 1,159
All Other <sup>(a)</sup>	1,163	7	104	12	10	\$ 1,296
<b>Total</b>	<b>\$ 9,926</b>	<b>\$ 2,158</b>	<b>\$ 3,518</b>	<b>\$ 1,115</b>	<b>\$ 10</b>	<b>\$ 16,727</b>

<sup>(a)</sup> Consists primarily of sales of raw materials and coke making by-products.

## 7. **Cash, Cash Equivalents and Restricted Cash**

The following table provides a reconciliation of cash, cash equivalents and restricted cash reported within U. S. Steel's Condensed Consolidated Balance Sheets that sum to the total of the same amounts shown in the Condensed Consolidated Statement of Cash Flows:

<b>(In millions)</b>	<b>September 30, 2023</b>	<b>December 31, 2022</b>	<b>September 30, 2022</b>
Cash and cash equivalents	\$ 3,222	\$ 3,504	\$ 3,364
Restricted cash in other current assets	5	4	—
Long-term restricted cash	32	31	123
<b>Total cash, cash equivalents and restricted cash</b>	<b>\$ 3,259</b>	<b>\$ 3,539</b>	<b>\$ 3,487</b>

Amounts included in restricted cash represent cash balances which are legally or contractually restricted, primarily for insurance purposes, environmental liabilities and other capital projects.

## 8. **Inventories**

The last-in, first-out (LIFO) method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. The first-in, first-out (FIFO) and moving average methods are the predominant inventory costing methods for our Mini Mill segment and the FIFO method is the predominant inventory costing method for our USSE segment. At September 30, 2023, and December 31, 2022, the LIFO method accounted for 44 percent and 43 percent of total inventory values, respectively.

(In millions)	September 30, 2023	December 31, 2022
Raw materials	\$ 850	\$ 1,098
Semi-finished products	934	811
Finished products	477	398
Supplies and sundry items	43	52
<b>Total</b>	<b>\$ 2,304</b>	<b>\$ 2,359</b>

Current acquisition costs for LIFO inventories were estimated to exceed the above inventory values by \$1.3 billion and \$1.2 billion at September 30, 2023, and December 31, 2022, respectively. As a result of the liquidation of LIFO inventories, cost of sales decreased and earnings before interest and income taxes increased by \$33 million and \$45 million for the three months and nine months ended September 30, 2023, respectively. Cost of sales decreased and earnings before interest and income taxes increased by \$1 million and \$8 million for the three and nine months ended September 30, 2022, respectively, as a result of liquidation of LIFO inventories.

## 9. Intangible Assets and Goodwill

Intangible assets that are being amortized on a straight-line basis over their estimated useful lives are detailed below:

(In millions)	Useful Lives	As of September 30, 2023			As of December 31, 2022		
		Gross Carrying Amount	Accumulated Amortization	Net Amount	Gross Carrying Amount	Accumulated Amortization	Net Amount
Customer relationships	22 Years	\$ 413	\$ 51	\$ 362	\$ 413	\$ 37	\$ 376
Patents	5-15 Years	17	13	4	17	12	5
Energy Contract	2 Years	54	48	6	54	32	22
Total amortizable intangible assets		\$ 484	\$ 112	\$ 372	\$ 484	\$ 81	\$ 403

Amortization expense was \$31 million for both the nine months ended September 30, 2023 and 2022.

Total estimated amortization expense for the remainder of 2023 is \$10 million. We expect approximately \$98 million in total amortization expense from 2024 through 2028 and approximately \$263 million in remaining amortization expense thereafter.

The carrying amount of acquired water rights with indefinite lives as of September 30, 2023, and December 31, 2022, totaled \$75 million.

Below is a summary of goodwill by segment for the nine months ended September 30, 2023:

	Flat-Rolled	Mini Mill	USSE	Tubular	Total
Balance at December 31, 2022	\$ —	\$ 916	\$ 4	\$ —	\$ 920
Additions	—	—	—	—	—
Balance at September 30, 2023	\$ —	\$ 916	\$ 4	\$ —	\$ 920

## 10. Pensions and Other Benefits

The following table reflects the components of net periodic benefit cost (income) for the three months ended September 30, 2023, and 2022:

(In millions)	Pension Benefits		Other Benefits	
	2023	2022	2023	2022
Service cost	\$ 9	\$ 11	\$ 1	\$ 2
Interest cost	56	40	17	13
Expected return on plan assets	(82)	(89)	(15)	(23)
Amortization of prior service cost (credit)	4	—	(6)	(6)
Amortization of actuarial net loss (gain)	3	18	(18)	(13)
Net periodic benefit income, excluding below	(10)	(20)	(21)	(27)
Multiemployer plans	20	18	—	—
Net periodic benefit cost (income)	\$ 10	\$ (2)	\$ (21)	\$ (27)

The following table reflects the components of net periodic benefit cost (income) for the nine months ended September 30, 2023, and 2022:

(In millions)	Pension Benefits		Other Benefits	
	2023	2022	2023	2022
Service cost	\$ 25	\$ 33	\$ 4	\$ 6
Interest cost	166	118	51	37
Expected return on plan assets	(246)	(267)	(45)	(68)
Amortization of prior service cost (credit)	13	1	(18)	(19)
Amortization of actuarial net loss (gain)	9	54	(54)	(39)
Net periodic benefit income, excluding below	(33)	(61)	(62)	(83)
Multiemployer plans	62	56	—	—
Settlement, termination and curtailment losses <sup>(a)</sup>	—	4	—	2
Net periodic benefit cost (income)	\$ 29	\$ (1)	\$ (62)	\$ (81)

(a) During the nine months ended September 30, 2022, pension and other postretirement benefits incurred special termination charges of approximately \$6 million due to workforce restructuring.

### Employer Contributions

During the first nine months of 2023, U. S. Steel made cash payments of \$61 million to the Steelworkers Pension Trust and \$3 million of pension payments not funded by trusts.

During the first nine months of 2023, cash payments of \$28 million were made for other postretirement benefit payments not funded by trusts.

Company contributions to defined contribution plans totaled \$13 million and \$11 million for the three months ended September 30, 2023, and 2022, respectively. Company contributions to defined contribution plans totaled \$37 million and \$34 million for the nine months ended September 30, 2023, and 2022, respectively.

## 11. Stock-Based Compensation Plans

U. S. Steel has outstanding stock-based compensation awards that were granted by the Compensation & Organization Committee (the Committee) of the Board of Directors, or its designee, under the 2005 Stock Incentive Plan (the 2005 Plan) and the 2016 Omnibus Incentive Compensation Plan, as amended and restated (the Omnibus Plan). On April 26, 2016, the Company's stockholders approved the Omnibus Plan and, between 2016 and the present, authorized the Company to issue up to 32,700,000 shares in the aggregate of U. S. Steel common stock under the Omnibus Plan. While the awards that were previously granted under the 2005 Plan remain outstanding, all future awards will be granted under the Omnibus Plan. As of September 30, 2023, there were 6,147,757 shares available for future grants under the Omnibus Plan.

Recent grants of stock-based compensation consist of restricted stock units, total stockholder return (TSR) performance awards and return on capital employed (ROCE) performance awards. Shares of common stock under the Omnibus Plan are issued from authorized, but unissued stock. The following table is a summary of the awards made under the Omnibus Plan during the first nine months of 2023 and 2022.

Grant Details	2023		2022	
	Shares <sup>(a)</sup>	Fair Value <sup>(b)</sup>	Shares <sup>(a)</sup>	Fair Value <sup>(b)</sup>
Restricted Stock Units	1,281,020	\$ 29.90	1,225,820	\$ 24.26
Performance Awards <sup>(c)</sup>				
TSR	185,120	\$ 37.41	236,520	\$ 28.41
ROCE <sup>(d)</sup>	357,020	\$ 29.35	408,870	\$ 23.59
Performance-Based Restricted Stock Units	—	\$ —	83,951	\$ 23.07

<sup>(a)</sup> The share amounts shown in this table do not reflect an adjustment for estimated forfeitures.

<sup>(b)</sup> Represents the per share weighted average for all grants during the period.

<sup>(c)</sup> The number of performance awards shown represents the target share grant of the award.

<sup>(d)</sup> A portion of ROCE awards granted in 2023 and 2022 are not shown in the table because they were granted in cash.

U. S. Steel recognized pretax stock-based compensation expense in the amount of \$14 million and \$13 million in the three-month periods ended September 30, 2023, and 2022, respectively and \$37 million and \$45 million in the first nine months of 2023 and 2022, respectively.

As of September 30, 2023, total future compensation expense related to nonvested stock-based compensation arrangements was \$56 million, and the weighted average period over which this expense is expected to be recognized is approximately 24 months.

### Stock Options

There have been no stock options granted since 2017 other than the 171,000 performance-based stock options granted in December 2021, which are further described below.

The 171,000 performance-based stock options granted in December 2021, which were valued using a lattice model, do not become vested and exercisable until the Company's 20-trading day average closing stock price meets or exceeds the following stock price hurdles during the seven-year period beginning on the grant date, as follows:

20-trading day Average Closing Stock Price Achievement During 7-Year Period Beginning on Grant Date <sup>(a)</sup>	Percentage of Performance-Based Stock Options Exercisable
\$ 35.00	33.33 %
\$ 45.00	33.33 %
\$ 55.00	33.34 %

<sup>(a)</sup> The \$35.00 tranche vested in April 2022.

### Stock Awards

Restricted stock units awarded as part of annual grants generally vest ratably over three years. Their fair value is the average market price of the underlying common stock on the date of grant. Restricted stock units granted in connection with new-hire or retention grants generally cliff vest three years from the date of the grant.

TSR performance awards may vest at varying levels at the end of a three-year performance period if U. S. Steel's total shareholder return compared to the total shareholder return of a peer group of companies meets performance criteria during the three-year performance period. TSR is calculated as follows: 20 percent for each year in the three-year performance period and 40 percent for the full three-year period. TSR performance awards may vest and pay out 50 percent at the threshold level, 100 percent at the target level and 200 percent at the maximum level. Payment for performance in between the threshold percentages will be interpolated. The fair value of the performance awards is calculated using a Monte-Carlo simulation.

ROCE performance awards may vest at the end of a three-year performance period contingent upon meeting ROCE performance goals approved by the Committee. For the 2022 and 2023 ROCE performance awards, each year in the three-year performance period is weighted at 20 percent and the full three-year period is weighted at 40 percent of the total award. ROCE performance awards may vest and pay out 50 percent at the threshold level, 100 percent at the target level and 200 percent at the maximum level. Payment for performance in between the threshold percentages will be interpolated. The fair value of the ROCE performance awards is the average market price of the underlying common stock on the date of grant.

In December 2021, and August 2022, special performance-based restricted stock unit awards (PSUs) were granted to members of the Company's executive leadership team. Shares are earned based on the achievement of certain pre-set quantitative performance criteria during the four-year performance period, January 1, 2022, through December 31, 2025. Shares may vest following the expiration of the Performance Period if the Company satisfies the performance criteria.

The Chief Executive Officer was granted PSUs that vest with the following, equally weighted, performance metrics: (i) EBITDA margin expansion, (ii) greenhouse gas emissions intensity reduction, (iii) asset portfolio optimization, (iv) leverage metrics and (v) corporate relative valuation. Other members of the executive leadership team were granted PSUs that vest with performance criteria related to: (i) on time and on budget completion of BR2 (30% of the grant), (ii) EBITDA margin expansion (40% of the grant) and (iii) greenhouse gas emissions intensity reduction (30% of the grant).

For the PSU awards, a pay out is achievable at threshold (50% of target), target (100% of target) or maximum (200% of target) performance achievement. Pay out amounts will be interpolated between the threshold, target and maximum amounts.

## **12. Income Taxes**

### **Tax provision**

For the nine months ended September 30, 2023, and 2022, the Company recorded a tax provision of \$237 million and \$684 million, respectively. The tax provisions for the first nine months of 2023 and 2022 were based on an estimated annual effective rate, which requires management to make its best estimate of annual pretax income or loss and discrete items recognized during the period, if applicable.

The tax provision for the nine months ended September 30, 2023, includes a benefit of \$31 million related to the filing of the 2022 federal income tax return, as well as an additional benefit of \$12 million related to the adjustment of prior years' federal income taxes.

The tax provision for the nine months ended September 30, 2022, includes an expense of \$19 million related to the filing of the 2021 federal income tax return, as well as an additional expense of \$13 million related to the reduction in the Pennsylvania corporate net income tax rate which is being phased in over nine years beginning in 2023.

Throughout the year, management regularly updates forecasted annual pretax results for the various countries in which we operate based on changes in factors such as prices, shipments, product mix, plant operating performance and cost estimates. To the extent that actual 2023 pretax results for U.S. and foreign income or loss vary from estimates applied herein, the actual tax provision or benefit recognized in 2023 could be materially different from the forecasted amount used to estimate the tax provision for the nine months ended September 30, 2023.

In March 2022, the Company and the Arkansas Economic Development Commission entered into the Recycling Tax Credit Incentive Agreement, whereby the Company may earn state income tax credits in an amount equal to 30 percent of the cost of waste reduction, reuse, or recycling equipment, subject to meeting the requirements of the Arkansas Code Ann. Section 26-51-506, for BR2 which is currently under construction near Osceola, Arkansas. Documentation supporting the Company's investment in qualifying equipment must be submitted as part of an application for certification expected to be completed on or before 2025. In March 2022, the Company received a lump-sum payment of approximately \$82 million as proceeds from the sale of a portion of expected future tax credits to be earned by the Company (see Note 21 for additional information). The Company estimates that it could earn tax credits in excess of \$700 million, exclusive of the amount sold in March 2022, which the Company will recognize in the year the assets are placed into service and meet the requirements of Arkansas Code Ann. Section 26-51-506. Any unused tax credit that cannot be claimed in a tax year may be carried forward indefinitely by the Company and applied to its future state tax liability.

On August 16, 2022, H.R. 5376 (commonly called the Inflation Reduction Act of 2022) was signed into law, which, among other things, implemented a corporate alternative minimum tax (CAMT) of 15 percent on net book income of certain large corporations adjusted for certain items prescribed by the legislation. The tax provision for the nine months ended September 30, 2023, reflects the impact of CAMT, which is not material to the Condensed Consolidated Financial Statements.

## **13. Earnings and Dividends Per Common Share**

### **Earnings Per Share Attributable to United States Steel Corporation Stockholders**

The effect of dilutive securities on weighted average common shares outstanding included in the calculation of diluted earnings per common share for the three and nine months ended September 30, 2023, and September 30, 2022, were as follows.

(Dollars in millions, except per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Earnings attributable to United States Steel Corporation stockholders:				
Basic	\$ 299	\$ 490	\$ 975	\$ 2,350
Interest expense on Senior Convertible Notes, net of tax	3	3	10	10
Diluted	\$ 302	\$ 493	\$ 985	\$ 2,360
Weighted-average shares outstanding (in thousands):				
Basic	223,109	237,094	225,311	251,848
Effect of Senior Convertible Notes	26,194	26,194	26,194	26,194
Effect of stock options, restricted stock units and performance awards	3,767	2,976	3,575	3,527
Diluted	253,070	266,264	255,080	281,569
Earnings per share attributable to United States Steel Corporation stockholders:				
Basic	\$ 1.34	\$ 2.07	\$ 4.33	\$ 9.33
Diluted	\$ 1.20	\$ 1.85	\$ 3.86	\$ 8.38

Excluded from the computation of diluted earnings per common share due to their anti-dilutive effect were 0.3 million and 0.4 million outstanding securities granted under the Omnibus Plan for the three and nine months ended September 30, 2023, respectively, and 1.7 million and 0.7 million outstanding securities granted under the Omnibus Plan for the three and nine months ended September 30, 2022, respectively.

The dividend for each of the first, second and third quarters of 2023 and 2022 was five cents per common share.

#### 14. Derivative Instruments

U. S. Steel uses foreign exchange forward sales contracts (foreign exchange forwards) with maturities up to 14 months to manage our currency requirements and exposure to foreign currency exchange rate fluctuations. The USSE and Flat-Rolled segments use hedge accounting for their foreign exchange forwards. The Mini Mill segment has foreign exchange forwards for which hedge accounting has not been elected; therefore, the changes in the fair value of their foreign exchange forwards are recognized immediately in the Consolidated Statements of Operations (mark-to-market accounting).

U. S. Steel also uses financial swaps to protect from the commodity price risk associated with purchases of natural gas, zinc, tin, electricity and iron ore (commodity purchase swaps). We elected cash flow hedge accounting for commodity purchase swaps for natural gas, zinc and tin and iron ore and use mark-to-market accounting for electricity swaps. The commodity purchase swaps where hedge accounting was elected have maturities up to 15 months. The commodity purchase swaps where hedge accounting was not elected have maturities of up to 3 months.

U. S. Steel has entered into financial swaps that are used to partially manage the sales price risk of certain hot-rolled coil sales (sales swaps) and iron ore sales (zero cost collars and swaps). Both the sales swaps and the zero cost collars are accounted for using hedge accounting and have maturities of up to 6 months.

The table below shows the outstanding swap quantities used to hedge forecasted purchases and sales as of September 30, 2023, and September 30, 2022:

Hedge Contracts	Classification	September 30, 2023	September 30, 2022
Natural gas (in mmbtus)	Commodity purchase swaps	21,393,000	59,215,000
Tin (in metric tons)	Commodity purchase swaps	230	885
Zinc (in metric tons)	Commodity purchase swaps	21,100	10,666
Electricity (in megawatt hours)	Commodity purchase swaps	146,400	547,680
Iron ore (in metric tons)	Commodity purchase swaps	123,300	—
Iron ore (in metric tons)	Zero-cost collars	—	432,000
Iron ore (in metric tons)	Sales swaps	483,300	—
Hot-rolled coils (in tons)	Sales swaps	310,000	44,000
Foreign currency (in millions of euros)	Foreign exchange forwards	€ 441	€ 292
Foreign currency (in millions of dollars)	Foreign exchange forwards	\$ 57	\$ 118
Foreign currency (in millions of CAD)	Foreign exchange forwards	\$ —	\$ 4

The following summarizes the fair value amounts included in our Condensed Consolidated Balance Sheets as of September 30, 2023, and December 31, 2022:

Balance Sheet Location (in millions)	September 30, 2023	December 31, 2022
<b>Designated as Hedging Instruments</b>		
Accounts receivable	\$ 30	\$ 20
Accounts payable	49	68
Investments and long-term receivables	1	—
Other long-term liabilities	4	15
<b>Not Designated as Hedging Instruments</b>		
Accounts receivable	2	13
Investments and long-term receivables	—	1

The table below summarizes the effect of hedge accounting on Accumulated Other Comprehensive Income (AOCI) and amounts reclassified from AOCI into earnings for the three and nine months ended September 30, 2023, and 2022:

(In millions)	Gain (Loss) on Derivatives in AOCI			Amount of Gain (Loss) Recognized in Income	
	Three Months Ended September 30, 2023	Three Months Ended September 30, 2022	Location of Reclassification from AOCI <sup>(a)</sup>	Three Months Ended September 30, 2023	Three Months Ended September 30, 2022
Sales swaps	\$ 10	\$ 9	Net sales	\$ (4)	\$ 9
Commodity purchase swaps	32	2	Cost of sales <sup>(b)</sup>	(32)	46
Foreign exchange forwards	19	13	Cost of sales	(5)	—

<sup>(a)</sup> The earnings impact of our hedging instruments substantially offsets the earnings impact of the related hedged items resulting in immaterial ineffectiveness.

<sup>(b)</sup> Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

(In millions)	Gain (Loss) on Derivatives in AOCI			Amount of Gain (Loss) Recognized in Income	
	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022	Location of Reclassification from AOCI <sup>(a)</sup>	Nine Months Ended September 30, 2023	Nine Months Ended September 30, 2022
Sales swaps	\$ 10	\$ 33	Net sales	\$ (13)	\$ (29)
Commodity purchase swaps	23	17	Cost of sales <sup>(b)</sup>	(77)	89
Foreign exchange forwards	14	22	Cost of sales	(2)	30

<sup>(a)</sup> The earnings impact of our hedging instruments substantially offsets the earnings impact of the related hedged items resulting in immaterial ineffectiveness.

<sup>(b)</sup> Costs for commodity purchase swaps are recognized in cost of sales as products are sold.

At current contract values, \$21 million currently in AOCI as of September 30, 2023, will be recognized as an increase in cost of sales over the next year and \$2 million currently in AOCI as of September 30, 2023, will be recognized an increase in net sales over the next year.

Foreign exchange forwards and financial swaps where hedge accounting was not elected generated a net loss of \$0.3 million and \$10 million for the three and nine months ended September 30, 2023, respectively. The gain recognized for foreign exchange forwards and financial sales swaps where hedge accounting was not elected was \$18 million and \$12 million for the three and nine months ended September 30, 2022, respectively.

15. **Debt**

(In millions)	Issuer/Borrower	Interest Rates %	Maturity	September 30, 2023	December 31, 2022
2037 Senior Notes	U. S. Steel	6.650	2037	274	274
2026 Senior Convertible Notes	U. S. Steel	5.000	2026	350	350
2029 Senior Notes	U. S. Steel	6.875	2029	475	475
2029 Senior Secured Notes	Big River Steel	6.625	2029	720	720
Environmental Revenue Bonds	U. S. Steel	4.125 - 6.750	2024 - 2053	1,164	924
Environmental Revenue Bonds	Big River Steel	4.500 - 4.750	2049	752	752
Finance leases and all other obligations	U. S. Steel	Various	2023 - 2029	150	100
Finance leases and all other obligations	Big River Steel	Various	2023 - 2027	171	176
Export Credit Agreement	U. S. Steel	Variable	2031	103	136
Credit Facility Agreement	U. S. Steel	Variable	2027	—	—
Big River Steel ABL Facility	Big River Steel	Variable	2026	—	—
USSK Credit Agreement	U. S. Steel Kosice	Variable	2026	—	—
USSK Credit Facility	U. S. Steel Kosice	Variable	2024	—	—
Total Debt				4,159	3,907
Less unamortized discount, premium, and debt issuance costs				(68)	(70)
Less short-term debt, long-term debt due within one year, and short-term issuance costs				98	63
Long-term debt				\$ 4,129	\$ 3,914

**Arkansas Development Finance Authority Environmental Improvement Revenue Bonds, Series 2023**

On May 18, 2023, U. S. Steel closed on an offering consisting of an aggregate principal amount of \$240 million unsecured Arkansas Development Finance Authority environmental improvement revenue bonds, which carry a green bond designation. The bonds, issued through Arkansas Development Finance Authority, have a coupon rate of 5.700% and carry a final maturity of 2053 (2053 ADFA Green Bonds). U. S. Steel received net proceeds of approximately \$238 million after fees of approximately \$2 million related to the underwriting and third-party expenses, and will pay semiannual interest. The net proceeds from the issuance of the 2053 ADFA Green Bonds were used to partially fund work related to BR2, currently under construction near Osceola, Arkansas.

On and after May 1, 2026, the Company may redeem the 2053 ADFA Green Bonds at its option, at any time in whole or from time to time in part at the redemption prices (expressed in percentages of principal amount) listed below, plus accrued and unpaid interest on the 2053 ADFA Green Bonds, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on May 1 of each of the years indicated below.

Year	Redemption Price
2026	105.000 %
2027	104.000 %
2028	103.000 %
2029	102.000 %
2030	101.000 %
2031 and thereafter	100.000 %

At any time prior to May 1, 2026, U. S. Steel may also redeem the 2053 ADFA Green Bonds, at our option, in whole or in part, or from time to time, at a price equal to the greater of 100 percent of the principal amount of the 2053 ADFA Green Bonds plus accrued and unpaid interest, if any, or the sum of the present value of the redemption price of the 2053 ADFA Green Bonds if they were redeemed on May 1, 2026, plus interest payments due through May 1, 2026, discounted to the date of redemption on a semi-annual basis at the applicable tax-exempt municipal bond rate, plus accrued and unpaid interest, if any.

## Arkansas Development Finance Authority Environmental Improvement Revenue Bonds, Series 2022

On September 6, 2022, U. S. Steel closed on an offering consisting of an aggregate principal amount of \$290 million unsecured Arkansas Development Finance Authority environmental improvement revenue bonds, which carry a green bond designation. The bonds, issued through Arkansas Development Finance Authority, have a coupon rate of 5.450% and carry a final maturity of 2052 (2052 ADFA Green Bonds). U. S. Steel received net proceeds of approximately \$287 million after fees of approximately \$3 million related to the underwriting and third-party expenses. The net proceeds from the issuance of the 2052 ADFA Green Bonds were used to partially fund work related to BR2, currently under construction near Osceola, Arkansas.

On and after September 1, 2025, the Company may redeem the 2052 ADFA Green Bonds at its option, at any time in whole or from time to time in part at the redemption prices (expressed in percentages of principal amount) listed below, plus accrued and unpaid interest on the 2052 ADFA Green Bonds, if any, to, but excluding, the applicable redemption date, if redeemed during the twelve-month period beginning on September 1 of each of the years indicated below.

Year	Redemption Price
2025	105.000 %
2026	104.000 %
2027	103.000 %
2028	102.000 %
2029	101.000 %
2030 and thereafter	100.000 %

At any time prior to September 1, 2025, U. S. Steel may also redeem the 2052 ADFA Green Bonds, at our option, in whole or in part, or from time to time, at a price equal to the greater of 100 percent of the principal amount of the 2052 ADFA Green Bonds plus accrued and unpaid interest, if any, or the sum of the present value of the redemption price of the 2052 ADFA Green Bonds if they were redeemed on September 1, 2025, plus interest payments due through September 1, 2025, discounted to the date of redemption on a semi-annual basis at the applicable tax-exempt municipal bond rate, plus accrued and unpaid interest, if any.

### 2026 Senior Convertible Notes

In October 2019, U. S. Steel issued \$350 million of 5.00% Senior Convertible Notes due November 1, 2026 (2026 Senior Convertible Notes). Interest on the 2026 Senior Convertible Notes is payable semi-annually on May 1 and November 1 of each year. The initial conversion rate for the 2026 Senior Convertible Notes is 74.8391 shares of U. S. Steel common stock per \$1,000 principal amount, equivalent to an initial conversion price of approximately \$13.36 per share of common stock, subject to adjustment pursuant to the 2026 Senior Convertible Notes indenture. Based on the initial conversion rate, the 2026 Senior Convertible Notes are convertible into 26,193,685 shares of U. S. Steel common stock and we reserved for the possible issuance of 33,396,930 shares, which is the maximum amount that could be issued upon conversion at maturity. Prior to August 1, 2026, holders of notes may convert all or a portion of their notes at their option only upon the satisfaction of specified conditions and during certain periods. On or after August 1, 2026, holders may convert all or a portion of their notes prior to the maturity date. Upon conversion, we will satisfy the obligation with cash, common stock, or a combination thereof, at our election. U. S. Steel may not redeem the 2026 Senior Convertible Notes prior to November 5, 2023. On or after November 5, 2023, and prior to August 1, 2026, if the price per share of U. S. Steel's common stock has been at least 130% of the conversion price for specified periods, U. S. Steel may redeem all or a portion of the 2026 Senior Convertible Notes at a cash redemption price of 100% of the principal amount, plus accrued and unpaid interest.

If U. S. Steel undergoes a fundamental change, as defined in the 2026 Senior Convertible Notes, holders may require us to repurchase the 2026 Senior Convertible Notes in whole or in part for cash at a price equal to 100% of the principal amount of the 2026 Senior Convertible Notes to be purchased plus any accrued and unpaid interest up to, but excluding the repurchase date.

### Big River Steel - Sustainability Linked ABL Facility

Big River Steel's amended senior secured asset-based revolving credit facility (Big River Steel ABL Facility) matures on July 23, 2026. The facility is secured by first-priority liens on accounts receivable and inventory and certain other assets and second priority liens on most tangible and intangible assets of Big River Steel in each case subject to permitted liens. Additionally, the amendment includes sustainability targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

The Big River Steel ABL Facility provides for borrowings for working capital and general corporate purposes in an amount equal up to the lesser of (a) \$350 million and (b) a borrowing base calculated based on specified percentages of eligible accounts receivables and inventory, subject to certain adjustments and reserves.

Big River Steel LLC must maintain a fixed charge coverage ratio of at least 1.00 to 1.00 for the most recent twelve consecutive months when availability under the Big River Steel ABL Facility is less than the greater of ten percent of the borrowing base availability and \$13 million. Based on the most recent four quarters as of September 30, 2023, Big River Steel would have met the fixed charge coverage ratio test. The facility includes affirmative and negative covenants and events of default that are customary for facilities of this type.

There were no amounts outstanding under the Big River Steel ABL Facility at September 30, 2023.

#### **U. S. Steel - Sustainability Linked Credit Facility Agreement**

On May 27, 2022, U. S. Steel entered into the Sixth Amended and Restated Credit Facility Agreement (Credit Facility Agreement) to replace the existing Fifth Amended and Restated Credit Facility Agreement (Fifth Credit Facility Agreement). The Credit Facility Agreement has substantially the same terms as the Fifth Credit Facility Agreement, except the Credit Facility Agreement references the Secured Overnight Financing Rate instead of the London Interbank Offered Rate, adjusts the individual lenders' commitments, and renews the five-year maturity to May 27, 2027. The Credit Facility Agreement also adjusts the threshold for the fixed charge coverage ratio. The total availability under the facility remained the same at \$1,750 million, and the financial impact from replacing the Fifth Credit Facility Agreement was immaterial. Consistent with the Fifth Credit Facility Agreement, the Credit Facility Agreement is secured by first-priority liens on certain accounts receivable and inventory and includes targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

The Credit Facility Agreement provides for borrowings for working capital and general corporate purchases in an amount equal to the lesser of (a) \$1,750 million or (b) a borrowing base calculated based on specified percentages of eligible accounts receivable and inventory, subject to certain adjustments and reserves. As of September 30, 2023, there were approximately \$4 million of letters of credit issued and no amounts drawn under the Credit Facility Agreement. U. S. Steel must maintain a fixed charge coverage ratio of at least 1.00 to 1.00 for the most recent four consecutive quarters when availability under the Credit Facility Agreement is less than the greater of ten percent of the maximum facility availability and \$140 million. Based on the most recent four quarters as of September 30, 2023, the Company would have met the fixed charge coverage ratio test.

#### **U. S. Steel Košice (USSK) Credit Facilities**

On September 28, 2023, the Company elected to reduce the size of the USSK Credit Agreement from €300 million to €150 million (approximately \$159 million). The reduced credit facility size supports USSK's liquidity needs and is consistent with efforts to optimize costs and the global liquidity position. The USSK Credit Agreement matures in 2026 and contains sustainability targets related to greenhouse gas emissions intensity reduction, safety performance and facility certification by ResponsibleSteel™.

Under the USSK Credit Agreement, USSK is required to maintain a net debt to EBITDA ratio of less than 3.50:1.00 (the "EBITDA Ratio Covenant"), as measured on a rolling twelve month basis on June 30th and December 31st of each year. In April 2023, after determining that USSK may not be able to comply with the EBITDA Ratio Covenant at June 30, 2023, based on forecasted EBITDA at the time, USSK requested a waiver of the EBITDA Ratio Covenant from its lenders for the period ending June 30, 2023. The waiver was approved unanimously by USSK's lender group. At September 30, 2023, the USSK Credit Agreement was undrawn and fully available.

During the first quarter of 2023, USSK increased the size of its €20 million credit facility to €30 million (approximately \$32 million) (the USSK Credit Facility). At September 30, 2023, USSK had no borrowings under the USSK Credit Facility, and the availability was approximately \$16 million due to approximately \$16 million of customs and other guarantees outstanding.

## **16. Fair Value of Financial Instruments**

The carrying value of cash and cash equivalents, current accounts and notes receivable, accounts payable and accrued interest included in the Condensed Consolidated Balance Sheet approximate fair value. See Note 14 for disclosure of U. S. Steel's derivative instruments, which are accounted for at fair value on a recurring basis.

#### **Stelco Option for Minntac Mine Interest**

On April 30, 2020, the Company entered into an Option Agreement with Stelco, Inc. (Stelco), that grants Stelco the option to purchase a 25 percent interest (Option Interest) in a to-be-formed entity (Joint Venture) that will own the Company's current iron ore mine located in Mt. Iron, Minnesota (Minntac Mine). As consideration for the Option Interest, Stelco paid the Company an aggregate amount of \$100 million in five \$20 million installments during the year-ended December 31, 2020, which are recorded net of transaction costs in noncontrolling interests in the Condensed Consolidated Balance Sheet. The option can be exercised any time before January 31, 2027, and in the event Stelco exercises the option, Stelco will contribute an additional \$500 million to the Joint Venture, which amount shall be remitted solely to U. S. Steel in the form of a one-time special distribution, and the parties will engage in good faith negotiations to finalize the master agreement (pursuant to which Stelco will acquire the Option Interest) and the limited liability company agreement of the Joint Venture.

**Surplus VEBA assets**

During the fourth quarter 2022, U. S. Steel and the United Steelworkers (USW) agreed to utilize the overfunded OPEB plans to support the benefits provided to active represented employees. Beginning January 1, 2023, this agreement allows the Company to use a certain amount of surplus VEBA assets (the surplus amount) to pay for legally permissible benefits under Section 501(c)(9) of the Internal Revenue Code for active employees and retirees of the USW. The surplus amount of \$595 million was determined as of December 31, 2022, and was the balance of VEBA assets in excess of 135% of the retiree obligation at that time. On January 1, 2023, a subaccount was created and consisted of a pro-rata share of the existing trust. On February 1, 2023, using January 31, 2023 asset values, a new investment strategy was implemented and comprised of existing investments from the VEBA trust and cash. On February 1, 2023, certain assets were transferred from the VEBA to the subaccount. The Company is permitted to withdraw a target of \$75 million annually, with a guaranteed annual minimum of \$50 million, on a quarterly pro rata basis, from the subaccount to cover the cost of the permissible benefits for active USW employees and USW retirees. The surplus VEBA assets subaccount portfolio consists of fixed income securities including corporate bonds, U.S. government bonds, and U.S. Treasury notes, in addition to alternatives including investments in private credit partnerships and real estate funds. A portion of the corporate bonds are classified as available-for-sale debt securities, with unrealized gains and losses reported in Accumulated other comprehensive loss. Upon sale, realized gains and losses are reported in earnings. All other investments in the subaccount are financial instruments measured at fair value or net asset value, with gains and losses recognized through net earnings and are reported as Net gain from investments related to active employee benefits on the Company's Condensed Consolidated Statements of Operations.

As of September 30, 2023, the fair value of the surplus VEBA assets subaccount portfolio was \$578 million, with \$75 million in Other current assets and \$503 million in Other noncurrent assets on the Condensed Consolidated Balance Sheet. As of September 30, 2023, the value of the investment in corporate bonds classified as available-for-sale debt securities was \$216 million.

During the three months ended September 30, 2023, a pretax net gain of \$6 million and an immaterial pretax net gain were recognized in Net gain from investments related to active employee benefits and in Accumulated other comprehensive income (loss), respectively. During the nine months ended September 30, 2023, a pretax net gain of \$36 million and \$4 million were recognized in Net gain from investments related to active employee benefits and in Accumulated other comprehensive income (loss), respectively.

The fair value of the subaccount portfolio by asset category as of September 30, 2023 were as follows (in millions):

Asset Category	September 30, 2023				
	Level 1	Level 2	Level 3	measured at NAV <sup>(a)</sup>	Total
<b>Fixed Income</b>					
Corporate bonds - U.S.	—	197	—	—	197
Corporate bonds - Non-U.S.	—	58	—	—	58
U.S. government bonds	—	98	—	—	98
Mortgage and asset-backed securities	—	12	—	—	12
Total fixed income	\$ —	\$ 365	\$ —	\$ —	\$ 365
<b>Alternatives</b>					
Private credit partnerships	—	—	59	60	119
Other alternatives	—	—	—	18	18
Total alternatives	\$ —	\$ —	\$ 59	\$ 78	\$ 137
Commingled Funds	—	—	—	69	69
Other <sup>(b)</sup>	7	—	—	—	7
Total assets at fair value	\$ 7	\$ 365	\$ 59	\$ 147	\$ 578

<sup>(a)</sup> In accordance with ASC Topic 820, certain investments that were measured at net asset value per share (or its equivalent) have not been classified in the fair value hierarchy.

<sup>(b)</sup> Includes cash, accrued income, and miscellaneous payables.

The following table summarizes U. S. Steel's financial liabilities that were not carried at fair value at September 30, 2023, and December 31, 2022. The fair value of long-term debt was determined using Level 2 inputs.

(In millions)	As of September 30, 2023		As of December 31, 2022	
	Fair Value	Carrying Amount	Fair Value	Carrying Amount
<b>Financial liabilities:</b>				
Long-term debt <sup>(a)</sup>	\$ 4,132	\$ 3,906	\$ 3,815	\$ 3,701

<sup>(a)</sup> Excludes finance lease obligations.

## 17. Statement of Changes in Stockholders' Equity

The following table reflects the first nine months of 2023 and 2022 reconciliation of the carrying amount of total equity, equity attributable to U. S. Steel and equity attributable to noncontrolling interests:

Nine Months Ended September 30, 2023 (In millions)	Accumulated Other Comprehensive Loss							Non- Controlling Interest
	Total	Retained Earnings	Common Stock	Treasury Stock	Paid-in Capital			
Balance at beginning of year	\$ 10,311	\$ 6,030	\$ (85)	\$ 283	\$ (1,204)	\$ 5,194	\$ 93	
Comprehensive income (loss):								
Net earnings	199	199	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	(10)	—	(10)	—	—	—	—	
Currency translation adjustment	32	—	32	—	—	—	—	
Derivative financial instruments	(44)	—	(44)	—	—	—	—	
Active employee benefit investments	3	—	3	—	—	—	—	
Employee stock plans	(9)	—	—	2	(22)	11	—	
Common stock repurchased	(75)	—	—	—	(75)	—	—	
Dividends paid on common stock	(12)	(12)	—	—	—	—	—	
Balance at March 31, 2023	\$ 10,395	\$ 6,217	\$ (104)	\$ 285	\$ (1,301)	\$ 5,205	\$ 93	
Comprehensive income (loss):								
Net earnings	477	477	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	(12)	—	(12)	—	—	—	—	
Currency translation adjustment	(1)	—	(1)	—	—	—	—	
Derivative financial instruments	33	—	33	—	—	—	—	
Active employee benefit investments	(1)	—	(1)	—	—	—	—	
Employee stock plans	14	—	—	—	1	13	—	
Common stock repurchased	(75)	—	—	—	(75)	—	—	
Excise tax on common stock repurchased	(1)	—	—	—	(1)	—	—	
Dividends paid on common stock	(11)	(11)	—	—	—	—	—	
Balance at June 30, 2023	\$ 10,818	\$ 6,683	\$ (85)	\$ 285	\$ (1,376)	\$ 5,218	\$ 93	
Comprehensive income (loss):								
Net earnings	299	299	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	(13)	—	(13)	—	—	—	—	
Currency translation adjustment	(35)	—	(35)	—	—	—	—	
Derivative financial instruments	47	—	47	—	—	—	—	
Active employee benefit investments	1	—	1	—	—	—	—	
Employee stock plans	16	—	—	—	(1)	17	—	
Common stock repurchased	(25)	—	—	—	(25)	—	—	
Dividends paid on common stock	(11)	(11)	—	—	—	—	—	
Balance at September 30, 2023	\$ 11,097	\$ 6,971	\$ (85)	\$ 285	\$ (1,402)	\$ 5,235	\$ 93	

Nine Months Ended September 30, 2022 (In millions)	Accumulated Other							Non- Controlling Interest
	Total	Retained Earnings	Comprehensive Income	Common Stock	Treasury Stock	Paid-in Capital		
Balance at beginning of year	\$ 9,103	\$ 3,534	\$ 331	\$ 280	\$ (334)	\$ 5,199	\$ 93	
Comprehensive income (loss):								
Net earnings	882	882	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	(3)	—	(3)	—	—	—	—	
Currency translation adjustment	(28)	—	(28)	—	—	—	—	
Derivative financial instruments	22	—	22	—	—	—	—	
Employee stock plans	7	—	—	2	(20)	25	—	
Common stock repurchased	(123)	—	—	—	(123)	—	—	
Dividends paid on common stock	(13)	(13)	—	—	—	—	—	
Cumulative effect upon adoption of Accounting Standards Update 2020-06	(56)	22	—	—	—	(78)	—	
Balance at March 31, 2022	\$ 9,791	\$ 4,425	\$ 322	\$ 282	\$ (477)	\$ 5,146	\$ 93	
Comprehensive income (loss):								
Net earnings	978	978	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	1	—	1	—	—	—	—	
Currency translation adjustment	(100)	—	(100)	—	—	—	—	
Derivative financial instruments	14	—	14	—	—	—	—	
Employee stock plans	19	—	—	—	(1)	20	—	
Common stock repurchased	(399)	—	—	—	(399)	—	—	
Dividends paid on common stock	(13)	(13)	—	—	—	—	—	
Balance at June 30, 2022	\$10,291	\$ 5,390	\$ 237	\$ 282	\$ (877)	\$ 5,166	\$ 93	
Comprehensive income (loss):								
Net earnings	490	490	—	—	—	—	—	
Other comprehensive income (loss), net of tax:								
Pension and other benefit adjustments	—	—	—	—	—	—	—	
Currency translation adjustment	(92)	—	(92)	—	—	—	—	
Derivative financial instruments	18	—	18	—	—	—	—	
Employee stock plans	13	—	—	—	—	13	—	
Common stock repurchased	(177)	—	—	—	(177)	—	—	
Dividends paid on common stock	(12)	(12)	—	—	—	—	—	
Other	(1)	(1)	—	—	—	—	—	
Balance at September 30, 2022	\$10,530	\$ 5,867	\$ 163	\$ 282	\$ (1,054)	\$ 5,179	\$ 93	

18. **Reclassifications from Accumulated Other Comprehensive Income (AOCI)**

(In millions)	Pension and Other Benefit Items	Foreign Currency Items	Unrealized (Loss) Gain on Derivatives	Active Employee Benefit Investments	Total
Balance at December 31, 2022	\$ (322)	\$ 280	\$ (43)	\$ —	\$ (85)
Other comprehensive income (loss) before reclassifications	2	(4)	(50)	3	(49)
Amounts reclassified from AOCI <sup>(a)</sup>	(37)	—	86	—	49
Net current-period other comprehensive (loss) income	(35)	(4)	36	3	—
Balance at September 30, 2023	\$ (357)	\$ 276	\$ (7)	\$ 3	\$ (85)
Balance at December 31, 2021	\$ (25)	\$ 371	\$ (15)	\$ —	\$ 331
Other comprehensive (loss) income before reclassifications	(1)	(220)	130	—	(91)
Amounts reclassified from AOCI <sup>(a)</sup>	(1)	—	(76)	—	(77)
Net current-period other comprehensive (loss) income	(2)	(220)	54	—	(168)
Balance at September 30, 2022	\$ (27)	\$ 151	\$ 39	\$ —	\$ 163

<sup>(a)</sup> See table below for further details.

Details about AOCI components (in millions)	Amount reclassified from AOCI			
	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
Amortization of pension and other benefit items <sup>(a)</sup>				
Prior service credits	\$ (2)	\$ (5)	\$ (5)	\$ (17)
Actuarial (gains) losses	(15)	4	(45)	15
Total pensions and other benefits items	(17)	(1)	(50)	(2)
Derivative reclassifications to Condensed Consolidated Statements of Operations	40	(63)	113	(100)
Total before tax	23	(64)	63	(102)
Tax (benefit) provision	(5)	17	(14)	25
Net of tax	\$ 18	\$ (47)	\$ 49	\$ (77)

<sup>(a)</sup> These AOCI components are included in the computation of net periodic benefit cost. See Note 10 for additional details.

19. **Transactions with Related Parties**

Related party sales and service transactions are primarily related to equity investees and were \$488 million and \$536 million for the three months ended September 30, 2023, and 2022, respectively and \$1,534 million and \$1,423 million for the nine months ended September 30, 2023, and 2022, respectively.

Accounts payable to related parties include balances due to PRO-TEC Coating Company, LLC (PRO-TEC) of \$178 million and \$142 million at September 30, 2023, and December 31, 2022, respectively for invoicing and receivables collection services provided by U. S. Steel on PRO-TEC's behalf. U. S. Steel, as PRO-TEC's exclusive sales agent, is responsible for credit risk related to those receivables. U. S. Steel also provides PRO-TEC marketing, selling and customer service functions. Payables to other related parties totaled \$2 million and \$1 million for the periods ending September 30, 2023, and December 31, 2022, respectively.

Purchases from related parties for outside processing services provided by equity investees amounted to \$8 million and \$7 million for the three months ended September 30, 2023, and 2022, respectively and \$18 million and \$21 million for the nine months ended September 30, 2023, and 2022, respectively. Purchases of iron ore pellets from related parties amounted to \$41 million and \$30 million for the three months ended September 30, 2023, and 2022, respectively and \$118 million and \$98 million for the nine months ended September 30, 2023, and 2022, respectively.

## 20. Restructuring and Other Charges

During the three and nine months ended September 30, 2023, the Company recorded restructuring and other charges of \$18 million and \$21 million, respectively, which relate primarily to Company-wide headcount reductions. Cash payments related to previously accrued restructuring programs made during the nine months ended September 30, 2023, were approximately \$48 million.

During the three and nine months ended September 30, 2022, the Company recorded restructuring and other charges of \$23 million and \$57 million, respectively, which primarily relate to the planned sale of a component within the Flat-Rolled segment, headcount reductions under a voluntary early retirement program (VERP) offered at USSK and severance-related charges at other facilities. Cash payments related to restructuring made during the nine months ended September 30, 2023, were approximately \$95 million.

The activity in the accrued balances incurred in relation to restructuring during the nine months ended September 30, 2023, was as follows:

(In millions)	Employee Related Costs	Exit Costs	Non-cash Charges	Total
Balance at December 31, 2022	\$ 132	\$ 50	\$ —	\$ 182
Additional charges	14	7	—	21
Release of prior accruals and other adjustments <sup>(a)</sup>	(2)	(1)	—	(3)
Cash payments	(24)	(24)	—	(48)
Balance at September 30, 2023	\$ 120	\$ 32	\$ —	\$ 152

<sup>(a)</sup>Includes releases of accruals to reflect the current estimate of costs to complete approved restructuring programs.

Accrued liabilities for restructuring programs are recorded primarily in payroll and benefits and accounts payable on the Condensed Consolidated Balance Sheet.

## 21. Contingencies and Commitments

U. S. Steel is the subject of, or party to, a number of pending or threatened legal actions, contingencies and commitments involving a variety of matters, including laws and regulations relating to the environment. Certain of these matters are discussed below. The ultimate resolution of these contingencies could, individually or in the aggregate, be material to the Condensed Consolidated Financial Statements. However, management believes that U. S. Steel will remain a viable and competitive enterprise even though it is possible that these contingencies could be resolved unfavorably.

U. S. Steel accrues for estimated costs related to existing lawsuits, claims and proceedings when it is probable that it will incur these costs in the future and the costs are reasonably estimable.

**Asbestos matters** – As of September 30, 2023, U. S. Steel was a defendant in approximately 920 active asbestos cases involving approximately 2,510 plaintiffs. The vast majority of these cases involve multiple defendants. About 1,545, or approximately 62 percent, of these plaintiff claims are currently pending in a jurisdiction which permits filings with massive numbers of plaintiffs. At December 31, 2022, U. S. Steel was a defendant in approximately 920 active asbestos cases involving approximately 2,510 plaintiffs. Based upon U. S. Steel's experience in such cases, it believes that the actual number of plaintiffs who ultimately assert claims against U. S. Steel will likely be a small fraction of the total number of plaintiffs.

The following table shows the number of asbestos claims in the current period and the prior three years:

Period ended	Opening Number of Claims	Claims Dismissed, Settled and Resolved	New Claims	Closing Number of Claims
December 31, 2020	2,390	240	295	2,445
December 31, 2021	2,445	200	260	2,505
December 31, 2022	2,505	230	235	2,510
September 30, 2023	2,510	170	170	2,510

The amount U. S. Steel accrues for pending asbestos claims is not material to U. S. Steel's financial condition. However, U. S. Steel is unable to estimate the ultimate outcome of asbestos-related claims due to a number of uncertainties, including: (1) the rates at which new claims are filed, (2) the number of and effect of bankruptcies of other companies traditionally defending asbestos claims, (3) uncertainties associated with the variations in the litigation process from jurisdiction to jurisdiction, (4) uncertainties regarding the facts, circumstances and disease process with each claim and (5) any new legislation enacted to address asbestos-related claims.

Further, U. S. Steel does not believe that an accrual for unasserted claims is required. At any given reporting date, it is probable that there are unasserted claims that will be filed against the Company in the future. The Company engages an outside valuation consultant to assist in assessing its ability to estimate an accrual for unasserted claims. This assessment is based on the Company's settlement experience, including recent claims trends. The analysis focuses on settlements made over the last several years as these claims are likely to best represent future claim characteristics. After review by the valuation consultant and U. S. Steel management, it was determined that the Company could not estimate an accrual for unasserted claims.

Despite these uncertainties, management believes that the ultimate resolution of these matters will not have a material adverse effect on U. S. Steel's financial condition.

**Environmental matters** – U. S. Steel is subject to federal, state, local and foreign laws and regulations relating to the environment. These laws generally provide for control of pollutants released into the environment and require responsible parties to undertake remediation of hazardous waste disposal sites. Penalties may be imposed for noncompliance. Changes in accrued liabilities for remediation activities where U. S. Steel is identified as a named party are summarized in the following table:

(In millions)	Nine Months Ended September 30, 2023	
Beginning of period	\$	126
Accruals for environmental remediation deemed probable and reasonably estimable		11
Adjustments for changes in estimates		(14)
Obligations settled		(16)
End of period	\$	107

Accrued liabilities for remediation activities are included in the following Condensed Consolidated Balance Sheet lines:

(In millions)	As of September 30, 2023		As of December 31, 2022	
Accounts payable	\$	26	\$	32
Deferred credits and other noncurrent liabilities		81		94
Total	\$	107	\$	126

Expenses related to remediation are recorded in cost of sales and were \$12 million and \$19 million for the years ended September 30, 2023, and September 30, 2022, respectively. It is not currently possible to estimate the ultimate amount of all remediation costs that might be incurred or the penalties that may be imposed. Due to uncertainties inherent in remediation projects and the associated liabilities, it is reasonably possible that total remediation costs for active matters may exceed the accrued liabilities by as much as 10 to 15 percent.

#### Remediation Projects

U. S. Steel is involved in environmental remediation projects at or adjacent to several current and former U. S. Steel facilities and other locations that are in various stages of completion ranging from initial characterization through post-

closure monitoring. Based on the anticipated scope and degree of uncertainty of projects, the Company categorizes projects as follows:

- (1) *Projects with Ongoing Study and Scope Development* - For these projects, the extent of remediation that may be required is not yet known, the remediation methods and plans are not yet developed, and/or cost estimates cannot be determined. Therefore, significant costs, in addition to the accrued liabilities for these projects, are reasonably possible. There are two environmental remediation projects where additional costs for completion are not currently estimable but could be material. These projects are at UPI and the former steelmaking plant at Joliet, Illinois. As of September 30, 2023, accrued liabilities for these projects totaled \$342,000 for the costs of studies, investigations, interim measures, design and/or remediation. It is reasonably possible that additional liabilities associated with future requirements regarding studies, investigations, design and remediation for these projects could be as much as \$8 million to \$11 million.
- (2) *Projects with Significant Accrued liabilities with a Defined Scope* - As of September 30, 2023, there are four significant projects with defined scope greater than or equal to \$5 million each, with a total accrued liability of \$66 million. These projects are Gary Resource Conservation and Recovery Act (accrued liability of \$24 million), Duluth Works (accrued liability of \$16 million), Fairfield Works (accrued liability of \$8 million) and the former Geneva facility (accrued liability of \$18 million).
- (3) *Other Projects with a Defined Scope* - These projects involve relatively small accrued liabilities for which we believe that, while additional costs are possible, they are not likely to be significant, and also include those projects for which we do not yet possess sufficient information to estimate potential costs to U. S. Steel. There are three other environmental remediation projects which each had an accrued liability of between \$1 million and \$5 million. The total accrued liability for these projects at September 30, 2023, was \$4 million. These projects have progressed through a significant portion of the design phase and material additional costs are not expected.

The remaining environmental remediation projects each have an accrued liability of less than \$1 million each. The total accrued liability for these projects at September 30, 2023, was approximately \$5 million. The Company does not foresee material additional liabilities for any of these sites.

*Post-Closure Costs* – Accrued liabilities for post-closure site monitoring and other costs at various closed landfills totaled \$23 million at September 30, 2023, and were based on known scopes of work.

*Administrative and Legal Costs* – As of September 30, 2023, U. S. Steel had an accrued liability of \$11 million for administrative and legal costs related to environmental remediation projects. These accrued liabilities were based on projected administrative and legal costs for the next three years and do not change significantly from year to year.

*Capital Expenditures* – For a number of years, U. S. Steel has made substantial capital expenditures to comply with various regulations, laws and other requirements relating to the environment. Such capital expenditures totaled \$55 million and \$23 million in the first nine months of 2023 and 2022, respectively. U. S. Steel anticipates making additional such expenditures in the future, which may be material; however, the exact amounts and timing of such expenditures are uncertain because of the continuing evolution of specific regulatory requirements.

*European Union (the EU) Environmental Requirements* - Phase IV of the EU Emissions Trading System (the EU ETS) commenced on January 1, 2021, and will finish on December 31, 2030. The European Commission issued final approval of the updated 2021-2025 Slovak National Allocation table in February 2022. The Slovak Ministry of Environment has allocated 6.2 million metric tons of European Union Emission Allowances (EUA) at no charge (free allowances or free allocation) to USSK. As of September 30, 2023, we have pre-purchased and settled approximately 1.65 million EUA totaling €135 million (approximately \$143 million) to cover the expected 2023 shortfall of emission allowances and a portion of the 2024 shortfall. In September 2023, we have also entered into forward agreements to purchase and settle €28.6 million of EUA in January and February 2024, for the anticipated 2024 shortfall.

The EU's Industrial Emissions Directive requires implementation of EU-determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to go beyond BAT requirements were €138 million (approximately \$146 million). These costs were partially offset by the EU funding received and may be mitigated over the next measurement periods if USSK complies with certain financial covenants, which are assessed annually. If we are unable to meet these covenants in the future, USSK might be required to provide additional collateral (e.g., bank guarantee) to secure 50 percent of the EU funding received. USSK complied with these covenants as of September 30, 2023, and no additional collateral will be required by the end of June 30, 2024. By this next assessment date, two projects of the total fifteen will pass the sustainability monitoring and will be excluded from further assessment to provide additional collateral if the covenants are not met. The last assessment of financial covenants will be performed as of June 30, 2026.

*Environmental indemnifications* – Throughout its history, U. S. Steel has sold numerous properties and businesses and many of these sales included indemnifications and cost sharing agreements related to the assets that were divested. The amount of potential environmental liability associated with these transactions and properties is not estimable due to the nature and extent of the unknown conditions related to the properties divested and deconsolidated. Aside from the environmental liabilities already recorded as a result of these transactions due to specific environmental remediation

activities and cases (included in the \$107 million of accrued liabilities for remediation discussed above), there are no other known probable and estimable environmental liabilities related to these transactions.

**Guarantees** – The maximum guarantees of the indebtedness of unconsolidated entities of U. S. Steel totaled \$7 million at September 30, 2023.

**Other contingencies** – Under certain lease agreements covering various equipment, U. S. Steel has the option to renew the lease or to purchase the equipment at the end of the lease term. If U. S. Steel does not exercise the purchase option by the end of the lease term, U. S. Steel guarantees a residual value of the equipment as determined at the lease inception date (totaling approximately \$12 million at September 30, 2023). No liability has been recorded for these guarantees as the potential loss is not probable.

The Company's BR2 project near Osceola, Arkansas qualifies for financing and related economic incentives associated with the acquisition, development, construction, and operation of the facility. These incentives consist of advance lump-sum payments which are included in deferred credits and other noncurrent liabilities on the Condensed Consolidated Balance Sheet. In March 2022, the Company received a lump-sum payment of approximately \$82 million as proceeds from the sale of a portion of expected future tax credits to be earned by the Company under the State of Arkansas's Recycling Tax Credit program. These funds are to be used primarily for the acquisition of project related equipment, however they may also be used for the training and development of new employees hired for the project. The Company is contingently liable for certain repayment penalties if the Company fails to meet certain employment requirements in any given period. In April 2022, the Company received a \$3 million grant from Mississippi County, Arkansas, and in May 2022, the Company received a \$50 million grant from the State of Arkansas Quick Action Closing Fund. Both grants pertain to the reimbursement of qualifying project costs. Deferred liabilities were recognized for each of these grants and are included in deferred credits and other noncurrent liabilities on the Condensed Consolidated Balance Sheet. For each of these incentives and grants, the balance of deferred income will be recognized into other gains, net in the accompanying Condensed Consolidated Statements of Operations on a systematic basis over the periods in which the Company earns the granted funds by complying with the investment and employment requirements of the grant programs.

**Insurance** – U. S. Steel maintains insurance for certain property damage, equipment, business interruption and general liability exposures; however, insurance is applicable only after certain deductibles and retainages. U. S. Steel is self-insured for certain other exposures including workers' compensation (where permitted by law) and auto liability. Liabilities are recorded for workers' compensation and personal injury obligations. Other costs resulting from losses under deductible or retainage amounts or not otherwise covered by insurance are charged against income upon occurrence.

U. S. Steel uses surety bonds, trusts and letters of credit to provide whole or partial financial assurance for certain obligations such as workers' compensation. The total amount of active surety bonds, trusts and letters of credit being used for financial assurance purposes was approximately \$188 million as of September 30, 2023, which reflects U. S. Steel's maximum exposure under these financial guarantees, but not its total exposure for the underlying obligations. A significant portion of our trust arrangements and letters of credit are collateralized by the Credit Facility Agreement. The remaining trust arrangements and letters of credit are collateralized by restricted cash. Restricted cash, which is recorded in other current and noncurrent assets, totaled \$37 million and \$35 million at September 30, 2023, and December 31, 2022, respectively.

**Capital Commitments** – At September 30, 2023, U. S. Steel's contractual commitments to acquire property, plant and equipment totaled \$1.726 billion.

**Contractual Purchase Commitments** – U. S. Steel is obligated to make payments under contractual purchase commitments, including unconditional purchase obligations. Payments for contracts with remaining terms in excess of one year are summarized below (in millions):

Remainder of 2023	2024	2025	2026	2027	Later Years	Total
\$148	\$587	\$210	\$175	\$113	\$355	\$1,588

The majority of U. S. Steel's unconditional purchase obligations relates to the supply of industrial gases, and certain energy and utility services with terms ranging from 15 months to 13 years. Unconditional purchase obligations also include coke and steam purchase commitments related to a coke supply agreement with Gateway Energy & Coke Company LLC (Gateway) under which Gateway is obligated to supply a minimum volume of the expected targeted annual production of the heat recovery coke plant, and U. S. Steel is obligated to purchase the coke from Gateway at the contract price. As of September 30, 2023, if U. S. Steel were to terminate the agreement, it may be obligated to pay in excess of \$48 million.

Total payments relating to unconditional purchase obligations were \$207 million and \$274 million for the three months ended September 30, 2023, and 2022, respectively, and \$630 million and \$695 million for the nine months ended September 30, 2023, and 2022, respectively.

## **22. Common Stock Repurchased**

On October 25, 2021, the Board of Directors authorized a share repurchase program that allowed for the repurchase of up to \$300 million of its outstanding common stock from time to time in the open market or privately negotiated transactions. On January 24, 2022, the Board of Directors authorized an additional \$500 million under the share repurchase program.

On July 25, 2022, following the completion of the previously authorized \$800 million share repurchase programs, the Board of Directors authorized a new share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock from time to time in the open market or privately negotiated transactions at the discretion of management. The Company's share repurchase program does not obligate it to acquire any specific number of shares.

U. S. Steel repurchased 7.1 million and 31.6 million shares of common stock for approximately \$175 million and \$699 million under these programs during the nine months ended September 30, 2023, and 2022, respectively.

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

### Overview

#### *Strategic alternatives review process*

On August 13, 2023, the Company announced that its Board of Directors decided to initiate a strategic alternatives review process, with the assistance of outside financial and legal advisors. There is no deadline or definitive timetable set for completion of the strategic alternatives review process and there can be no assurance that this process will result in the Company pursuing a transaction or any other strategic outcome.

#### *Business and segments update*

U. S. Steel's results in the third quarter of 2023 were significantly impacted by market challenges in each of the Company's four reportable segments: North American Flat-Rolled (Flat-Rolled), Mini Mill, U. S. Steel Europe (USSE) and Tubular.

In Flat-Rolled, our contract and spot orders were impacted by the continued decline in weekly index prices, the impact of which was offset in part by lower raw material costs. In response to the United Autoworkers strike and in order to balance its flat-rolled steel supply with customer demand, on September 18, 2023, the Company temporarily idled blast furnace 'B' at Granite City Works. As a result of this decision, during the third quarter 2023, the Company recognized a charge within Cost of sales of \$14 million for employee-related expenses and take-or-pay obligations. This action, in the aggregate with the previously indefinitely idled blast furnace 'A', has effectively idled all iron and steel making assets at Granite City Works on a temporary basis. The facility continues to process slabs and produce hot-rolled, cold-rolled and coated sheets. The Company expects lower steel prices to adversely impact the segment's average selling price in the fourth quarter. Additionally, the temporarily idled blast furnace 'B' at Granite City Works and the impact from the United Autoworkers strike are expected to reduce shipment volumes.

The Mini Mill segment results were lower than second quarter 2023 as a result of lower average selling prices partially offset by lower raw material costs. Planned maintenance outages are expected to impact shipment volumes and lower spot prices are expected to adversely impact the segment's average selling price in the fourth quarter. Lower market prices for key metallic inputs are expected to favorably impact input costs in the fourth quarter.

The U. S. Steel Europe segment results were negatively impacted by lower average selling prices partially offset by lower raw material costs, the favorable impact of foreign exchange rates and lower energy costs. Muted customer demand and the high level of imports has resulted in lower steel pricing which is expected to negatively impact the segment's average selling price in the fourth quarter.

The Tubular segment results were lower than second quarter 2023 as a result of lower average selling prices and lower volumes. The lower pricing and demand environment were driven primarily by continued high levels of imports, higher inventory levels across the supply chain and lower rig counts which put pressure on domestic pipe producer demand and pricing. The Company expects the flow-through of lower OCTG pipe prices to continue into the fourth quarter. In addition, inventory levels across the tubular supply chain are normalizing which we expect to lead to increased customer activity and shipment volumes.

The Company continued to advance its Best for All<sup>®</sup> strategy during the third quarter. The nearly \$4 billion of strategic investment in the Mini Mill segment is progressing on-time and on-budget. At its Big River Steel facility, the Company completed construction of a 200-thousand-ton, non-grain oriented (NGO) electrical steel line which produced its first coil in September 2023, and industrial grade coils in October. Construction of Big River 2 near Osceola, Arkansas continued during the quarter. This new mini mill is expected to have about 3 million tons per year of steelmaking capability and will combine two state-of-the-art EAFs with differentiated steelmaking and finishing technology, including endless casting and rolling equipment and a planned advanced high-strength steel (AHSS) finishing line. This project is on track to be completed in the second half of 2024. Also, the construction of a 325 thousand ton galvanize/Galvalume<sup>®</sup> dual coating line at Big River Steel continues on-time and on-budget. In our North American Flat-rolled segment, construction of a direct reduced (DR) grade pellet facility at the Company's Keetac ore operations continues. This \$150 million investment is expected to be completed by year-end and produce first pellet in 2024. Capital expenditures for strategic projects were \$1.46 billion during the nine months ended September 30, 2023.

Fluctuations in the market price of raw materials and other inflationary impacts have affected the results of each of our reportable segments, and fluctuations going-forward are reasonably likely to have a material impact on future results. We could experience inflation related headwinds for certain raw materials and other costs.

In February 2022, Russia invaded Ukraine and active conflict continues in the country. The war in Ukraine has caused certain disruptions and instability in Russia and Ukraine, as well as in the markets in which we operate. The Company is constantly monitoring the situation for future impacts and risks to the business and has implemented risk mitigating strategies where possible. As a result of the invasion, governments around the world, including the European Union (EU) and the United States of

America (U.S.), have enacted sanctions against Russia and Russian interests. We are complying with all applicable sanctions that impact our business.

Since the onset of the war, and before, USSE has been procuring iron ore and coal through alternate sources. With the EU prohibiting purchases of coal from suppliers in Russia, new purchases of coal originating from Russia have stopped. The Company has built up sufficient inventory on site or in-transit to meet current customer demand and alternate supply chains have been fully implemented.

Additionally, Russian supply of natural gas to Europe has decreased significantly in response to enacted sanctions. However, Slovakia has natural gas storage and access to additional supply from countries including Norway, the U.S. and Africa. Together, these sources are enough to support the country's expected consumption through the end of 2023, which includes demand for natural gas for our USSE segment operations.

## RESULTS OF OPERATIONS

U. S. Steel's results in the three months ended September 30, 2023, compared to the same period in 2022, declined for the North American Flat-Rolled and Tubular segments and improved for the Mini Mill and U. S. Steel Europe segments and in the nine months ended September 30, 2023, compared to the same period in 2022, declined for the North American Flat-Rolled, Mini Mill and U. S. Steel Europe segments and improved for the Tubular segment.

- **North American Flat-Rolled (Flat-Rolled):** Flat-Rolled results for the three and nine months ended September 30, 2023 declined primarily due to lower sales price across most product categories.
- **Mini Mill:** Mini Mill results for the three months ended September 30, 2023 improved primarily due to lower costs from raw materials and for the nine months ended September 30, 2023 declined primarily due to lower sales price across all product categories.
- **USSE:** USSE results for the three months ended September 30, 2023 improved primarily due to lower costs from raw materials and for the nine months ended September 30, 2023 declined primarily due to lower sales price across all product categories.
- **Tubular:** Tubular results for the three months ended September 30, 2023 declined primarily due to lower sales volume and for the nine months ended September 30, 2023 improved primarily due to higher sales price.

**Net sales by segment** for the three months and nine months ended September 30, 2023 and 2022 are set forth in the following table:

(Dollars in millions, excluding intersegment sales)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Flat-Rolled	\$ 2,749	\$ 3,248	(15)%	\$ 8,275	\$ 9,926	(17)%
Mini Mill	529	602	(12)%	1,701	2,158	(21)%
USSE	838	925	(9)%	2,708	3,518	(23)%
Tubular	314	425	(26)%	1,217	1,115	9%
Total sales from reportable segments	4,430	5,200	(15)%	13,901	16,717	(17)%
Other	1	3	(67)%	8	10	(20)%
Net sales	\$ 4,431	\$ 5,203	(15)%	\$ 13,909	\$ 16,727	(17)%

Management's analysis of the **percentage change in net sales** for U. S. Steel's reportable business segments for the three months ended September 30, 2023, versus the three months ended September 30, 2022:

	Steel Products <sup>(a)</sup>					Other <sup>(c)</sup>	Net Change
	Volume	Price	Mix	FX <sup>(b)</sup>			
Flat-Rolled	(1)%	(13)%	— %	— %	(1)%	(15)%	
Mini Mill	6 %	(21)%	3 %	— %	— %	(12)%	
USSE	10 %	(23)%	(3)%	8 %	(1)%	(9)%	
Tubular	(18)%	(5)%	(3)%	— %	— %	(26)%	

<sup>(a)</sup> Excludes intersegment sales.

<sup>(b)</sup> Foreign currency translation effects.

<sup>(c)</sup> Primarily sales of raw materials and coke making by-products.

Net sales for the three months ended September 30, 2023, compared to the same period in 2022 were \$4,431 million and \$5,203 million, respectively.

- For the Flat-Rolled segment, the decrease in sales primarily resulted from lower average realized prices (\$196 per ton) across most products and decreased shipments (17 thousand tons) from lower value products.
- For the Mini Mill segment, the decrease in sales primarily resulted from lower average realized prices (\$195 per ton) across all products, partially offset by increased shipments (32 thousand tons) from higher value products.
- For the USSE segment, the decrease in sales primarily resulted from lower average realized prices (\$169 per ton) across all products, partially offset by increased shipments (91 thousand tons) from lower value products.
- For the Tubular segment, the decrease in sales primarily resulted from lower average realized prices (\$290 per ton) and decreased shipments (22 thousand tons).

Management's analysis of the **percentage change in net sales** for U. S. Steel's reportable business segments for the nine months ended September 30, 2023, versus the nine months ended September 30, 2022:

	Steel Products <sup>(a)</sup>					Other <sup>(c)</sup>	Net Change
	Volume	Price	Mix	FX <sup>(b)</sup>			
Flat-Rolled	2 %	(17)%	(1)%	— %	(1)%	(17)%	
Mini Mill	9 %	(32)%	2 %	— %	— %	(21)%	
USSE	(6)%	(18)%	(1)%	2 %	— %	(23)%	
Tubular	(11)%	21 %	(1)%	— %	— %	9 %	

<sup>(a)</sup> Excludes intersegment sales.

<sup>(b)</sup> Foreign currency translation effects.

<sup>(c)</sup> Primarily sales of raw materials and coke making by-products.

Net sales for the nine months ended September 30, 2023, compared to the same period in 2022 were \$13,909 million and \$16,727 million, respectively.

- For the Flat-Rolled segment, the decrease in sales primarily resulted from lower average realized prices (\$267 per ton) across most products, partially offset by increased shipments (184 thousand tons) from lower value products.
- For the Mini Mill segment, the decrease in sales primarily resulted from lower average realized prices (\$370 per ton) across all products, partially offset by increased shipments (156 thousand tons) from higher value products.
- For the USSE segment, the decrease in sales primarily resulted from lower average realized prices (\$211 per ton) across all products and decreased shipments (169 thousand tons) across most products.
- For the Tubular segment, the increase in sales primarily resulted from higher average realized prices (\$661 per ton), partially offset by decreased shipments (44 thousand tons).

### Selling, general and administrative expenses

Selling, general and administrative expenses were \$118 million and \$320 million in the three months and nine months ended September 30, 2023, respectively, compared to \$95 million and \$324 million in the three months and nine months ended September 30, 2022, respectively. The change in the three months ended September 30, 2023, compared to the same period in 2022 was primarily due to strategic alternatives review process costs.

### Restructuring and other charges

During the three months and nine months ended September 30, 2023, the Company recognized restructuring and other charges of \$18 million and \$21 million, respectively, compared to charges of \$23 million and \$57 million recognized during the three

months and nine months ended September 30, 2022, respectively. See Note 20 to the Condensed Consolidated Financial Statements for further details.

### **Operating configuration adjustments**

The Company adjusts its operating configuration in response to changes in market conditions, global overcapacity, import competition arising from unfair trade practices, and changes in customer demand. These operating configuration adjustments can include indefinitely and temporarily idling certain of its facilities as well as re-starting production at certain of its facilities. The Company will continue to adjust its operating configuration in order to ensure its order book and production footprint are balanced.

#### Idled Operations

In the third quarter of 2023, the Company temporarily idled blast furnace B at Granite City Works, effectively idling all iron and steel making assets at the facility. The carrying value of idle assets at Granite City Works as of September 30, 2023, is \$150 million. The hot-strip mill, cold mill and coating lines continue to operate at Granite City Works.

In the first quarter of 2023, the Company completed the previously announced permanent shutdown of coke batteries numbers 1 through 3 at the Mon Valley Works.

In January 2022, the Company informed its employees, customers, and other key stakeholders that the Company would be idling its subsidiary in Pittsburg, California, USS-UPI, LLC ("UPI") at the end of 2023. UPI primarily produces galvanized sheet and tin mill products. In September 2023, the Company issued WARN notices to employees at UPI to notify them of employment losses resulting from the idling of operations.

In 2022, U. S. Steel indefinitely idled the majority of the tin mill operations at Gary Works. This included the Tin Line #5 and the Tin Line #6. As of September 30, 2023, the carrying value of the indefinitely idled tin mill operations assets at Gary Works is \$75 million. Tin mill operations continue to operate at the Midwest plant.

The following operations were initially idled in 2020 and remained idle as of September 30, 2023. These facilities and their respective carrying values as of September 30, 2023 included:

- Lorain Tubular Operations, \$55 million
- Lone Star Tubular Operations, \$5 million
- Wheeling Machine Products coupling production facility at Hughes Springs, Texas, immaterial

Earnings (loss) before interest and income taxes by segment is set forth in the following table:

(Dollars in millions)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Flat-Rolled	\$ 225	\$ 518	(57)%	\$ 449	\$ 1,840	(76)%
Mini Mill	42	1	nm	186	549	(66)%
USSE	(13)	(32)	59 %	25	512	(95)%
Tubular	87	155	(44)%	476	339	40 %
Total earnings from reportable segments	341	642	(47)%	1,136	3,240	(65)%
Other	7	21	(67)%	(2)	16	(113)%
Segment earnings before interest and income taxes	348	663	(48)%	1,134	3,256	(65)%
Items not allocated to segments:						
Restructuring and other charges	(18)	(23)		(21)	(57)	
Stock-based compensation expense <sup>(a)</sup>	(14)	(13)		(37)	(45)	
Asset impairment charges	—	—		(4)	(157)	
Environmental remediation charges	(9)	(13)		(11)	(13)	
Strategic alternatives review process costs	(16)	—		(16)	—	
Granite City idling costs	(14)	—		(14)	—	
Other charges, net	—	—		(1)	2	
Total earnings before interest and income taxes	\$ 277	\$ 614	(55)%	\$ 1,030	\$ 2,986	(66)%

<sup>(a)</sup> The prior year was retroactively adjusted to reflect the reclassification of stock-based compensation expense.

### Segment results for Flat-Rolled

	Three months ended September 30,			Nine months ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 225	\$ 518	(57)%	\$ 449	\$ 1,840	(76)%
Gross margin	15 %	20 %	(5)%	12 %	22 %	(10)%
Raw steel production (mnt)	2,390	2,265	6 %	7,312	6,894	6 %
Capability utilization	72 %	68 %	4 %	74 %	70 %	4 %
Steel shipments (mnt)	2,159	2,176	(1)%	6,672	6,488	3 %
Average realized steel price per ton	\$ 1,036	\$ 1,232	(16)%	\$ 1,045	\$ 1,312	(20)%

The decrease in Flat-Rolled results for the three months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$390 million)
- decreased shipments (approximately \$55 million)
- unfavorable equity investees income (approximately \$40 million),

these changes were partially offset by:

- higher other sales (approximately \$10 million)
- lower raw material costs, including LIFO impacts (approximately \$75 million)
- lower energy costs (approximately \$25 million)
- lower operating costs (approximately \$45 million)
- lower other costs, primarily variable compensation (approximately \$35 million).

Gross margin for the three months ended September 30, 2023, compared to the same period in 2022 decreased primarily as a result of lower average realized prices.

The decrease in Flat-Rolled results for the nine months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$1,725 million)

- lower non-prime sales (approximately \$25 million)
- unfavorable equity investees income (approximately \$160 million),

these changes were partially offset by:

- increased shipments, including volume efficiencies (approximately \$60 million)
- higher other sales (approximately \$45 million)
- lower raw material costs, including LIFO impacts (approximately \$135 million)
- lower energy costs (approximately \$40 million)
- lower operating costs (approximately \$45 million)
- lower other costs, primarily variable compensation (approximately \$195 million).

Gross margin for the nine months ended September 30, 2023, compared to the same period in 2022 decreased primarily as a result of lower average realized prices, partially offset by higher sales volume.

### Segment results for Mini Mill

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 42	1	nm	\$ 186	549	(66)%
Gross margin	19 %	7 %	12 %	20 %	32 %	(12)%
Raw steel production (mnt)	693	616	13 %	2,201	1,967	12 %
Capability utilization	83 %	74 %	9 %	89 %	80 %	9 %
Steel shipments (mnt)	561	529	6 %	1,807	1,651	9 %
Average realized steel price per ton	\$ 901	\$ 1,096	(18)%	\$ 898	\$ 1,268	(29)%

The increase in Mini Mill results for the three months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- increased shipments, including volume efficiencies (approximately \$35 million)
- lower raw material costs (approximately \$90 million),

these changes were partially offset by:

- lower average realized prices, including mix (approximately \$75 million)
- higher other costs (approximately \$10 million).

Gross margin for the three months ended September 30, 2023, compared to the same period in 2022 increased primarily as a result of lower lower costs, primarily raw materials.

The decrease in Mini Mill results for the nine months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$595 million)
- higher operating costs (approximately \$25 million)
- higher energy costs (approximately \$5 million)

these changes were partially offset by:

- increased shipments (approximately \$65 million)
- increased other sales (approximately \$10 million)
- lower raw material costs (approximately \$180 million)
- lower other costs (approximately \$5 million).

Gross margin for the nine months ended September 30, 2023, compared to the same period in 2022 decreased primarily as a result of lower average realized sales price, partially offset by higher sales volume.

## Segment results for USSE

	Three Months Ended September 30,			% Change	Nine Months Ended September 30,		
	2023	2022			2023	2022	% Change
(Loss) earnings before interest and taxes (\$ millions)	\$ (13)	\$ (32)	59 %	\$ 25	\$ 512	(95)%	
Gross margin	2 %	— %	2 %	5 %	17 %	(12)%	
Raw steel production (mnt)	990	946	5 %	3,295	3,250	1 %	
Capability utilization	79 %	75 %	4 %	88 %	87 %	1 %	
Steel shipments (mnt)	958	867	10 %	2,875	3,044	(6)%	
Average realized steel price per (\$/ton)	\$ 852	\$ 1,021	(17)%	\$ 910	\$ 1,121	(19)%	
Average realized steel price per (€/ton)	€ 783	€ 1,013	(23)%	€ 840	€ 1,049	(20)%	

The increase in USSE results for the three months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower raw material costs, including inventory revaluations (approximately \$170 million)
- lower energy costs (approximately \$20 million)
- strengthening of the Euro versus the U.S. dollar (approximately \$25 million),
- lower other costs (approximately \$10 million),

these changes were partially offset by:

- lower average realized prices, including mix (approximately \$200 million)
- lower other sales (approximately \$5 million).

Gross margin for the three months ended September 30, 2023, compared to the same period in 2022 increased primarily as a result of lower costs, primarily raw materials.

The decrease in USSE results for the nine months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower average realized prices, including mix (approximately \$600 million)
- decreased shipments (approximately \$25 million)
- lower other sales (approximately \$15 million)
- higher operating costs (approximately \$10 million),

these changes were partially offset by:

- lower raw material costs, including inventory revaluations (approximately \$110 million)
- lower other costs, primarily variable compensation (approximately \$55 million).

Gross margin for the nine months ended September 30, 2023, compared to the same period in 2022 decreased primarily as a result of lower average realized prices and lower sales volume.

## Segment results for Tubular

	Three Months Ended September 30,			% Change	Nine Months Ended September 30,		
	2023	2022			2023	2022	% Change
Earnings before interest and taxes (\$ millions)	\$ 87	\$ 155	(44)%	\$ 476	\$ 339	40 %	
Gross margin	30 %	37 %	(7)%	42 %	33 %	9 %	
Raw steel production (mnt)	111	173	(36)%	411	497	(17)%	
Capability utilization	49 %	76 %	(27)%	61 %	74 %	(13)%	
Steel shipments (mnt)	104	126	(17)%	346	390	(11)%	
Average realized steel price per ton	\$ 2,927	\$ 3,217	(9)%	\$ 3,422	\$ 2,761	24 %	

The decrease in Tubular results for the three months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- lower average realized prices (approximately \$30 million)
- decreased shipments, including volume inefficiencies (approximately \$65 million),

these changes were partially offset by:

- lower energy costs (approximately \$5 million)

- lower other costs (approximately \$20 million).

Gross margin for the three months ended September 30, 2023, compared to the same period in 2022 decreased primarily as a result of lower sales volume and lower average realized prices.

The increase in Tubular results for the nine months ended September 30, 2023, compared to the same period in 2022 was primarily due to:

- higher average realized prices (approximately \$225 million)
- lower raw material costs (approximately \$10 million)
- lower energy costs (approximately \$5 million)
- lower other costs (approximately \$15 million)

these changes were partially offset by:

- decreased shipments, including volume inefficiencies (approximately \$115 million)
- higher operating costs (approximately \$5 million).

Gross margin for the nine months ended September 30, 2023, compared to the same period in 2022 increased primarily as a result of higher average realized prices, partially offset by lower sales volume.

### Net interest and other financial benefits

(Dollars in millions)	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023	2022	% Change	2023	2022	% Change
Interest expense	\$ 16	\$ 38	58 %	\$ 63	\$ 127	50 %
Interest income	(39)	(15)	160 %	(103)	(20)	415 %
Other financial costs	7	7	— %	19	27	30 %
Net periodic benefit income	(42)	(60)	(30)%	(125)	(182)	(31)%
Net gain from investments related to active employee benefits	(6)	—	nm	(36)	—	nm
Total net interest and other financial benefits	\$ (64)	\$ (30)	113 %	\$ (182)	\$ (48)	279 %

Net interest and other financial benefits improved in the three months ended September 30, 2023, as compared to the same period in 2022 primarily due to increased interest income on cash deposits, lower interest expense as a result of increased capitalized interest and gains on investments related to active employee benefits from the initial asset base increase from the transfer of certain VEBA investments previously reported under net periodic benefit income. These were partially offset by reduced net periodic benefit income due to 2022 plan asset performance, a reduced asset base from the transfer of certain VEBA investments to the active employee benefits and increased prior service cost.

Net interest and other financial benefits improved in the nine months ended September 30, 2023, as compared to the same period in 2022 primarily due to increased interest income on cash deposits, lower interest expense as a result of increased capitalized interest and gains on investments related to active employee benefits from the initial asset base increase from the transfer of certain VEBA investments previously reported under net periodic benefit income. These were partially offset by reduced net periodic benefit income due to 2022 plan asset performance, a reduced asset base from the transfer of certain VEBA investments to the active employee benefits and increased prior service cost.

### Income Taxes

Income tax expense was \$42 million and \$237 million in the three months and nine months ended September 30, 2023, respectively, compared to \$154 million and \$684 million in the three months and nine months ended September 30, 2022, respectively. The changes from the prior year periods were primarily due to a decrease in earnings before taxes. In addition, the current year period includes a benefit of \$31 million related to the filing of the 2022 federal income tax return, as well as an additional benefit of \$12 million related to the adjustment of prior years' federal income taxes.

### Net earnings

Net earnings attributable to United States Steel Corporation were \$299 million and \$975 million in the three and nine months ended September 30, 2023, respectively, compared to net earnings of \$490 million and \$2,350 million in the three and nine months ended September 30, 2022, respectively. The changes primarily reflect the factors discussed above.

## LIQUIDITY AND CAPITAL RESOURCES

### Net Cash Provided by Operating Activities

Net cash provided by operating activities was \$1,711 million for the nine months ended September 30, 2023, compared to net cash provided by operating activities of \$2,750 million in the same period in 2022. The period over period decrease in cash from operations from the prior year period was primarily due to lower net earnings partially offset by favorable changes in working capital primarily inventory and accounts receivable. Changes in working capital can vary significantly depending on factors such as the timing of inventory production and purchases, which is affected by the length of our business cycles as well as our captive raw materials position, customer payments of accounts receivable and payments to vendors in the regular course of business.

As shown below our cash conversion cycle for the third quarter of 2023 decreased by 5 days as compared to the fourth quarter of 2022.

Cash Conversion Cycle	Third Quarter of 2023		Fourth Quarter of 2022	
	\$ millions	Days	\$ millions	Days
Accounts receivable, net <sup>(a)</sup>	\$1,541	35	\$1,634	39
+ Inventories <sup>(b)</sup>	\$2,304	58	\$2,359	60
- Accounts Payable and Other Accrued Liabilities <sup>(c)</sup>	\$2,816	69	\$2,831	70
= Cash Conversion Cycle <sup>(d)</sup>		24		29

<sup>(a)</sup> Calculated as Average Accounts Receivable, net divided by total Net Sales multiplied by the number of days in the period.

<sup>(b)</sup> Calculated as Average Inventory divided by total Cost of Sales multiplied by the number of days in the period.

<sup>(c)</sup> Calculated as Average Accounts Payable and Other Accrued Liabilities less bank checks outstanding and other current liabilities divided by total Cost of Sales multiplied by the number of days in the period.

<sup>(d)</sup> Calculated as Accounts Receivable Days plus Inventory Days less Accounts Payable Days.

The cash conversion cycle is a non-generally accepted accounting principles (non-GAAP) financial measure. We believe the cash conversion cycle is a useful measure in providing investors with information regarding our cash management performance and is a widely accepted measure of working capital management efficiency. The cash conversion cycle should not be considered in isolation or as an alternative to other GAAP metrics as an indicator of performance.

The last-in, first-out (LIFO) inventory method is the predominant method of inventory costing for our Flat-Rolled and Tubular segments. Based on the Company's latest internal forecasts and its inventory requirements, management does not believe there will be significant permanent LIFO liquidations that would impact earnings for the remainder of 2023.

### Net Cash Used in Investing Activities

Net cash used in investing activities was \$1,935 million for the nine months ended September 30, 2023, compared to \$1,065 million in the same period in 2022. The increase in net cash used in investing activities was primarily due to increased capital expenditures (discussed in more detail below).

Capital expenditures for the nine months ended September 30, 2023, were \$1,939 million, compared with \$1,138 million in the same period in 2022. Mini Mill capital expenditures were \$1,474 million and included \$1,098 million for BR2, exclusive of the air separation unit, as well as spending for the CGL and the NGO being built at the existing Big River Steel facility. Flat-Rolled capital expenditures were \$375 million which includes spending for the construction of a DR grade pellet facility at Keetac and the Gary Pig Iron facility, as well as mining equipment, other infrastructure and environmental projects across the Flat-Rolled footprint. USSE capital expenditures were \$66 million and included spending for the USSK waste water quality - soluble matters reduction project, enterprise resource planning (ERP) project, 5-stand control system upgrades, blast furnace and various other projects. Tubular capital expenditures were \$24 million and included spending to support steelmaking, infrastructure, and environmental projects within the Tubular footprint.

### Net Cash Used in Financing Activities

Net cash used in financing activities was \$53 million for the nine months ended September 30, 2023, compared to \$752 million in the same period last year. The period over period change in financing activities was primarily due to higher repurchases of common stock and repayments of long-term debt in the prior year period.

### Financing

Certain of our credit facilities, including the Credit Facility Agreement, the Big River Steel ABL Facility, the USSK Credit Agreement and the Export Credit Agreement, contain standard terms and conditions including customary material adverse

change clauses. If a material adverse change was to occur, our ability to fund future operating and capital requirements could be negatively impacted.

On September 28th, 2023, the Company elected to reduce the size of the USSK Credit Agreement from €300 million to €150 million (approximately \$159 million). The reduced USSK Credit Agreement maintained the previous larger agreement's USSK specific financial covenants. The reduced credit facility size supports USSK's liquidity needs and is consistent with efforts to optimize costs and the global liquidity position.

We use surety bonds, trusts and letters of credit to provide whole or partial financial assurance for certain transactions and business activities. The use of some forms of financial assurance and cash collateral have a negative impact on liquidity. U. S. Steel has committed approximately \$188 million of liquidity sources for financial assurance purposes as of September 30, 2023. Changes in certain of these commitments which use collateral are reflected within cash, cash equivalents and restricted cash on the Condensed Consolidated Statement of Cash Flows.

### **Share Repurchases**

On July 25, 2022, following the completion of the previously authorized \$800 million share repurchase programs, the Board of Directors authorized a new share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock from time to time in the open market or privately negotiated transactions at the discretion of management. The Company's share repurchase program does not obligate it to acquire any specific number of shares. Common stock repurchased under our share repurchase programs totaled 7.1 million shares for approximately \$175 million in the nine months ended September 30, 2023. See Note 22 to the Condensed Consolidated Financial Statements for further details.

### **Capital Requirements**

U. S. Steel's contractual commitments to acquire property, plant and equipment at September 30, 2023, totaled \$1.726 billion.

### **Liquidity**

The following table summarizes U. S. Steel's liquidity as of September 30, 2023:

(Dollars in millions)	
Cash and cash equivalents	\$ 3,222
Amount available under Credit Facility Agreement	1,746
Amount available under Big River Steel - Revolving Line of Credit	350
Amount available under USSK Credit Agreement and USSK Credit Facility	175
Total estimated liquidity	\$ 5,493

We finished the third quarter of 2023 with \$3,222 million of cash and cash equivalents and \$5,493 million of total liquidity. Available cash is left on deposit with financial institutions or invested in highly liquid securities with parties we believe to be creditworthy. Substantially all of the liquidity attributable to our foreign subsidiaries can be accessed without the imposition of income taxes as a result of a prior election to liquidate for U.S. income tax purposes a foreign subsidiary that holds most of our international operations.

We expect that our estimated liquidity requirements will consist primarily of our 2023 planned strategic and sustaining capital expenditures, working capital requirements, interest expense, and operating costs and employee benefits for our operations after taking into account the footprint actions and cost reductions at our plants and headquarters. Our available liquidity at September 30, 2023 consists principally of our cash and cash equivalents and available borrowings under the Credit Facility Agreement, Big River Steel ABL Facility, USSK Credit Agreement and the USSK Credit Facility.

Management continues to evaluate market conditions in our industry and our global liquidity position and may consider additional actions to further strengthen our balance sheet and optimize liquidity, including but not limited to the repayment or refinancing of outstanding debt and the incurrence of additional debt to opportunistically finance strategic projects. The Company may also return excess liquidity to shareholders through share repurchases and dividends from time to time if deemed appropriate by management.

U. S. Steel management believes that our liquidity will be adequate to fund our requirements based on our current assumptions with respect to our results of operations and financial condition.

The Company has a supply chain finance (SCF) arrangement with a third-party administrator which allows participating suppliers, at their sole discretion, to make offers to sell payment obligations of the Company prior to their scheduled due dates at a discounted price to a participating financial institution. The third-party administrator entered into a separate agreement with the

Export Import Bank of the United States to guarantee 90 percent of supplier obligations sold for up to \$200 million. No guarantees or collateral are provided by the Company or any of its subsidiaries under the SCF program.

The Company's goal is to capture overall supplier savings and improve working capital efficiency. The agreements facilitate the suppliers' ability to sell payment obligations, while providing them with greater working capital flexibility. The Company has no economic interest in the sale of the suppliers' receivables and no direct financial relationship with the financial institution concerning these services. The Company's obligations to its suppliers, including amounts due and scheduled payment dates, are not impacted by suppliers' decisions to sell amounts under the arrangements. The SCF program requires the Company to pay the third-party administrator the stated amount of the confirmed participating supplier invoices. The payment terms for confirmed invoices range from 75 to 90 days after the end of the month in which the invoice was issued.

The underlying costs from suppliers that elected to participate in the SCF program are generally recorded in cost of sales in the Company's Condensed Consolidated Statement of Operations. Amounts due to suppliers who participate in the SCF program are reflected in accounts payable and accrued expenses on the Company's Condensed Consolidated Balance Sheet and payments on the obligations by our suppliers are included in cash used in operating activities in the Condensed Consolidated Statement of Cash Flows. As of September 30, 2023, accounts payable and accrued expenses included \$93 million of outstanding payment obligations which suppliers elected to sell to participating financial institutions.

### **Environmental Matters, Litigation and Contingencies**

Some of U. S. Steel's facilities were in operation before 1900. Although the Company believes that its environmental practices have either led the industry or at least been consistent with prevailing industry practices, hazardous materials have been and may continue to be released at current or former operating sites or delivered to sites operated by third parties.

Our U.S. facilities are subject to environmental laws applicable in the U.S., including the Clean Air Act (the CAA), the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as well as state and local laws and regulations.

U. S. Steel has incurred and will continue to incur substantial capital, operating, and maintenance and remediation expenditures as a result of environmental laws and regulations, related to release of hazardous materials, which in recent years have been mainly for process changes to meet the CAA obligations and similar obligations in Europe.

#### EU Environmental Requirements and Slovak Operations

Phase IV of the EU Emissions Trading System (the EU ETS) commenced on January 1, 2021 and will finish on December 31, 2030. The European Commission issued final approval of the updated 2021-2025 Slovak National Allocation table in February 2022. The Slovak Ministry of Environment has allocated 6.2 million metric tons of European Union Emission Allowances (EUA) at no charge (free allowances or free allocation) to USSE. As of September 30, 2023, we have pre-purchased and settled approximately 1.65 million EUA totaling €135 million (approximately \$143 million) to cover the expected 2023 shortfall of emission allowances and a portion of the 2024 shortfall. In September 2023, we have also entered into forward agreements to purchase and settle €28.6 million of EUA in January and February 2024, for the anticipated 2024 shortfall.

The EU's Industrial Emissions Directive requires implementation of EU determined best available techniques (BAT) for Iron and Steel production to reduce environmental impacts as well as compliance with BAT associated emission levels. Total capital expenditures for projects to go beyond BAT requirements were €138 million (approximately \$146 million). These costs were partially offset by the EU funding received and may be mitigated over the next measurement periods if USSK complies with certain financial covenants, which are assessed annually. If we are unable to meet these covenants in the future, USSK might be required to provide additional collateral (e.g., bank guarantee) to secure 50 percent of the EU funding received. USSK complied with these covenants as of September 30, 2023, and no additional collateral will be required by the end of June 30, 2024. By this next assessment date, two projects of the total fifteen will pass the sustainability monitoring and will be excluded from further assessment to provide additional collateral if the covenants are not met. The last assessment of financial covenants will be performed as of June 30, 2026.

For further discussion of laws applicable in Slovakia and the EU and their impact on USSE, see Note 21 to the Condensed Consolidated Financial Statements, "Contingencies and Commitments - Environmental Matters, EU Environmental Requirements."

### **New and Emerging Environmental Regulations**

#### United States and European Greenhouse Gas Emissions Regulations

The Phase IV EU ETS period spans 2021-2030 and began on January 1, 2021. The Phase IV period is divided into two sub periods (2021-2025 and 2026-2030), rules for the first subperiod are finalized, however we expect that rules for the second subperiod may be more stringent than those for the first one. Once approved, the rules may impact subperiod 2026-2030. Currently, the overall EU ETS target is a 40 percent reduction of 1990 emissions by 2030. Free allocation of CO<sub>2</sub> allowances is based on reduced benchmark values which have been published in the first quarter of 2021 and historical levels of production from 2014-2018. Allocations to individual installations may be adjusted annually to reflect relevant increases and decreases in

production. The threshold for adjustments is set at 15 percent and will be assessed on the basis of a rolling average of two precedent years. Production data verified by an external auditor shows that USSE's rolling average for 2020-2021 returned to the base limit for hot metal production resulting in an increase to the free allocation for 2022 compared to 2021, however the 2022 free allocation was still slightly reduced due to missing the 15 percent threshold for sinter production. Additionally, lower production in 2019 through 2021 will have an impact on the future free allocation for 2026-2030, where the historical production average for years 2019-2023 will be assessed. Based on actual production data for 2022, we expect that the free allocation for hot metal will remain unchanged for 2023, however allocations for sinter will be lower.

In order to achieve the EU political goal of carbon emissions neutrality by 2050, on July 14, 2021, the European Commission released a package of legislative proposals called Fit for 55. The proposals contain significant changes to current EU ETS functions and requirements, including: a new carbon border adjustment mechanism (CBAM) to impose carbon fees on EU imports, further reduction of free CO<sub>2</sub> allowance allocation to heavy industry and measures to strengthen the supply of carbon allowances. The initial phase started on October 1, with only reporting obligation without financial impact. The full scale of CBAM will commence on January 1, 2026. CBAM will have an impact on USSK's free allocation starting in 2026 where initial reduction to 97.5% starts until 2035 with no free allocation. Another implication of CBAM is the customs duty where USSK will cover all its imports from third parties with CBAM Certificates that will represent embedded emissions in goods imported. The legislative process is being impacted by the ongoing Russia-Ukraine crisis. The proposals are subject to the EU legislative process, and we cannot predict their future impact.

U. S. Steel continues to monitor emerging regulations on Per- and Polyfluoroalkyl Substances (PFAS). The U.S. EPA (United States Environmental Protection Agency) has issued regulations on PFAS under several environmental statutes and continues to introduce additional regulations. Thus far, those regulations do not directly impact U. S. Steel because the company does not knowingly introduce PFAS in its manufacturing processes, but U. S. Steel continues to review new regulations related to PFAS and their potential impact to the company.

#### United States - Air

The CAA imposes stringent limits on air emissions with a federally mandated operating permit program and civil and criminal enforcement sanctions. The CAA requires, among other things, the regulation of hazardous air pollutants through the development and promulgation of National Emission Standards for Hazardous Air Pollutants (NESHAP) and Maximum Achievable Control Technology (MACT) Standards. The U.S. EPA has developed various industry-specific MACT standards pursuant to this requirement. The CAA requires the U.S. EPA to promulgate regulations establishing emission standards for each category of Hazardous Air Pollutants. The U.S. EPA also must conduct risk assessments on each source category that is already subject to MACT standards and determine if additional standards are needed to reduce residual risks.

While our operations are subject to several different CAA rules and categories of NESHAP and MACT standards, the principal impact of these standards on U. S. Steel's operations includes those that are specific to coke making, iron making, steel making and iron ore processing. The U. S. EPA has several rules under consideration that will impact our operations, as described in the sections below. While many of these rules are not finalized and the impacts are not estimable at this time, the overall cumulative impact could be material.

On July 13, 2020, the U.S. EPA published a Residual Risk and Technology Review rule for the Integrated Iron and Steel MACT category in the Federal Register. Based on the results of the U.S. EPA's risk review, the agency determined that risks due to emissions of air toxics from the Integrated Iron and Steel category are acceptable and that the current regulations provided an ample margin of safety to protect public health. Under the technology review, the U.S. EPA determined that there are no developments in practices, processes or control technologies that necessitate revision of the standards. In September 2020, several petitions for review of the rule, including those filed by the Company, the American Iron and Steel Institute (the AISI), Clean Air Council and others, were filed with the United States Court of Appeals for the D.C. Circuit. The cases were consolidated and are being held in abeyance until the U.S. EPA reviews and responds to administrative petitions for review. The U.S. EPA is required by court order to issue a final rule by March 11, 2024. The U.S. EPA proposed a revised iron and steel rule on July 31, 2023. U. S. Steel and other entities submitted extensive comments to the U.S. EPA on September 28, 2023. Since the revisions to the iron and steel rule are not final, any impacts are not estimable at this time.

For the Taconite Iron Ore Processing category, based on the results of the U.S. EPA's risk review, the agency promulgated a final rule on July 28, 2020, in which the U.S. EPA determined that risks from emissions of air toxics from this source category are acceptable and that the existing standards provide an ample margin of safety. Furthermore, under the technology review, the agency identified no cost-effective developments in controls, practices, or processes to achieve further emissions reductions. Petitions for review of the rule were filed in the United States Court of Appeals for the D.C. Circuit, in which the Company and the AISI intervened. The U.S. EPA is required by court order to issue a final rule by November 16, 2023. The U.S. EPA proposed the Taconite Rule on May 15, 2023, and comments were submitted on July 7, 2023. Since the revised taconite rule is not final, any impacts are not estimable at this time. The U.S. EPA is under a court-ordered deadline to complete the residual risk and technology rulemaking by November 16, 2023.

The U.S. EPA is in the process of conducting its statutorily obligated residual risk and technology review of coke oven standards. Because the U.S. EPA completed its review of the Coke MACT regulations and published the proposed rule on August 15, 2023. U. S. Steel and other entities submitted extensive comments to the U.S. EPA on October 2, 2023. Since the rule is not final any

impacts related to the U.S. EPA's review of the coke standards cannot be estimated at this time. The U.S. EPA is under a court-ordered deadline to complete the residual risk and technology rulemaking by May 23, 2024.

In response to Court orders that invalidated prior U.S. EPA determinations regarding ozone attainment interference, on April 6, 2022, the U.S. EPA proposed a Federal Implementation Plan (that would replace several pending or disapproved State Implementation Plans) for Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard. The proposed rule would affect electric generating units (EGUs) in 26 states and certain non-EQU industries, including, among several others, coke ovens, taconite production kilns, boilers, blast furnaces, basic oxygen furnaces, reheating furnaces, and annealing furnaces in 23 states, including those where U. S. Steel has operations. The U.S. EPA announced the final rule on March 15, 2023. The final rule only included regulation of boilers and reheat furnaces for the iron and steel industry limiting the potential impacts. The final rule was published in the Federal Register on June 5, 2023. U. S. Steel filed an administrative petition for review and a petition for judicial review to the rule on August 4, 2023. The matter remains before the U.S. EPA Administrator (administrative) and the District of Columbia Circuit Court of Appeals (judicial).

The CAA also requires the U.S. EPA to develop and implement National Ambient Air Quality Standards (NAAQS) for criteria pollutants, which include, among others, particulate matter (PM) - consisting of PM<sub>10</sub> and PM<sub>2.5</sub>, lead, carbon monoxide, nitrogen dioxide, sulfur dioxide (SO<sub>2</sub>) and ozone.

In October 2015, the U.S. EPA lowered the NAAQS for ozone from 75 parts per billion (ppb) to 70 ppb. On November 6, 2017, the U.S. EPA designated most areas in which we operate as attainment with the 2015 standard. In a separate ruling, on June 4, 2018, the U.S. EPA designated other areas in which we operate as "marginal nonattainment" with the 2015 ozone standard. On December 6, 2018, the U.S. EPA published a final rule regarding implementation of the 2015 ozone standard. Because no state regulatory or permitting actions to bring the ozone nonattainment areas into attainment have yet to be proposed or developed for U. S. Steel facilities, the operational and financial impact of the ozone NAAQS cannot be reasonably estimated at this time. On December 31, 2020, the U.S. EPA published a final rule pursuant to its statutorily required review of NAAQS that retains the ozone NAAQS at 70 ppb. In January 2021, New York, along with several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the D.C. Circuit. Several other states and industry trade groups intervened in support of the U. S. EPA's action. The case remains in abeyance before the court as the U.S. EPA voluntarily reconsiders the ozone NAAQS. The U. S. EPA expects to propose a rulemaking for its voluntary reconsideration of the ozone standard in April 2024. Because the U.S. EPA has yet to complete its reconsideration to revise or retain the 2020 ozone NAAQS, any impacts are not estimable at this time.

On December 18, 2020, the U.S. EPA published a final rule pursuant to its statutorily required review of NAAQS that retains the existing PM<sub>2.5</sub> standards without revision. In early 2021, several states and non-governmental organizations filed petitions for judicial review of the action with the United States Court of Appeals for the D.C. Circuit. Several industry trade groups intervened in support of the U.S. EPA's action. The case remains in abeyance before the court as the U.S. EPA voluntarily reconsiders the PM<sub>2.5</sub> NAAQS. On January 6, 2023, the U.S. EPA proposed to lower the annual PM<sub>2.5</sub> NAAQS from the current 12 ug/m<sup>3</sup> standard to within the range of 9.0 to 10.0 ug/m<sup>3</sup>. The U. S. EPA expects to finalize a rule on the reconsideration in late 2023. U. S. Steel is currently reviewing the proposal and comments to determine the potential impacts. Because the U.S. EPA has proposed the rule without specificity, any impacts are inestimable at this time.

For calendar year 2022, all Allegheny County ambient air quality monitors met all U.S. EPA health based National Ambient Air Quality Standards for the second consecutive year. On March 16, 2022, the U.S. EPA published a final rule, a clean data determination, showing that Allegheny County has attained the 2012 annual PM<sub>2.5</sub> NAAQS based on the 2018 – 2020 ambient air quality data. Based on these and other data, ACHD submitted a Redesignation Request and Maintenance Plan to the U.S. EPA requesting that the U.S. EPA redesignate all of Allegheny County in attainment with the current PM<sub>2.5</sub> NAAQS.

#### United States - Water

The definition of Waters of the United States (WOTUS) has had many changes and legal challenges over the last several years. In January 2023, the U.S. EPA issued a final rule redefining WOTUS that became effective March 1, 2023. The new WOTUS rule would have expanded the definition of what waters would be considered to be a WOTUS. However, in May 2023, the U. S. Supreme court issued a decision in *Sackett v. EPA* that significantly narrowed the definition of WOTUS and, specifically, as that definition relates to wetlands under the Clean Water Act. On August 29, 2023, the U.S. EPA re-issued its WOTUS rule as a Final Rule with no public notice and comment with changes incorporated from the *Sackett* decision. As a result of ongoing litigation on the January 2023 Rule, the U.S. EPA and the Army Corps of Engineers are implementing the definition of "waters of the United States" under the January 2023 Rule, as amended by the August "conforming" rule, in 23 states, the District of Columbia, and the U.S. Territories. In the other 27 states and for certain parties, the agencies are interpreting "waters of the United States" consistent with the pre-2015 regulatory regime and the *Sackett* decision until further notice. U. S. Steel will continue to review and follow the final WOTUS definition and associated litigation for its potential impact on the Company.

For further discussion of relevant environmental matters, including environmental remediation obligations, see "Item 1. Legal Proceedings - Environmental Proceedings."

#### **OFF-BALANCE SHEET ARRANGEMENTS**

U. S. Steel did not enter into any new material off-balance sheet arrangements during the third quarter of 2023.

## INTERNATIONAL TRADE

U. S. Steel continues to face import competition, much of which is unfairly traded and fueled by massive global steel overcapacity, currently estimated to be over 674 million net tons per year—more than six times the entire U.S. steel market and over twenty times total U.S. steel imports. These imports and overcapacity negatively impact the Company's operational and financial performance. U. S. Steel continues to lead efforts to address these challenges that threaten the Company, our workers, our stockholders and our country's national and economic security.

As of the date of this filing, pursuant to a series of Presidential Proclamations issued in accordance with Section 232 of the Trade Expansion Act of 1962, U.S. imports of certain steel products are subject to a 25 percent tariff, except imports from: (1) Argentina, Brazil, and South Korea, which are subject to restrictive quotas; (2) the European Union (EU), Japan and the United Kingdom (UK) that are melted and poured in the EU/Japan/UK, within quarterly tariff-rate quota (TRQ) limits; (3) Canada and Mexico, which are not subject to tariffs or quotas, but tariffs could be re-imposed on surging product groups after consultations; (4) Ukraine and, if melted and poured in Ukraine, the EU, which are exempt from tariffs until June 1, 2024; and (5) Australia, which are not subject to tariffs, quotas or an anti-surge mechanism.

The U.S. Department of Commerce (DOC) is managing a process in which U.S. companies may request and/or oppose temporary product exclusions from the Section 232 tariffs and quotas. U. S. Steel opposes exclusion requests for imported products that are the same as, or substitutes for, products manufactured by U. S. Steel. On August 28, 2023, DOC published proposed revisions to the Section 232 product exclusion process regulations, with public comments due in October.

Multiple legal challenges to the Section 232 action continue before the U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (CAFC), the latter which has consistently rejected constitutional and statutory challenges to the Section 232 action. Several challenges to the Section 232 action and retaliation thereto continue at the World Trade Organization (WTO).

Since its implementation in March 2018, the Section 232 action has supported the U.S. steel industries and U. S. Steel's investments in advanced steel production capabilities, technology, and skills, strengthening U.S. national and economic security. The Company continues to actively defend the Section 232 action.

In February 2019, the European Commission (EC) implemented a definitive safeguard on global steel imports in the form of TRQs that impose 25 percent tariffs on steel imports that exceed the TRQ limit. The EC's safeguard is currently set to expire in June 2024.

Antidumping duties (AD) and countervailing duties (CVD or antisubsidy duties) apply in addition to the Section 232 tariffs, quotas, TRQs and the EC's safeguard, and AD/CVD orders may continue beyond the Section 232 action and the EC's safeguard. U. S. Steel continues to actively defend and maintain the 61 U.S. AD/CVD orders and 14 EU AD/CVD orders covering U. S. Steel products in multiple proceedings before the DOC, U.S. International Trade Commission (ITC), CIT, CAFC, the EC and European courts, and the WTO.

In January 2023, Cleveland-Cliffs and the USW filed new AD/CVD petitions on U.S. imports of tin mill products from eight countries. In June 2023, DOC issued an affirmative preliminary CVD determination regarding tin mill products from China. In August 2023, DOC made affirmative preliminary dumping determinations regarding tin mill products from Canada, China, and Germany, but negative preliminary determinations for tin mill products from Korea, Netherlands, Taiwan, Turkey, and UK. The ITC final phase hearing is scheduled for January 4, 2024.

Additional tariffs of 7.5 to 25 percent continue to apply to certain U.S. imports from China, including certain raw materials used in steel production, semi-finished and finished steel products, and downstream steel-intensive products, pursuant to Section 301 of the Trade Act of 1974. The Office of the United States Trade Representative (USTR) is currently conducting a statutory review of the Section 301 tariffs.

The United States and EU are currently negotiating continuation of the Section 232 TRQ on U.S. imports from Europe and the EU's suspended retaliation on U.S. exports, as well as a global sustainable steel arrangement to restore market-oriented conditions and address carbon intensity. In June 2023, to inform these ongoing discussions with the EU, USTR requested that the ITC conduct a Section 332 investigation to assess greenhouse gas emissions intensity of steel produced in the United States. The ITC initiated the Section 332 proceeding in July 2023, will hold a hearing on December 7, 2023, collect information from domestic producers through mid-2024, and will issue a report in January 2025. U. S. Steel is actively participating in this Section 332 investigation.

U. S. Steel will continue to execute a broad, global strategy to maximize opportunities and navigate challenges presented by imports, global steel overcapacity, and international trade law and policy developments.

## **NEW ACCOUNTING STANDARDS**

See Notes 2 and 3 to the Condensed Consolidated Financial Statements in Part I Item 1 of this Quarterly Report on Form 10-Q.

### **Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

For quantitative and qualitative disclosures about market risk, see Item 7A “Quantitative and Qualitative Disclosures About Market Risk” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2022, there were no material changes in U. S. Steel's exposure to market risk from December 31, 2022.

### **Item 4. CONTROLS AND PROCEDURES**

#### **EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES**

U. S. Steel has evaluated the effectiveness of the design and operation of its disclosure controls and procedures as of September 30, 2023. These disclosure controls and procedures are the controls and other procedures that were designed to ensure that information required to be disclosed in reports that are filed with or submitted to the SEC are: (1) accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures and (2) recorded, processed, summarized and reported within the time periods specified in applicable law and regulations. Based on this evaluation, the Chief Executive Officer and Chief Financial Officer concluded that, as of September 30, 2023, U. S. Steel's disclosure controls and procedures were effective.

#### **CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING**

There have not been any changes in U. S. Steel's internal control over financial reporting that occurred during the fiscal quarter covered by this quarterly report, which have materially affected, or are reasonably likely to materially affect, U. S. Steel's internal control over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. LEGAL PROCEEDINGS**

#### **GENERAL LITIGATION**

On June 8, 2021, JSW Steel (USA) Inc. and JSW Steel USA Ohio, Inc. (collectively, JSW), U.S. based subsidiaries of Indian steelmaker JSW Steel, filed suit in the United States District Court for the Southern District of Texas against Nucor, U. S. Steel, AK Steel Holding Group and Cleveland-Cliffs (collectively, the JSW Defendants) alleging that the Defendants operated as a cartel and formed a conspiracy to boycott JSW from obtaining semi-finished steel slabs. JSW alleges that the JSW Defendants acted in violation of Section 1 of the Sherman Act and the Clayton Act (federal antitrust), and violation of the Texas Free Enterprise and Antitrust Act. JSW also alleges that the JSW Defendants formed a civil conspiracy in violation of Texas common law, and that the JSW Defendants tortiously interfered with JSW's business relationships. The basis for JSW's allegations relate to the JSW Defendants participation in the DOC's Section 232 process, including the JSW Defendants' support of the enactment of the President's Section 232 proclamation, statements made by the JSW Defendants after the enactment of Section 232, and the JSW Defendants' participation in the Section 232 exclusion process. Plaintiffs seek monetary damages including \$45 million for payment of Section 232 tariffs and unspecified amounts for financial penalties, termination fees and lost profits as well as other damages. U. S. Steel, along with the other JSW Defendants, filed a Motion to Dismiss the case on August 17, 2021. On February 17, 2022, the Court issued an opinion dismissing JSW's antitrust complaint with prejudice. JSW filed a timely notice of appeal with the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit held oral argument on the appeal on February 6, 2023, and we are awaiting a ruling from the Court. The Company continues to vigorously defend the matter.

On December 24, 2018, U. S. Steel's Clairton Plant experienced a fire, affecting portions of the facility involved in desulfurization of the coke oven gas generated during the coking process. With the desulfurization process out of operation as a result of the fire, U. S. Steel was not able to certify compliance with Clairton Plant's Title V permit levels for sulfur emissions. U. S. Steel promptly notified ACHD, which has regulatory jurisdiction for the Title V permit, and updated the ACHD regularly on efforts to mitigate any potential environmental impacts until the desulfurization process was returned to normal operations. Of the approximately 2,400 hours between the date of the fire and April 4, 2019, when the Company resumed desulfurization, there were ten intermittent hours where average SO<sub>2</sub> emissions exceeded the hourly NAAQS for SO<sub>2</sub> at the Allegheny County regional air quality monitors located in Liberty and North Braddock boroughs, which are near U. S. Steel's Mon Valley Works facilities. On April 29, 2019, PennEnvironment and Clean Air Council, both environmental, non-governmental organizations filed a Complaint in Federal Court in the Western District of Pennsylvania. The ACHD was subsequently granted intervenor status. Collectively the parties seek injunctive relief and civil penalties regarding the alleged Permit violations following the fire. Discovery has concluded. The court denied the parties' respective Motions for Summary Judgment. A non-jury trial which was scheduled to take place in April and May of 2023 is being held in abeyance as the parties reached a tentative settlement agreement, signed a term sheet, and advised the Court accordingly. The parties are working to draft a Consent Decree to memorialize the settlement terms. Separately, a class action has been filed in the Court of Common Pleas of Allegheny County on behalf of approximately 123,000 persons who claim that the impacts from the fire created a nuisance and seek damages for loss of use and enjoyment of properties. That action has been certified as a class action and the Company intends to vigorously defend against it.

#### **ENVIRONMENTAL PROCEEDINGS**

The following is a summary of the proceedings of U. S. Steel that were pending or contemplated as of September 30, 2023, under federal and state environmental laws, and which U. S. Steel reasonably believes may result in monetary sanctions of at least \$1 million (the threshold chosen by U. S. Steel as permitted by Item 103 of Regulation S-K promulgated under the Securities Exchange Act of 1934, as amended). Information about specific sites where U. S. Steel is or has been engaged in significant clean up or remediation activities is also summarized below. Except as described herein, it is not possible to accurately predict the ultimate outcome of these matters.

##### ***CERCLA Remediation Sites***

Claims under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) have been raised with respect to the cleanup of various waste disposal and other sites. Under CERCLA, potentially responsible parties (each, a PRP) for a site include current owners and operators, past owners and operators at the time of disposal, persons who arranged for disposal of a hazardous substance at a site and persons who transported a hazardous substance to a site. CERCLA imposes strict and joint and several liabilities. Because of various factors, including the ambiguity of the regulations, the difficulty of identifying the responsible parties for any particular site, the complexity of determining the relative liability among them, the uncertainty as to the most desirable remediation techniques, and the amount of damages and cleanup costs and the time period during which such costs may be incurred, we are unable to reasonably estimate U. S. Steel's ultimate liabilities under CERCLA.

As of September 30, 2023, U. S. Steel has received information requests or been identified as a PRP at a total of four CERCLA sites, three of which have liabilities that have not been resolved. Based on currently available information, which is in many cases preliminary and incomplete, management believes that U. S. Steel's liability for CERCLA cleanup and remediation costs at the other site will be over \$5 million as described below.

## **Duluth Works**

The former U. S. Steel Duluth Works site was placed on the National Priorities List under CERCLA in 1983 and on the State of Minnesota's Superfund list in 1984. Liability for environmental remediation at the site is governed by a Response Order by Consent executed with the MPCA in 1985 and a Record of Decision signed by MPCA in 1989. U. S. Steel has partnered with the Great Lakes National Program Office (GLNPO) of the U.S. EPA Region 5 to address contaminated sediments in the St. Louis River Estuary and several other operable units that could impact the estuary if not addressed. An amendment to the Project Agreement between U. S. Steel and GLNPO was executed during the second quarter of 2018 to recognize the initial costs associated with implementing the first two phases of the proposed remedial plan at the site.

Remediation contracts were issued by both USS and GLNPO for the first phase of the remedial work at the site during the fourth quarter of 2020. USS and GLNPO have completed the second phase of work at the site which extended through early 2022. The final phase of the remedial design has been defined and another amendment to the Project Agreement between U.S. Steel and GLNPO was executed in December 2021. Execution of this final phase is in progress and is expected to extend through 2024 for habitat restoration. USS' portion of additional, design, oversight costs, and implementation of all three phases of the preferred remedial alternative on the upland property and Estuary are currently estimated as of September 30, 2023 at approximately \$16 million.

### ***Resource Conservation Recovery Act (RCRA) and Other Remediation Sites***

U. S. Steel may be liable for remediation costs under other environmental statutes, both federal and state, or where private parties are seeking to impose liability on U. S. Steel for remediation costs through discussions or litigation. There are eight such sites where remediation is being sought involving amounts in excess of \$1 million. Based on currently available information, which is in many cases preliminary and incomplete, management believes that liability for cleanup and remediation costs in connection with four sites may involve remediation costs between \$1 million and \$5 million per site and four sites are estimated to, or could have, costs for remediation, investigation, restoration or compensation in excess of \$5 million per site.

For more information on the status of remediation activities at U. S. Steel's significant sites, see the discussions below.

## **Gary Works**

On October 23, 1998, the U.S. EPA issued a final Administrative Order on Consent (Order) addressing Corrective Action for Solid Waste Management Units (SWMU) throughout Gary Works. This Order requires U. S. Steel to perform an RCRA Facility Investigation, a Corrective Measures Study and Corrective Measure Implementation. Evaluations are underway at six groundwater areas on the east side of the facility. A remedial groundwater treatment system has been operating at one of the six areas since 2021. An Interim Stabilization Measure work plan was recently approved by the U.S. EPA for a second area and a contractor is completing installation and start-up of the remedial system. Until the remaining Phase I work and Phase II field investigations are completed, it is not possible to assess what additional expenditures will be necessary for Corrective Action projects at Gary Works. In total, the accrued liability for Corrective Action projects is approximately \$23 million as of September 30, 2023, based on our current estimate of known remaining costs.

## **Geneva Works**

At U. S. Steel's former Geneva Works, liability for environmental remediation, including the closure of three hazardous waste impoundments and facility-wide corrective action, has been allocated between U. S. Steel and the current property owner pursuant to an agreement and a permit issued by the Utah Department of Environmental Quality (UDEQ). Having completed the investigation on a majority of the remaining areas identified in the permit, U. S. Steel had determined the most effective means to address the remaining impacted material was to manage those materials in a previously approved on-site Corrective Action Management Unit (CAMU). U. S. Steel awarded a contract for the implementation of the CAMU project during the fourth quarter of 2018. Construction, waste stabilization and placement, along with closure of the CAMU, were substantially completed in the fourth quarter of 2020. U. S. Steel has an accrued liability of approximately \$18 million as of September 30, 2023 for our estimated share of the remaining costs of remediation at the site.

## **USS-UPI LLC**

In February 2020, U. S. Steel purchased the remaining 50 percent interest in USS-POSCO Industries, a former joint venture that is located in Pittsburg, California between subsidiaries of U. S. Steel and POSCO, now known as USS-UPI, LLC. Prior to formation of the joint venture, UPI's facilities were previously owned and operated solely by U. S. Steel, which assumed responsibility for the existing environmental conditions. U. S. Steel continues to monitor the impacts of the remedial plan implemented in 2016 to address groundwater impacts from trichloroethylene at SWMU 4. Evaluations continue for the SWMUs, known as the Northern Boundary Group, and it is likely that corrective measures will be required, but it is not possible at this time to define a scope or estimate costs for what may be required by the California Department of Toxic Substances Control. As such, there has been no material change in the status of the project during the nine months ended September 30, 2023. As of September 30, 2023, approximately \$229,000 has been accrued for ongoing environmental studies, investigations and remedy monitoring. Significant additional costs associated with this site are possible and are referenced in Note 21 to the Condensed Consolidated Financial Statements "Contingencies and Commitments - Environmental Matters - Remediation Projects - Projects with Ongoing Study and Scope Development."

## **Fairfield Works**

A consent decree was signed by U. S. Steel, the U.S. EPA and the U.S. Department of Justice and filed with the United States District Court for the Northern District of Alabama (United States of America v. USX Corporation) in December 1997. In accordance with the consent decree, U. S. Steel initiated a RCRA corrective action program at the Fairfield Works facility. The Alabama Department of Environmental Management (ADEM), with the approval of the U.S. EPA, assumed primary responsibility for regulation and oversight of the RCRA corrective action program at Fairfield Works. Corrective Measure Implementation Plans (CMIPs) have been submitted to and approved by ADEM for the last two areas on site where impacts to soil and sediments are required to be addressed. Plans are being finalized for contracting the work required under the CMIPs. U. S. Steel has an accrued liability of approximately \$8 million as of September 30, 2023 for the estimated remaining costs of remediation at the site.

## **Air Related Matters**

### **Granite City Works**

In October 2015, Granite City Works received a Violation Notice from the Illinois Environmental Protection Agency (IEPA) in which the IEPA alleges that U. S. Steel violated the emission limits for nitrogen oxides (NOx) and volatile organic compounds from the Basic Oxygen Furnace Electrostatic Precipitator Stack. In addition, the IEPA alleges that U. S. Steel exceeded its natural gas usage limit at its CoGeneration Boiler. U. S. Steel responded to the notice and on July 21, 2023, received a denial from the IEPA. On September 11, 2023, U. S. Steel submitted a response and comments, and remains in discussion with IEPA.

Although discussions with IEPA regarding the foregoing alleged violations are ongoing and the resolution of these matters is uncertain at this time, it is not anticipated that the result of those discussions will be material to U. S. Steel.

### **Minnesota Ore Operations**

On February 6, 2013, the U.S. EPA published a FIP that applies to taconite facilities in Minnesota. The FIP establishes and requires emission limits and the use of low NOx reduction technology on indurating furnaces as Best Available Retrofit Technology (BART). While U. S. Steel installed low NOx burners on three furnaces at Minntac and is currently obligated to install low NOx burners on the two other furnaces at Minntac pursuant to existing agreements and permits, the rule would require the installation of a low NOx burner on the one furnace at Keetac for which U. S. Steel did not have an otherwise existing obligation. U. S. Steel estimates expenditures associated with the installation of low NOx burners of as much as \$25 million to \$30 million. In 2013, U. S. Steel filed a petition for administrative reconsideration to the U.S. EPA and a petition for judicial review of the 2013 FIP and denial of the Minnesota SIP to the Eighth Circuit. In April 2016, the U.S. EPA promulgated a revised FIP with the same substantive requirements for U. S. Steel. In June 2016, U. S. Steel filed a petition for administrative reconsideration of the 2016 FIP to the U.S. EPA and a petition for judicial review of the 2016 FIP before the Eighth Circuit Court of Appeals. While the proceedings regarding the petition for judicial review of the 2013 FIP remained stayed, oral arguments regarding the petition for judicial review of the 2016 FIP were heard by the Eighth Circuit Court of Appeals on November 15, 2017. Thus, both petitions for judicial review remain with the Eighth Circuit. On December 4, 2017, the U.S. EPA published a notification in the Federal Register in which the U.S. EPA denied U. S. Steel's administrative petitions for reconsideration and stay of the 2013 FIP and 2016 FIP. On February 1, 2018, U. S. Steel filed a petition for judicial review of the U.S. EPA's denial of the administrative petitions for reconsideration to the Eighth Circuit Court of Appeals. The U.S. EPA and U. S. Steel reached a settlement regarding the five indurating lines at Minntac. After proposing a revised FIP and responding to public comments, on March 2, 2021, the U.S. EPA promulgated a final revised FIP incorporating the conditions and limits for Minntac to which the parties agreed. U. S. Steel and the U.S. EPA continue to negotiate resolution for Keetac.

### **Mon Valley Works**

On March 7, 2022, the Company received an enforcement order from the ACHD that includes a civil penalty demand for \$1.8 million. In the Order, the ACHD alleges that the Company's Clairton plant is solely and entirely culpable for 153 alleged exceedances of the Pennsylvania hydrogen sulfide ambient air standard that are reported to have occurred during January 1, 2020 through March 1, 2022. The Company disagrees with the bases for the demand. On April 5, 2022, the Company appealed the Order and is vigorously defending the matter. The ACHD Hearing Officer has scheduled a hearing on the appeal for January 23, 2024.

On March 24, 2022, the Company received an enforcement order from the ACHD that includes a civil penalty demand for \$4.6 million for alleged air permit violations occurring between January 1, 2020 through March 15, 2022 regarding the Company's Clairton plant's coke oven pushing emission control systems. The Company disagrees with the bases for the demand and has appealed the Order. The ACHD Hearing Officer has scheduled a hearing on the appeal for January 30, 2024.

## **ASBESTOS LITIGATION**

See Note 21 to our Condensed Consolidated Financial Statements, Contingencies and Commitments for a description of our asbestos litigation.

**Item 1A. RISK FACTORS**

***We cannot assure you that our exploration of strategic alternatives will result in us pursuing a transaction or that any such transaction would be successfully completed, and the process of reviewing strategic alternatives or its conclusion could adversely affect our business and our stockholders.***

In August 2023, the Company's management and Board of Directors announced that they are engaged in a review of strategic alternatives to maximize value for the Company's stockholders. We are actively working with financial advisors and legal counsel in this strategic alternatives review process.

No assurance can be given as to the timeline or outcome of the process, including whether the process will result in a transaction or that any transaction that is agreed to will be completed. Entry into or completion of any potential transaction or other strategic alternatives would be dependent on a number of factors that may be beyond our control, including, among other things, market conditions, industry trends, regulatory approvals and the availability of financing for a potential transaction on reasonable terms. Even if a transaction is entered into, there can be no assurance that it will be successful or have a positive effect on stockholder value. Our Board of Directors may also determine that no transaction is in the best interest of our stockholders.

We expect to incur substantial expenses associated with identifying, evaluating and negotiating potential strategic alternatives. The process of reviewing potential strategic alternatives may be time consuming, distracting and disruptive to our business operations. We may also incur additional unanticipated expenses in connection with this process. In addition, we may be subject to costly and time-consuming litigation related to the process. Further, the process may result in the loss of potential business opportunities and have a negative effect on the market price and volatility of our common stock, as well as our ability to recruit and retain qualified personnel.

In addition, speculation regarding any developments related to the review of strategic alternatives and perceived uncertainties related to the future of the Company could cause our stock price to fluctuate significantly.

**Item 2. PURCHASES OF EQUITY SECURITIES BY ISSUER AND AFFILIATED PURCHASERS**

Share repurchase activity under the Company's share repurchase program during the three months ended September 30, 2023, was as follows:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs in effect at September 30, 2023 <sup>(a)</sup>
July 1 - 31, 2023	1,020,656	\$ 24.49	1,020,656	\$ 126,000,800
August 1 - 31, 2023	—	\$ —	—	\$ 126,000,800
September 1 - 30, 2023	—	\$ —	—	\$ 126,000,800
<b>Quarter ended September 30, 2023</b>	<b>1,020,656</b>	<b>\$ 24.49</b>	<b>1,020,656</b>	<b>\$ 126,000,800</b>

<sup>(a)</sup> On July 25, 2022, the Board of Directors authorized a share repurchase program that allows for the repurchase of up to \$500 million of its outstanding common stock. The Company's share repurchase program does not obligate it to acquire any specific number of shares. Under this program, the shares may be purchased from time to time at prevailing market prices, through open market or privately negotiated transactions, at the discretion of management.

**Item 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**Item 4. MINE SAFETY DISCLOSURES**

The information concerning mine safety violations and other regulatory matters required by Section 150 of the Dodd-Frank Wall Street Reform Act and Item 104 of Regulation S-K is included in Exhibit 95 to this Form 10-Q.

**Item 5. OTHER INFORMATION**

None.

**Item 6. EXHIBITS**

- 3.1 [Amended and Restated Certificate of Incorporation of United States Steel Corporation, dated April 25, 2017. \(Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on April 28, 2017, Commission File Number 1-16811.\)](#)
- 3.2 [Amended and Restated By-Laws of United States Steel Corporation, as of January 31, 2023. \(Incorporated by reference to Exhibit 3.1 to United States Steel Corporation's Form 8-K filed on February 2, 2023, Commission File Number 1-16811.\)](#)
- [10.1](#) Amended and Restated Credit Agreement, dated December 22, 2022, among Exploratory Ventures, LLC, as Borrower, United States Steel Corporation, as Parent Guarantor, KFW IPEX-Bank GMBH, as Mandated Lead Arranger and ECA Structuring Bank, KFW IPEX-Bank GMBH, as Facility Agent and ECA Agent, and lenders party thereto from time to time.\*
- [31.1](#) Certification of Chief Executive Officer required by Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as promulgated by the SEC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [31.2](#) Certification of Chief Financial Officer required by Rules 13a-14(a) or 15d-14(a) of the Securities Exchange Act of 1934, as promulgated by the SEC pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- [32.1](#) Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- [32.2](#) Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- [95](#) Mine Safety Disclosure required under Section 1503 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- 101 The following financial information from United States Steel Corporation's Quarterly Report on Form 10-Q for the quarter ended September 30, 2023 formatted in Inline XBRL (Extensible Business Reporting Language) includes: (i) the Condensed Consolidated Statement of Operations, (ii) the Condensed Consolidated Statement of Comprehensive Income, (iii) the Condensed Consolidated Balance Sheet, (iv) the Condensed Consolidated Statement of Cash Flows, and (v) Notes to the Condensed Consolidated Financial Statements.
- 104 Cover Page Interactive Data File - (formatted as Inline XBRL and contained in Exhibit 101).

\* Schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Corporation hereby undertakes to furnish supplemental copies of the omitted schedules and exhibits upon request by the SEC.



**AMENDED AND RESTATED CREDIT AGREEMENT**

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December 22 , 2022

among

**EXPLORATORY VENTURES, LLC**  
as Borrower

**UNITED STATES STEEL CORPORATION**  
as Parent Guarantor

Arranged by

**KFW IPEX-BANK GMBH**  
as Mandated Lead Arranger and ECA Structuring Bank

**KFW IPEX-BANK GMBH**  
as Facility Agent and ECA Agent

– and –

**Lenders party hereto from time to time**

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**AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of December 22, 2022 (this “**Agreement**”), among **EXPLORATORY VENTURES, LLC**, a limited liability company that is duly formed and validly existing under the laws of the state of Delaware (the “**Borrower**”), **UNITED STATES STEEL CORPORATION**, a corporation that is duly incorporated and validly existing under the laws of the state of Delaware (the “**Parent Guarantor**”); **KFW IPEX-BANK GMBH** (“**KfW IPEX-Bank**”), as Mandated Lead Arranger and ECA Structuring Bank; **KFW IPEX-BANK**, as Facility Agent (in such capacity together with its permitted successors and assigns, the “**Facility Agent**”), **KFW IPEX-BANK**, as ECA Agent (in such capacity together with its permitted successors and assigns, the “**ECA Agent**”), **THE FINANCIAL INSTITUTIONS** listed on Schedule A (*Commitments*) as lenders (each, a “**Lender**” and together, the “**Lenders**”); and other parties party hereto from time to time. Capitalized terms shall be defined as set forth in Section 1.1 (*Definitions*).

**WHEREAS**, United States Steel Corporation assigned its rights and interests in, to and under that certain Credit Agreement, dated as of December 10, 2019 (as amended, supplemented, or otherwise modified prior to the Amendment and Restatement Effective Date, the “**Original Credit Agreement**”), by and among the Parent Guarantor, as borrower, KfW IPEX-Bank, GmbH, as Facility Agent and ECA Agent, and the Lenders party thereto from time to time, and the other Finance Documents, and its obligations and liabilities arising thereunder, to Exploratory Ventures, LLC, a wholly-owned Subsidiary of United States Steel Corporation, under the Assignment and Assumption Agreement;

**WHEREAS**, the Parent Guarantor has entered into the Project Equipment Supply Agreement with the Exporter for the supply of certain equipment and services from suppliers within Austria in connection with certain upgrades at the Mon Valley Works Project (as defined in the Original Credit Agreement) in Braddock, Pennsylvania;

**WHEREAS**, the Parent Guarantor has amended the Project Equipment Supply Agreement to instead make certain upgrades at the Mini-Mill2 Project in Osceola, Arkansas;

**WHEREAS**, the Parent Guarantor (i) assigned its rights and interests in, to and under the Project Equipment Supply Agreement, and its obligations and liabilities arising thereunder, to the Borrower and (ii) became a guarantor of the Borrower with respect to the Borrower’s obligations and liabilities arising under the Project Equipment Supply Agreement;

**WHEREAS**, the Borrower wishes to continue (i) the Commercial Loans and Covered Loans under and as defined in the Original Credit Agreement and (ii) make certain amendments to provide for the application of the Covered Loans to the Mini-Mill2 Project instead of the Mon Valley Works Project on the terms set forth in this Agreement;

**WHEREAS**, in order to confirm its commitment to the Project Upgrades, the Exporter has executed and delivered to the Facility Agent the Exporter’s Undertaking and the Exporter’s Certificate;

**WHEREAS**, in order to finance the Project Upgrades, the Borrower has requested that the Lenders continue to make available to it two loan commitments consisting of (a) covered loan commitments not to exceed \$250,000,000, the purpose of which is to finance (i) 85% of the

Eligible Project Costs and (ii) 100% of the OeKB Guarantee Premium and (b) commercial loan commitments not to exceed the Down Payment; and

**WHEREAS**, in order to induce the Lenders to continue such covered loan commitments, (i) the OeKB Guarantor has affirmed its continued guarantee of the covered obligations and (ii) the Parent Guarantor has agreed to guarantee the Obligations; and

**WHEREAS**, it is the intent of the parties hereto that this Agreement not constitute a novation of the obligations and liabilities existing under the Original Credit Agreement or evidence payment of all or any of such obligations and liabilities, that this Agreement amend and restate in its entirety the Original Credit Agreement and continue any Loans and Commitments under the Original Credit Agreement, as so amended and restated, and that from and after the Amendment and Restatement Effective Date the Original Credit Agreement be of no further force or effect except as to evidence the incurrence of the obligations of the Borrower thereunder and as otherwise set forth hereunder;

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

## **Article 1 INTERPRETATION**

### **1.1 Definitions.**

For the purposes of this Agreement:

“**Actions**” means any legal, governmental or regulatory actions, claims, suits, arbitrations or proceedings.

“**Adjusted Term SOFR Rate**” means the Term SOFR, plus 0.42826 %.

“**Administrative Party**” means any of the Mandated Lead Arranger or an Agent.

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

“**Affiliate**” means, with respect to any Person, any other Person which directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, such Person.

“**Agents**” means the ECA Agent and the Facility Agent, and “**Agent**” means either the ECA Agent or the Facility Agent.

“**Agreement**” has the meaning given to it in the introductory paragraph hereto.

**“Amended and Restated IPEX Fee Letter”** means the Amended and Restated IPEX Fee Letter, dated on or around the date of the Amendment and Restatement Effective Date, between the Borrower and KfW IPEX-Bank.

**“Amendment and Restatement Agreement”** means that certain Amendment and Restatement Agreement, dated as of the Amendment and Restatement Effective Date, by and among the Borrower, the Parent Guarantor, the Facility Agent, the ECA Agent and the Lenders.

**“Amendment and Restatement Effective Date”** has the meaning given to it in Section 11.1 (*Conditions Precedent to the Closing Date*).

**“Anti-Corruption Laws”** means any laws, rules or regulations relating to corruption or bribery, including the FCPA.

**“Anti-Money Laundering Laws”** means any rules or regulations relating to money laundering, terrorism financing, or transactions involving the proceeds of illegal activities, including the US Bank Secrecy Act, USA PATRIOT Act, US Money Laundering Control Act and all related implementing regulations.

**“Applicable Law”** means any law (including common law and equity), any international or other treaty, any domestic or foreign constitution or any multinational, federal, provincial, territorial, state, municipal, county or local statute, law, ordinance, code, rule, regulation, Order (including any securities laws or requirements of stock exchanges and any consent, decree or administrative Order), or Authorization of a Governmental Body in any case applicable to any specified Person, property, transaction or event, or any such Person’s property or assets (and, in the case of Section 7.3 (*Change in Circumstances*), whether or not having the force of law), including the Occupational Safety and Health Act of 1970 and other applicable law relating to safety, labor and employee matters and related rules and standards.

**“Applicable Margin”** has the meaning given to it in Schedule E of the Credit Agreement.

**“Applicable Percentage”** means, with respect to any Lender at any time, the percentage of the total principal amount of the Loans held by such Lender or, if at such time, no Loans have yet been advanced, the percentage of the Total Commitments of all Lenders held by such Lender at such time.

**“Assignment and Assumption Agreement”** means that certain Assignment and Assumption Agreement, in form and substance satisfactory to the Facility Agent, by and between the Borrower and the Parent Guarantor.

**“Attributable Debt”** means, with respect to any sale and leaseback transaction, at the time of determination, the lesser of (a) the sale price of the property so leased multiplied by a fraction the numerator of which is the remaining portion of the base term of the lease included in such transaction and the denominator of which is the base term of such lease, and (b) the total obligation (discounted to the present value at the implicit interest factor, determined in accordance with GAAP, included in the rental payments) of the lessee for rental payments (other than amounts required to be paid on account of property Taxes as well as maintenance, repairs, insurance, water

rates and other items which do not constitute payments for property rights) during the remaining portion of the base term of the lease included in such transaction.

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 5.8(d) (*Unavailability of Tenor of Benchmark*).

“**Authorization**” means any authorization, approval, consent, concession, exemption, license, permit, franchise or no-action letter from any Governmental Body.

“**Authorized Officer**” means, with respect to any Person, the principal executive officer, principal financial officer, corporate secretary, assistant corporate secretary or principal accounting officer or any attorney-in-fact of such Person.

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

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

“**Base Reference Bank Rate**” means the arithmetic mean of the rates (rounded upwards, if necessary, to the next 1/16<sup>th</sup> of 1%) as supplied to the Facility Agent at its request by the Reference Banks; *provided*, that such rate shall in no case be lower than 0.00% per annum:

- (a) (other than where paragraph (b) below applies) as the rate at which the relevant Reference Bank could borrow funds in the London interbank market in U.S. Dollars and for the relevant period were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in U.S. Dollars for that period (or, to the extent such rate is unavailable, Section 5.10 (*Cost of Funds*) shall apply); or
- (b) if different, as the rate (if any and applied to U.S. Dollars and the relevant Reference Bank period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

“**Benchmark**” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current

Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 5.8(a) (*Benchmark Replacement*).

“**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Facility Agent for the applicable Benchmark Replacement Date:

(a) Daily Simple SOFR; or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Facility Agent and the Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Finance Documents.

“**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Facility Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

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

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

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such

clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

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

- (a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);
- (b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or
- (c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

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

“**Benchmark Unavailability Period**” means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Finance Document in accordance with Section 5.8 (*Benchmark Replacement Setting*) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Finance Document in accordance with Section 5.8 (*Benchmark Replacement Setting*).

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

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

“**Benefit Plan**” means any of (A) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (B) a “plan” as defined in Section 4975 of the Code or (C) any person or entity whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Board of Directors**” means either the board of directors of the Parent Guarantor, or board of managers or members of the Borrower, as applicable, or any duly authorized committee of such board.

“**Borrower**” has the meaning given to it in the introductory paragraph hereto.

“**Break Costs**” means the amount (if any) by which:

- (a) the interest which a Lender should have received for the period from the date of funding (or proposed funding) of all or any part of its participation in the Loan to the last day of the current Interest Period in respect of the Loan, had the Loan been made and the principal amount been paid on the last day of such Interest Period;

exceeds:

- (b) the sum of the amount it did receive as interest plus the amount which such Lender would be able to obtain by placing an amount equal to the principal amount received by it on deposit with a leading bank in the London interbank market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period (or, to the extent such rate is unavailable, Section 5.10 (*Cost of Funds*) shall apply).

“**Business Day**” means any day, other than a Saturday, Sunday or statutory holiday in any one of New York City, New York or Frankfurt am Main, Germany or a day on which banks are generally closed in any one of those cities.

“**Capital Lease Obligations**” of any Person, means obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required under GAAP to be classified and accounted for as capital leases on a balance sheet of such Person; *provided* that all leases of any Person that are or would have been characterized as operating leases in accordance with GAAP as in effect immediately prior to the Original Effective Date shall continue to be accounted for as operating leases (and not capital leases) for purposes of this Agreement regardless of any change in GAAP following the date that would otherwise require such leases to be recharacterized as capital leases. The amount of such obligations will be the capitalized amount thereof determined in accordance with GAAP.

“**Change of Control**” means and shall occur if:

(x) with respect to the Parent Guarantor:

- (a) any “person” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that for purposes of this clause (a) such person shall be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35% of either the aggregate ordinary voting power or the aggregate equity value represented by the issued and outstanding Equity Interests of the Parent Guarantor;
- (b) individuals who on the Original Closing Date constituted the Board of Directors of the Parent Guarantor (together with any new directors whose election by such Board of Directors or whose nomination for election by the shareholders of the Parent Guarantor was approved by a vote of a majority of the directors of the Parent Guarantor then still in office who were either directors on the Original Closing Date or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of such Board of Directors then in office;
- (c) the adoption of a plan relating to the liquidation or dissolution of the Parent Guarantor ; or
- (d) the merger or consolidation of the Parent Guarantor with or into another Person or the merger of another Person with or into the Parent Guarantor, or the sale of all or substantially all the assets of the Parent Guarantor (determined on a consolidated basis) to another Person, other than a merger or consolidation transaction in which shareholders that represented 100% of the Equity Interests of the Parent Guarantor immediately prior to such transaction (or other securities into which such securities are converted as part of such merger or consolidation transaction) own directly or indirectly at least a majority of the voting power of the Equity Interests of the surviving Person in such merger or consolidation transaction immediately after such transaction and in substantially the same proportion as before the transaction; and

(y) with respect to the Borrower:

- (a) at any time, Big River Steel Holdings LLC shall cease to be the sole member of the Borrower; provided that, such occurrence shall not constitute a Change of Control if (i) the Parent Guarantor continues to, directly or indirectly, own 99.90% of the outstanding shares, units, interests, participations or other equivalents (however designated) of the Borrower, (ii) the Borrower has notified the Facility Agent of such transaction at least 20 Business Days in advance, and (iii) the Borrower has complied with any “know your customer” requests from all Lenders; or
- (b) at any time, the Parent Guarantor shall cease to, directly or indirectly, own or control 99.90% of the outstanding shares, units, interests, participations or other equivalents (however designated) of the Borrower.

“**Claim**” means any claim, loss or liability of any nature whatsoever, including but not limited to administrative, regulatory enforcement or judicial or equitable action, claim, suit, or judgment by

any other Person or any written notice by any Governmental Body, other than any Tax that does not represent a claim, loss or liability arising from a non-Tax claim.

“**Class**” when used in reference to any Loan or borrowing, means whether such Loan, or the Loans constituting such borrowing, are Covered Loans or Commercial Loans; or when used in reference to any Commitment, refers to whether such Commitment is a Covered Loan Commitment or Commercial Loan Commitment.

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

“**Commercial Lenders**” means the banks and financial institutions listed on Schedule A (*Commitments*) under the heading “Commercial Loan Commitments” (and any other bank and financial institution that shall become a Commercial Lender pursuant to Section 13.1 (*Assignment by Lenders*)).

“**Commercial Loan**” has the meaning given to it in Section 2.1(b) (*Commercial Loans*).

“**Commercial Loan Additional Closing Date**” has the meaning given to it in Section 11.3 (*Additional Conditions Precedent to Commercial Loans*).

“**Commercial Loan Commitment**” means the commitment of a Commercial Lender to make Commercial Loans to the Borrower, up to an aggregate amount, at any one time outstanding, not in excess of such Commercial Lender’s Proportionate Share of the Total Commercial Loan Commitment at such time.

“**Commercial Loan Commitment Fee**” means the commitment fee payable to the Lenders in respect of the Commercial Loan Commitment in accordance with Section 5.12(b) (*Commercial Loan Commitment Fee*).

“**Commercial Loan Commitment Period**” means the period from and including the Original Closing Date to and including the earliest of:

- (a) the date the Commercial Loans are drawn in full;
- (b) the termination or cancellation in full of the Commercial Loan Commitments hereunder; and
- (c) in any case, no later than 42 months following the Original Effective Date.

*provided* that, in each case, if any such date is not a Business Day, the last day of the Commercial Loan Commitment Period shall be the immediately preceding Business Day.

“**Commercial Loan Utilization Request**” means a written notice (substantially in the form set out on Schedule C-2 (*Commercial Loan Utilization Request*)) requesting a Utilization in accordance with Section 3.1 (*Delivery of a Utilization Request*).

“**Commitment**” means, in respect of each applicable Lender at any time, the amount specified with respect to such (a) Covered Lender on Schedule A (*Commitments*) under the heading

“Covered Loan Commitments” and (b) such Commercial Lender on Schedule A (*Commitments*) under the heading “Commercial Loan Commitments” (in each case, as shall be amended in accordance with Section 13.1 (*Assignment by Lenders*) and distributed to all parties by the Facility Agent from time to time to reflect any changes thereto), as such amount may be reduced from time to time by such Lender’s Applicable Percentage of any cancellation of any unused portion of the Commitment.

“**Commitment Fee**” means the commitment fee payable to the Lenders in accordance with Section 5.12(a) (*Covered Loan Commitment Fee*) and Section 5.12(b) (*Commercial Loan Commitment Fee*).

“**Completion Certificate**” means a certificate signed by the Borrower and Exporter in the form set out on Schedule D – Part III (*Completion Certificate*).

“**Compliance Certificate**” means a certificate of an Authorized Officer of the Borrower in the form set out on Schedule F (*Compliance Certificate*).

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 5.10 (*Cost of Funds*), Section 5.11 (*Break Costs*) and other technical, administrative or operational matters) that the Facility Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Facility Agent in a manner substantially consistent with market practice (or, if the Facility Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Facility Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Facility Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Finance Documents).

“**Confidential Information**” has the meaning given to it in Section 20.1 (*Confidential Information*).

“**Connection Income Taxes**” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profit Taxes.

“**Consolidated Net Tangible Assets**” means, as of the time of determination, the aggregate amount of the assets of the Parent Guarantor and the assets of its consolidated Subsidiaries after deducting (a) all goodwill, trade names, trademarks, service marks, patents, unamortized debt discount and expense and other intangible assets and (b) all current liabilities, as reflected on the most recent consolidated balance sheet prepared by the Parent Guarantor in accordance with GAAP and provided to the Facility Agent pursuant to Section 10.1(a)(i) (*Quarterly Statements*) or Section 10.1(a)(ii) (*Annual Consolidated Statements*) (and not subsequently disclaimed as not

being reliable by the Parent Guarantor) by the Parent Guarantor prior to the time as of which “Consolidated Net Tangible Assets” is being determined.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or undertaking to which such Person is a party or by which it or any of the property owned by it is bound.

“**Control**” means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power including the ownership of voting securities, by contract or otherwise in respect of both ordinary and extraordinary matters (including reorganization, restructuring and the amendment of any applicable constitutional document). “**Controlled**” shall have the meaning correlative thereto.

“**Covered Lenders**” means the banks and financial institutions listed on Schedule A (*Commitments*) under the heading “Covered Loan Commitments” (and any other bank and financial institution that shall become a Covered Lender pursuant to Section 13.1 (*Assignment by Lenders*)).

“**Covered Loan**” has the meaning given to it in Section 2.1(a)(ii) (*Premium Loans*).

“**Covered Loan Additional Closing Date**” has the meaning given to it in Section 11.2 (*Additional Conditions Precedent to Covered Loans*).

“**Covered Loan Commitment**” means the commitment of a Covered Lender to make Covered Loans to the Borrower, up to an aggregate amount, at any one time outstanding, not in excess of such Covered Lender’s Proportionate Share of the Total Covered Loan Commitment at such time.

“**Covered Loan Commitment Fee**” means the commitment fee payable to the Lenders in respect of the Covered Loan Commitment in accordance with Section 5.12(a) (*Covered Loan Commitment Fee*).

“**Covered Loan Commitment Period**” means the period from and including the Original Closing Date to and including the earliest of:

- (i) the date the Covered Loans are drawn in full;
- (ii) the termination or cancellation in full of the Covered Loan Commitments hereunder; and
- (iii) in any case, no later than 42 months following the Original Effective Date.

*provided* that, in each case, if any such date is not a Business Day, the last day of the Covered Loan Commitment Period shall be the immediately preceding Business Day.

“**Covered Loan Utilization Request**” means a written notice (substantially in the form set out on Schedule C-1 (*Covered Loan Utilization Requests*)) requesting a Utilization, as the context may require, in accordance with Section 3.1 (*Delivery of a Utilization Request*).

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

“**Default**” means any event or condition which, upon notice, lapse of time, or both, would constitute an Event of Default.

“**Defaulting Lender**” has the meaning given to it in Section 2.2(a) (*Finance Parties’ Rights and Obligations*).

“**Down Payment**” means an amount equal to 15% of the Eligible Project Costs.

“**ECA Agent**” has the meaning given to it in the introductory paragraph hereto.

“**ECA Mandatory Prepayment Event**” means each of the following events or circumstances:

- (a) it is or becomes unlawful for the OeKB Guarantor to perform any of its obligations under the OeKB Guarantee or for the Covered Lenders to receive the benefit of the OeKB Guarantee;
- (b) any obligation or obligations of the OeKB Guarantor under the OeKB Guarantee are not or cease to be legal, valid, binding or enforceable or the OeKB Guarantee is not or ceases to be in full force and effect; or
- (c) the OeKB Guarantor avoids, rescinds, repudiates, suspends, cancels or terminates all or part of the OeKB Guarantee or evidences an intention to or purports to avoid, rescind, repudiate, suspend, cancel or terminate all or a part of the OeKB Guarantee.

“**EEA Financial Institution**” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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 member state of the European Union, Iceland, Liechtenstein and Norway, as well as any other country which becomes an EEA Member Country in the future.

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

“**Eligible Goods and Services**” means goods and services including third country supply that are eligible for support under the terms of the OeKB Guarantee and the OECD 1981 Arrangement on Guidelines for Officially Supported Export Credits Consensus (as amended).

“**Eligible Local Costs**” means any expenditure in respect of Local Costs in the total amount not exceeding the lower of:

- (a) \$48,808,685.84; and
- (b) 23% of the Export Contract Value.

“**Eligible Project Costs**” means the amount payable for Eligible Goods and Services and Eligible Local Costs under the Project Equipment Supply Agreement that is eligible for financing under the limits and under the conditions contained in the OeKB Guarantee in the total amount not exceeding \$250,300,953.02.

“**Eligible Project Cost Loan**” has the meaning given to it in Section 2.1(a)(i) (*Eligible Project Cost Loans*).

“**Entitled Person**” has the meaning given to it in Section 22.7 (*Judgment Currency*).

“**Environment**” means all or any of the following media:

- (a) air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- (b) water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers);
- (c) land (including, without limitation, land under water); and
- (d) any ecological systems, animals, plants and all other living organisms supported by these media.

“**Environmental Claim**” means any action, proceeding, litigation or claim by any Person, or investigation by any Governmental Body, alleging or asserting that the Borrower or its Subsidiaries is in violation of Environmental Law or with respect to any release of, or exposure to, Hazardous Materials.

“**Environmental Law**” means any and all laws, rules and regulations, and any lawful Orders of any Governmental Body, in each case as now or hereafter in effect and applicable to the Borrower or any of its Subsidiaries, relating to the protection of the Environment or biodiversity, the effects of the environment on health and safety (including the conditions of the workplace) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

“**Environmental Matter**” means any:

- (a) release of Hazardous Materials;
- (b) failure to conserve, preserve or protect the Environment or any wildlife supported by the Environment; or

(c) violation of Environmental Law.

**“Environmental Permits”** means any Authorization required under any Environmental Law for the operation of the business of the Borrower conducted on or from the properties owned or used by the Borrower.

**“Equator Principles”** means those principles entitled “The Equator Principles June 2013: A financial industry benchmark for determining, assessing and managing environmental and social risk in projects” and developed and adopted by the International Finance Corporation and various other financial institutions available at <https://equator-principles.com/>.

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

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

**“ERISA Affiliate”** means any trade or business (whether or not incorporated) treated as a single employer or under common control with the Borrower for the purpose of Section 414 of the Code or Section 4001 of ERISA.

**“ERISA Event”** means (a) the occurrence of a reportable event specified as such in Section 4043 of ERISA or any related regulation, other than an event in relation to which the requirement to give notice of that event is waived by any regulation as in effect on the date of such occurrence with respect to a Plan (other than a Multiemployer Plan), (b) (i) a failure to meet the minimum funding standard with respect to a Plan (other than a Multiemployer Plan) under Section 412 of the Code or Section 302 of ERISA, whether or not there has been any waiver of notice (as referred to in subsection (a) above) or waiver of the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, (ii) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan or (iii) the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan (other than a Multiemployer Plan) or the failure to make any required contribution to a Multiemployer Plan, (c) any termination of, withdrawal from or other event or condition with respect to any Plan which would reasonably be expected to result in liability of the Borrower, the Parent Guarantor or ERISA Affiliate under Title IV of ERISA (other than premiums to the Pension Benefit Guaranty Corporation or its successor), (d) a determination that a Multiemployer Plan is or is expected to be “insolvent” (within the meaning of Section 4245 of ERISA), or in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA), (e) a determination that any Plan (other than a Multiemployer Plan) is considered an “at-risk” plan within the meaning of Section 430 of the Code or Section 303 of ERISA, (f) the occurrence of an act or omission which would reasonably be expected to give rise to the imposition on the Borrower, the Parent Guarantor or any of its ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan, (g) any fact or circumstance exists that would reasonably be expected to result in the imposition of a lien pursuant to ERISA or Section 430(k) of the Code or a violation of Section 436 of the Code with respect to any Plan, (h)

with respect to any Plan that is intended to be a qualified plan under Section 401(a) of the Code (other than a Multiemployer Plan), any occurrence or event that results or would reasonably be expected to result in the loss of the Plan's qualified status or (i) the occurrence of a non-exempt prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to a Plan (other than a Multiemployer Plan).

**"ESP Amendment"** has the meaning given to it in the definition of Project Equipment Supply Agreement.

**"EU Anti-Boycott Regulations"** means (a) the Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom and (b) Section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung* or *AWV*) in connection with the German Foreign Trade Law (*Außenwirtschaftsgesetz* or *AWG*) or any similar applicable anti-boycott statute.

**"EU Bail-In Legislation Schedule"** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**"Event of Default"** has the meaning given to it in Section 12.1 (*Events of Default*).

**"Exchange Act"** means the Securities Exchange Act of 1934, as amended from time to time.

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Article 6 (*Taxes*), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with Article 6(g) (*Status of Lenders*) and (d) any withholding Taxes imposed under FATCA.

**"Existing Lender"** has the meaning given to it in Section 13.1(b) (*Assignment to by Lenders*).

**"Export Contract Value"** means the total amount to be paid by or on behalf of the Borrower for Eligible Goods and Services exported, excluding Local Costs, in the total amount not exceeding \$201,492,267.18.

**"Exporter"** means Primetals.

**“Exporter’s Certificate”** means a notice substantially in the form set out in Schedule D (*Form of Exporter’s Certificate*) or in such other form as may be agreed by the Exporter and the Facility Agent.

**“Exporter’s Declaration”** means a letter of indemnity from the Exporter to the ECA Agent (Exporteurerklärung) with respect to the Project Upgrades.

**“Exporter’s Undertaking”** means a letter of indemnity (“Rückgarantie (G3)”) from the Exporter to the OeKB Guarantor with respect to the Project Upgrades.

**“Facility Agent”** has the meaning given to it in the introductory paragraph hereto.

**“Facility Agent’s Account”** means the account of the Facility Agent at Citibank N.A. New York, SWIFT Number: CITIUS33, Account Holder: KfW, Frankfurt am Main (BIC: KFWIDEFF), Account Number: 10926093, Reference: 8137749064 United States Steel KV29458, or such other account as may be designated by the Facility Agent to the Borrower.

**“FATCA”** means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Bodies and implementing such Sections of the Code.

**“FCPA”** means the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78dd 1 et seq.)

**“Fee Letters”** means any letter entered into by reference to this Agreement between one or more of the Finance Parties and the Borrower setting out the amount of any fees referred to in this Agreement, including, without limitation the Amended and Restated IPEX Fee Letter.

**“Final Acceptance”** means the Mini-Mill2 Final Acceptance.

**“Final Maturity Date”** means (a) for the Covered Loans, the fifteenth (15<sup>th</sup>) following the occurrence of the First Repayment Date and (b) for the Commercial Loans, the ninth (9<sup>th</sup>) Interest Payment Date following the occurrence of the First Repayment Date.

**“Finance Documents”** means:

- (a) this Agreement;
- (b) the Fee Letters;
- (c) any Transfer Certificate;
- (d) any Notes;
- (e) the Parent Guarantee;

- (f) the Amendment and Restatement Agreement;
- (g) the Assignment and Assumption Agreement;

and all other agreements, instruments and documents from time to time (both before and after the date of this Agreement) designated as such by the Facility Agent and the Borrower.

“**Finance Parties**” means each Lender and Administrative Party and “Finance Party” means any Lender or Finance Party.

“**Financial Statements**” means the financial statements delivered on the Amendment and Restatement Effective Date and those required to be delivered pursuant to Section 10.1 (*Reporting Requirements; Notices*).

“**First Coil Date**” means the date upon which the cold commissioning (i.e. “first coil”) at the Mini-Mill2 Project has been achieved, as certified by the Loan Parties.

“**First Repayment Date**” means the earlier of the date falling six months after the Starting Point of Credit and October 31, 2023.

“**Fiscal Quarter**” means each calendar quarter ending on March 31, June 30, September 30 and December 31 of each year.

“**Fiscal Year**” means the period of January 1 to December 31 of each year.

“**Fitch**” means Fitch, Inc. or any successor to its rating business.

“**Floor**” means a rate of interest equal to 0%.

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

“**Governmental Body**” means the government of the United States of America or any other nation, or of any political subdivision thereof, whether state, provincial or local, and any agency, authority, instrumentality, regulatory body, court, arbitrator or arbitrators, tribunal, central bank or enterprise that is owned, sponsored, or controlled by any government, or any other entity exercising executive, legislative, judicial or arbitral, taxing, regulatory or administrative powers or functions or pertaining to government (including any applicable stock exchange and supra-national bodies such as the European Union or the European Central Bank) and in each case having jurisdiction over the Borrower, the Project Upgrades or the Finance Documents, as the context may require.

“**Guarantee**” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the

purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise) or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however*, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee,” when used as a verb, has a correlative meaning.

“**Hazardous Material**” means any pollutant, contaminant or toxic or hazardous material or substance or waste that is now or hereafter prohibited, limited or regulated under any Environmental Law.

“**Hedging Agreement**” means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest rate, currency exchange rate or commodity price hedging arrangement.

“**Impaired Agent**” means the ECA Agent, at any time when:

- (a) it has failed to make (or has notified a party that it shall not make) a payment required to be made by it under the Finance Documents by the due date for payment unless the ECA Agent notifies the Borrower in writing that one or more of the conditions precedent to funding has not been satisfied, unless:
  - (i) its failure to pay is caused by administrative or technical error and payment is made within three (3) Business Days of its due date; or
  - (ii) the ECA Agent is disputing in good faith whether it is contractually obliged to make the payment in question; or
- (b) the ECA Agent otherwise rescinds or repudiates a Finance Document; or
- (c) (if the ECA Agent is also a Lender) it is a Defaulting Lender; or
- (d) with respect to the ECA Agent, or its direct or indirect parent company, (i) an Insolvency Event has occurred and is continuing or (ii) has become the subject of a Bail-In Action.

“**Impairment**” means the rescission, termination, cancellation, repeal, invalidity, suspension, injunction, inability to satisfy stated conditions to effectiveness or amendment, modification or supplementation.

“**Incur**” means issue, assume, guarantee or otherwise become liable; and the terms “**Incurred**” and “**Incurrence**” have meanings correlative to the foregoing.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind (other than unspent cash deposits held in escrow by or in favor of such Person, or in a segregated deposit account controlled by such Person, in each case in the ordinary course of business to secure the performance obligations or, damages owing from, one or more third parties), (b) all obligations of such Person

evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person on which interest charges are customarily paid (other than obligations where interest is levied only on late or past due amounts), (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all unpaid obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (other than cash collateralized letters of credit to secure the performance of workers' compensation, unemployment insurance, other social security laws or regulations, bids, trade contracts, leases, environmental and other statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case, obtained in the ordinary course of business), (j) all capital stock of such Person which is required to be redeemed or is redeemable at the option of the holder if certain events or conditions occur or exist or otherwise, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except (i) to the extent that contractual provisions binding on the holder of such Indebtedness provide that such Person is not liable therefor, and (ii) in the case of general partnerships where the interest is held by a Subsidiary with no other significant assets. Notwithstanding the foregoing, the term "Indebtedness" will exclude obligations that are no longer outstanding under the applicable indenture or instruments therefor. Notwithstanding the foregoing, in connection with the purchase by the Borrower or any Subsidiary of any business, the term "Indebtedness" will exclude post-closing payment adjustments to which the seller may become entitled to the extent such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid when due.

**"Indemnified Party"** has the meaning given to it in Section 7.5(a) (*Indemnities*).

**"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 under any Finance Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

**"Insolvency Event"** in relation to any Lender means that such Lender or its parent company is the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its parent company, or such Lender or its parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

**"Intellectual Property"** means patents, patent applications, trademarks, service marks, trade names, trademark registrations, service mark registrations, domain names and other source indicators, copyrights and copyrightable works, know-how, trade secrets, systems, procedures,

proprietary or confidential information and all other intellectual property, industrial property and proprietary rights.

“**Interest Payment Date**” means, subject to Article 5 (*Interest, Interest Periods and Fees*), of this Agreement, the last day of each Interest Period.

“**Interest Period**” means each period determined in accordance with Article 5 (*Interest, Interest Periods and Fees*) of this Agreement and, in relation to overdue amounts, each period determined in accordance with Section 5.2 (*Default Interest*).

“**Interpolated Screen Rate**” means the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the specified time for the currency of that Loan; *provided*, that such rate shall in no case be lower than zero.

“**IRS**” means the United States Internal Revenue Service.

“**Judgment Currency**” has the meaning assigned to that term in Section 22.7 (*Judgment Currency*).

“**KfW IPEX-Bank**” has the meaning given to it in the introductory paragraph hereto.

“**Lenders**” means each Person that is a party on the date hereof to this Agreement as an “initial Lender” and each other lender party hereto from time to time pursuant to Section 13.1 (*Assignment by Lenders*), and their respective permitted successors and assigns.

“**LIBOR**” means, rounded upwards, if necessary, to the next 1/16<sup>th</sup> of 1%.

- (a) the applicable Screen Rate as of the specified time for the currency of that Loan and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Section 5.6 (*Unavailability of Screen Rate*), and if, in either case, that rate is less than zero, LIBOR shall be deemed to be 0.00%.

“**LIBOR Quotation Day**” means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period, unless market practice differs in the London interbank market for U.S. Dollars, in which case the Quotation Day for that currency shall be determined by the Facility Agent in accordance with market practice in the London interbank market (and if quotations would normally be given on more than one day, the Quotation Day shall be the last of those days).

“**Lien**” means any Indebtedness secured by a mortgage, security interest, pledge, lien, charge or other similar encumbrance.

“**Loan Party**” means, collectively, the Borrower and the Parent Guarantor.

“**Loans**” means loans provided under this Agreement pursuant to Article 2 (*Loans*).

“**Local Costs**” means any expenditure in relation to goods or services supplied or rendered or to be supplied or rendered by the Exporter pursuant to the Project Equipment Supply Agreement in the buyer’s country. These exclude commissions payable to the Exporter’s agent in the buying country.

“**Majority Lenders**” means, at any time, one or more Lenders holding more than 50% of the Commitments or, if Loans have been made, of the outstanding principal amount of Loans at such time. The “**Majority Lenders**” of a particular Class of Loans means, at any time, one or more Lenders holding more than 50% of the Commitments of such Class or, if Loans have been made, of the outstanding principal amount of the Loans of such Class at such time.

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

- (a) the financial condition, business, properties or results of operations of the Parent Guarantor and its Subsidiaries, taken as a whole, since September 30, 2019;
- (b) the validity, legality or enforceability of any Transaction Documents or the OeKB Guarantee; or
- (c) the rights and remedies of the Facility Agent or Lenders under any of the Transaction Documents.

“**Material Indebtedness**” means Indebtedness (other than the (a) Loans and (b) Indebtedness owed by the Parent Guarantor or one of its Subsidiaries solely to the Parent Guarantor or the Borrower), or obligations in respect of one or more Hedging Agreements, of any one or more of the Parent Guarantor and its Subsidiaries, in an aggregate principal amount exceeding \$100,000,000 (or the equivalent in other currencies). For purposes of determining Material Indebtedness, the “principal amount” of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (after giving effect to any enforceable netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time.

“**Mini-Mill2 Final Acceptance**” means an Acceptance Certificate or a Deemed Acceptance Certificate (each as defined in the Project Equipment Supply Agreement).

“**Mini-Mill2 Project**” means the Borrower’s Mini-Mill2 premises located in or around Osceola, Arkansas.

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

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 3(37) of ERISA to which the Borrower or ERISA affiliate thereof is obligated to contribute.

“**Notes**” means any note issued under Section 2.5(b) (*Evidence of Indebtedness*).

“**Obligations**” means all indebtedness, liabilities, indemnities and other obligations owed by the Borrower to any Finance Party hereunder, under any other Finance Document or under the OeKB Guarantee (pursuant to the terms of the Finance Documents), including interest and fees occurring during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding whether actual or contingent, direct or indirect, matured or not, now existing or hereafter arising (including any fees or premium payable under the OeKB Guarantee (and in the case of the OeKB Guarantee Premium, only to the extent payable in accordance with Section 5.12(c) (*OeKB Guarantee Premium*)). “**OECD**” means the Organization for Economic Co-operation and Development.

“**OeKB General Terms and Conditions**” means *Allgemeine Geschäftsbedingungen betreffend Garantien für gebundene Finanzkredite (G 3) und Forderungsankäufe (G 9)*, April 1999.

“**OeKB Guarantee**” means the Guarantee (*Endgültige Deckungszusage*), in form and substance satisfactory to each of the Lenders, to be issued to the Lenders by the OeKB Guarantor in connection with the Covered Loans under this Agreement, such guarantee and the coverage thereunder being subject to the terms and conditions set forth in a final guarantee confirmation, the OeKB General Terms and Conditions, the OeKB Guarantor’s general conditions and any other conditions, guidelines or directives whatsoever which are binding on the Covered Lenders in relation to the Covered Loans hereunder.

“**OeKB Guarantee Premium**” means the insurance premium payable by the Covered Lenders under and in respect of the OeKB Guarantee and which amount the Borrower agrees herein to pay on behalf of the Covered Lenders as a condition for the Covered Lenders to make funds available for the financing of the Project Upgrades.

“**OeKB Guarantor**” means Oesterreichische Kontrollbank AG.

“**OFAC**” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“**Officer’s Certificate**” means a certificate in form satisfactory to the Facility Agent, acting reasonably, signed by a principal executive officer, principal financial officer, treasurer or principal accounting officer and which shall list any officer or Authorized Officer who has been given sufficient powers and authority under Applicable Law and the Borrower’s constitutional documents (or powers of attorney or written resolutions executed in accordance with the Borrower’s constitutional documents) and whose name appears on a certificate of incumbency delivered concurrently with the execution of this Agreement, as such certificate of incumbency may be amended from time to time to identify names of the individuals then holding such offices or the names of such representatives and the capacity in which they are acting, in each case as may be acceptable to the Facility Agent.

“**Order**” means any order, directive, decree, judgment, ruling, award, injunction, direction or request of any Governmental Body or other decision-making authority.

“**Original Closing Date**” means February 19, 2020.

“**Original Credit Agreement**” has the meaning given to it in the introductory paragraph hereto.

“**Original Effective Date**” means December 10, 2019, the date of signing of the Original Credit Agreement.

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

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Finance Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“**Parent Guarantee**” means that certain Parent Guarantee, dated as of the Amendment and Restatement Effective Date, by and between the Parent Guarantor and the Facility Agent.

“**Parent Guarantor**” has the meaning assigned to such term in the preamble.

“**Parent PESA Guarantee**” means that certain Parent Company Guarantee, dated as of December 22, 2022, by and among the Parent Guarantor and Primetals.

“**Participant**” has the meaning given to it in Section 13.1(i) (*Assignment by Lenders*).

“**Participant Register**” has the meaning given to it in Section 13.1(j) (*Assignment by Lenders*).

“**Periodic Term SOFR Determination Day**” has the meaning specified in the definition of “Term SOFR”.

“**Permitted Liens**” means any of the following:

- (a) leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or United States government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested Taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;
- (b) Liens imposed by law, such as carriers’, warehousemen’s and mechanics’ Liens, in each case for sums not yet overdue by more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with respect to which such Person shall then be proceeding with an appeal or other proceedings for review and Liens arising solely by virtue of any statutory or common law

provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; *provided, however*, that such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the Borrower in excess of those set forth by regulations promulgated by the Federal Reserve Board;

- (c) Liens for Taxes not yet subject to penalties for non-payment or which are being contested in good faith by appropriate proceedings;
- (d) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real property or Liens incidental to the conduct of the business of such Person or to the ownership of its properties which were not Incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;
- (e) Liens securing Indebtedness Incurred to finance the construction, purchase or lease of, or repairs, improvements or additions to, property, plant or equipment of such Person; *provided, however*, that the Lien may not extend to any other property owned by such Person at the time the Lien is Incurred (other than assets and property affixed or appurtenant thereto), and the Indebtedness (other than any interest thereon) secured by the Lien may not be Incurred more than 180 days after the later of the acquisition, completion of construction, repair, improvement, addition or commencement of full operation of the property subject to the Lien;
- (f) Liens existing on the Original Closing Date with respect to the Parent Guarantor;
- (g) Liens on property or shares of Equity Interests of another Person at the time such other Person becomes a Subsidiary of such Person; *provided, however*, that the Liens may not extend to any other property owned by such Person (other than assets and property affixed or appurtenant thereto);
- (h) Liens securing industrial revenue or pollution control bonds issued for the benefit of the Parent Guarantor;
- (i) Liens on property at the time such Person or any of its Subsidiaries acquires the property, including any acquisition by means of a merger or consolidation with or into such Person or a Subsidiary of such Person; *provided, however*, that the Liens may not extend to any other property owned by such Person (other than assets and property affixed or appurtenant thereto);
- (j) Liens securing Indebtedness or other obligations of a Subsidiary of such Person owing to such Person or a wholly-owned Subsidiary of such Person;
- (k) Liens to secure any Refinancing (or successive Refinancings) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause (e), (f), (g), (h) or (i); *provided, however*, that: (i) such new Lien shall be limited to all or part of the same

property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof); and (ii) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (x) the outstanding principal amount or, if greater, committed amount of the Indebtedness under clause (e), (f), (g), (h) or (i) at the time the original Lien became a Permitted Lien pursuant to this Agreement and (y) an amount necessary to pay any fees and expenses, including premiums, related to such Refinancing, refunding, extension, renewal or replacement; and

- (l) Liens on assets subject to a sale and leaseback transaction securing Attributable Debt permitted to be Incurred pursuant to Section 10.6 (*Limitation on Sale and Leaseback Transactions*).

“**Permitted Transferee**” means any assignee or transferee permitted pursuant to Section 13.1 (*Assignment by Lenders*).

“**Person**” means and includes individuals, corporations, bodies corporate, limited or general partnerships, joint stock companies, limited liability companies, joint ventures, associations, companies, trusts, banks, trust companies, funds, Governmental Bodies or any other type of organization or entity, whether or not a legal entity.

“**PESA**” has the meaning given to it in the definition of Project Equipment Supply Agreement.

“**PESA Assignment and Assumption Agreement**” means that certain Assignment and Assumption Agreement dated as of December 22, 2022 by and among the Parent Guarantor, the Borrower and Primetals.

“**Plan**” means an “employee pension benefit plan” (within the meaning of Section 3(2) of ERISA) that is subject to Title IV or Section 302 of ERISA or Section 412 of the Code), maintained by the Borrower or any ERISA Affiliate; or to which the Borrower has any liability, contingent or otherwise.

“**Premium Loan**” has the meaning given to it in Section 2.1(a)(ii) (*Premium Loans*).

“**Primetals**” means Primetals Technologies Austria GmbH or, as the context may require, Primetals Technologies USA LLC, an Affiliate of Primetals Technologies Austria GmbH, acting as agent therefor.

“**Principal Property**” means any domestic blast furnace or steel producing facility, or casters that are part of a plant that includes such a facility, in each case located in the United States, having a net book value in excess of 1% of Consolidated Net Tangible Assets at the time of determination.

“**Project Equipment Supply Agreement**” means, in each case together with the relevant purchase orders qualifying as Eligible Project Costs, that certain Project Equipment Supply Agreement by and between the Borrower (as successor by the PESA Assignment and Assumption Agreement, under which the Borrower accepted the assignment from the Parent Guarantor of the Parent Guarantor’s rights and interests in, to and under the Project Equipment Supply Agreement, and the Parent Guarantor’s obligations and liabilities arising under the Project Equipment Supply

Agreement), and Primetals dated as of August 15, 2019 (the “**PESA**”), as amended by that certain ESP Amendment to Project Equipment Supply Agreement dated as of August 15, 2019 (the “**ESP Amendment**”), as the ESP Amendment has been amended pursuant to the Amendment No. 3 to ESP Amendment to the Project Equipment Supply Agreement dated as of October 19, 2020, the Amendment No. 4 to the ESP Amendment to the Project Equipment Supply Agreement dated as of December 30, 2021 and the Amendment No. 5 to ESP Amendment to the Project Equipment Supply Agreement dated as of February 28, 2022, related to the Mini-Mill2 Project.

“**Project Upgrades**” means the installation of an endless strip production line at the Mini-Mill2 Project supplied by Primetals.

“**Proportionate Share**” means, as to any Lender and its Commitment of any Class, the percentage calculated as such Lender’s unutilized Commitment of such Class divided by all Lenders’ unutilized Commitments of such Class.

“**PTE**” means a prohibited transaction class exemption issued by the United States Department of Labor, as any such exemption may be amended from time to time.

“**Ratings Agency**” means S&P, Moody’s or Fitch.

“**Recipient**” means (a) the Facility Agent or (b) any Lender.

“**Reference Banks**” means the principal offices of JPMorgan Chase Bank, N.A. (London Branch), Crédit Agricole Corporate & Investment Bank and Deutsche Bank AG.

“**Refinancing**” means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness.

“**Register**” has the meaning given to it in Section 13.1(f) (*Assignment by Lenders*).

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“**Remaining Interest Period**” means the six-month Interest Period (i) with respect to the Covered Loan, ending on February 22, 2023 and (ii) with respect to the Commercial Loan, ending on March 7, 2023.

“**Repayment Date**” means the First Repayment Date and each subsequent Interest Payment Date thereafter.

“**Repayment Installment**” means each installment of principal that is scheduled to fall due on the Loans on each Repayment Date.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Restricted Finance Party**” has the meaning given to it in Section 8.1(l) (*Sanctions*).

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

“**Sale-Leaseback**” means a transaction or arrangement under which title to any property or an interest therein is transferred by or on the direction of a Person (“**X**”) to another Person which leases or otherwise grants the right to use such property, asset or interest (or other property, which X intends to use for the same or a similar purpose) to X (or nominee of X), whether or not in connection therewith X also acquires a right or is subject to an obligation to acquire the property, asset or interest, and regardless of the accounting treatment of such arrangement.

“**Sanctioned Jurisdiction**” means any country or territory that is the subject or target of comprehensive Sanctions (as of the date hereof, Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine).

“**Sanctions**” means any laws, rules, regulations or executive orders relating to economic or financial sanctions or trade embargoes imposed, administered or enforced by the United States (including OFAC and the U.S. Department of State), the European Union, or the Federal Republic of Germany (including the Federal Ministry for Economic Affairs and Climate Action).

“**Sanctions List**” means any list of designated Persons that are the subject or target of Sanctions, including: (a) the Specially Designated Nationals and Blocked Persons List maintained by OFAC; and (b) the consolidated list of persons, groups and entities subject to EU financial sanctions maintained by the European Union.

“**Sanctions Target**” means any Person:

- (a) identified on any Sanctions List;
- (b) that is the government of, or is a governmental agency or instrumentality of, any Sanctioned Jurisdiction;
- (c) 50% or more owned by one or more Persons described in the foregoing clause (a) or (b);
- (d) organized, domiciled or resident in any Sanctioned Jurisdiction; or
- (e) otherwise the target of Sanctions.

“**Screen Rate**” means the London interbank offered rate (rounded upwards, if necessary, to the next 1/16<sup>th</sup> of 1%) administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant currency and period displayed (before any correction, recalculation or republication by the administrator) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; *provided*, that such rate shall in no case be lower than zero. If such page or service ceases to be available, the Facility Agent may specify another page or service displaying the relevant rate after consultation with the Borrower.

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**Starting Point of Credit**” means, the earlier of:

- (a) The date on which Final Acceptance for the Project Upgrades have been achieved; and
- (b) April 30, 2023.

“**Subsidiary**” means with respect to any Person, any other Person which is Controlled directly or indirectly by that Person, and “**Subsidiaries**” means all of such other Persons.

“**Supporting Documentation**” means, in relation to any payment under the Project Equipment Supply Agreement for Eligible Project Costs to be financed or reimbursed by an Eligible Project Cost Loan, those documents specified in this definition that are relevant to the payment and necessary, in the reasonable opinion of the Facility Agent (and which shall be deemed *prima facie* evidence as to the contents thereof), to:

- (a) identify the goods or services, due shipment, dispatch or provision;
- (b) evidence the amount due and payable and the last date for payment;
- (c) in the case of a Covered Loan Utilization Request – Reimbursement (Schedule C-1, Part II) to the Borrower, evidence receipt by the Exporter of payment from the Borrower,

namely, for a Covered Loan Utilization Request with regard to any Eligible Project Cost Loan (either by way of a disbursement to the Exporter or by reimbursement to the Borrower), one or more of the following, to the extent applicable (as per Schedule G (“*Payment Steps*”)):

- (i) Exporter’s commercial invoice(s);
- (ii) for placement of material for fabrication, relevant documentation of orders placed with sub-suppliers (redacted for commercially sensitive information), and, where applicable, a Completion Certificate, substantially in the form of Schedule D – Part III, in relation to such orders signed by the Borrower and the Exporter;
- (iii) for delivery of goods, a copy of the transport document (e.g. bill of lading, airway bill) and, where applicable, a Completion Certificate, substantially in the form of Schedule D – Part III, in relation to the goods and services signed by the Borrower and the Exporter;
- (iv) for completion of the First Coil Date a Provisional Acceptance Certificate under the Project Equipment Supply Agreement signed by Primetals Technologies USA LLC and the Borrower or a Deemed Provisional Acceptance Certificate under the

Project Equipment Supply Agreement issued by Primetals Technologies USA LLC;

- (v) for maintenance manuals and as-built documentation, a copy of “Primetals Secure File Exchange – Download Notification” or if no download has occurred or remains available within 30 days from issue date “Primetals File Exchange – Initial Report” showing the issue date; or
- (vi) for Final Acceptance, an Acceptance Certificate under the Project Equipment Supply Agreement signed by Primetals Technologies USA LLC and the Borrower or a Deemed Acceptance Certificate under the Project Equipment Supply Agreement issued by Primetals Technologies USA LLC.

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

“**Term SOFR**” means the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Term SOFR Administrator**” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Facility Agent in its reasonable discretion).

“**Term SOFR Quotation Day**” means, in relation to any period for which an interest rate is to be determined, two Business Days before the first day of that period, unless market practice differs in United States syndicated loan market with respect to loans in U.S. Dollars, in which case the Quotation Day for that currency shall be determined by the Facility Agent in accordance with market practice in the United States syndicated loan market (and if quotations would normally be given on more than one day, the Quotation Day shall be the last of those days).

“**Term SOFR Reference Rate**” means the forward-looking term rate based on SOFR.

“**Total Commercial Loan Commitment**” shall have the meaning given to it in Section 2.1(b) (*Commercial Loans*).

**“Total Commitments”** means the sum of the Total Covered Loan Commitment and the Total Commercial Loan Commitment, *provided* that the Total Commitments shall be reduced in the case of a reduction of the Eligible Project Costs before the Loans are fully drawn or the end of the Commercial Loan Commitment Period and the Covered Loan Commitment Period has been reached, *provided further* that an increase in Eligible Project Costs shall not automatically lead to an increase in the Total Commitments.

**“Total Covered Loan Commitment”** shall have the meaning given to it in Section 2.1(a)(ii) (*Premium Loans*).

**“Total Eligible Project Cost Loan Commitment”** shall have the meaning given to it in Section 2.1(a)(i) (*Eligible Project Cost Loans*).

**“Transaction Documents”** means the Project Equipment Supply Agreement, the Parent PESA Guarantee, and the PESA Assignment and Assumption Agreement together with the Finance Documents.

**“Transfer Certificate”** means a certificate substantially in the form set out on Schedule B (*Form of Transfer Certificate*) with any amendments which the Facility Agent may approve or reasonably require or any other form agreed between the Facility Agent and the Borrower.

**“UK Financial Institution”** means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**“UK Resolution Authority”** means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**“Unadjusted Benchmark Replacement”** means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

**“Unpaid Sum”** means any sum due and payable but unpaid by the Borrower under the Finance Documents.

**“Unused Commitment”** means, in respect of each Lender at any time, such Lender’s applicable Commitment *minus* the aggregate of (a) the principal amount of Loans then held by such Lender, (b) the principal that was held by such Lender and prepaid by the Borrower and (c) the principal that was held by such Lender and assigned to another Lender.

**“U.S. Government Securities Business Day”** means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**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 specified in Article 6(g)(ii)(B)(3) (*Status of Lenders*).

“**U.S. Secondary Sanctions**” means any “secondary sanctions” (as such term is construed under U.S. sanctions laws, regulations and executive orders) imposed by the United States (including any such “secondary sanctions” imposed by OFAC or the U.S. Department of State). “**USA PATRIOT Act**” means the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

“**Utilization**” means the borrowing of a Loan.

“**Utilization Date**” means the date of a Utilization, being the date on which the relevant Loan is made or is to be made.

“**Utilization Request**” means, as the context may require, a Covered Loan Utilization Request or a Commercial Loan Utilization Request.

“**Write-down and Conversion Powers**” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

## **1.2 Certain Rules of Interpretation.**

In this Agreement, unless otherwise specifically provided or unless the context otherwise requires:

- (a) the terms “Agreement,” “this Agreement,” “hereto,” “hereof,” “herein,” “hereby,” “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular Article, Section, Schedule, or other portion hereof or thereof;
- (b) references to a “paragraph,” “Section” or “Article” followed by a number or letter refer to the specified paragraph, Section or Article of this Agreement;
- (c) the division of this Agreement into articles, sections and paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

- (d) words importing the singular shall include the plural and *vice versa*, and words importing gender shall include all genders;
- (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”;
- (f) the terms “party” and “the parties” refer to a party or the parties to this Agreement, and references to a Person in this Agreement means such Person or its successors or permitted assigns;
- (g) the term “continuing,” when used in relation to a Default or Event of Default, means that such Default or Event of Default is continuing unremedied or unwaived in accordance with the terms of the Finance Documents;
- (h) the term “repay” (or any derivative form thereof) shall, subject to any contrary indication, be construed to include “prepay” (or, as the case may be, the corresponding derivative form thereof);
- (i) the words “will” and “shall” are to be treated as synonymous;
- (j) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement;
- (k) references to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, supplementing, interpreting or replacing the statute or regulation referred to;
- (l) except as otherwise specifically provided herein, where any payment is required to be made or any other action is required to be taken on a particular day and such day is not a Business Day and, as a result, such payment cannot be made or action cannot be taken on such day, then this Agreement shall be deemed to provide that such payment shall be made or such action shall be taken on the next Business Day in the same calendar month (if there is one) or the immediately preceding Business Day (if there is not); *provided*, that any Repayment Date which would otherwise end after the Final Maturity Date shall end on the Final Maturity Date (and if the Final Maturity Date is not a Business Day, the immediately preceding Business Day);
- (m) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
- (n) a law or provision of law is a reference to that law or provision as amended and includes any subordinate legislation; and
- (o) a Lender’s “cost of funds” and similar formulations in relation to a Lender’s participation in a Loan is a reference to the average cost (determined either on an actual or a notional basis) which that Lender would incur if it were to fund, from whatever source(s) it may

reasonably select, an amount equal to the amount of that participation in that Loan for a period equal in length to the Interest Period of that Loan.

### **1.3 Currency.**

Any reference in this Agreement to currency, “**Dollar**”, “**U.S. Dollar**” or to “**\$**”, unless otherwise expressly indicated, shall be to the lawful currency of the United States of America, being referred to herein as United States dollars. Any amounts to be advanced, paid, prepaid, or repaid shall be made in United States dollars.

### **1.4 Knowledge.**

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “knowledge” of a Person, it shall be deemed to refer to the actual knowledge of any Chief Executive Officer, Chief Financial Officer, General Counsel, any Vice President or any other officer or director (or Person performing any role of substantially the same scope and responsibility of any of the foregoing) of such Person and all information which ought to have been known by any of them after conducting a reasonable inquiry into the matters in question, whether or not any such inquiry was actually made; *provided*, that each such Person shall be deemed to have knowledge of all events, conditions and circumstances described in any notice delivered to the Borrower pursuant to the terms of this Agreement or any other Finance Document.

### **1.5 Conflict.**

In the case of any inconsistency between the terms of this Agreement and any other Finance Document, this Agreement shall prevail.

### **1.6 Rates.**

The Facility Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Facility Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Facility Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR, or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract

or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.”

## **Article 2 LOANS**

### **2.1 Loans.**

#### **(a) Covered Loans.**

(i) **Eligible Project Cost Loans.** Subject to the terms and conditions set forth in this Agreement, each Covered Lender hereby agrees, severally and not jointly, to advance to the Borrower from time to time during the Covered Loan Commitment Period such loans as the Borrower may request under Section 3.1 (*Delivery of a Utilization Request*) (individually, an “**Eligible Project Cost Loan**” and, collectively the “**Eligible Project Cost Loans**”). The aggregate amount of the Eligible Project Cost Loan Commitments shall not exceed 85% of the Eligible Project Costs, in the total amount not exceeding \$212,755,810.07 (such amount, as may be reduced from time to time in accordance with the terms hereof, the “**Total Eligible Project Cost Loan Commitment**”).

(ii) **Premium Loans.** Subject to the terms and conditions set forth in this Agreement, each Covered Lender hereby agrees, severally and not jointly, to advance to the Borrower from time to time during the Covered Loan Commitment Period such loans as the Borrower may request under Section 3.1 (*Delivery of a Utilization Request*) (individually, a “**Premium Loan**” and, collectively the “**Premium Loans**”, and together with the Eligible Project Cost Loans, each a “**Covered Loan**” and together, the “**Covered Loans**”). Covered Loans shall be made *pro rata* among the Covered Lenders in accordance with their respective Covered Loan Commitment. The principal amount at any time outstanding of the Covered Loans shall not exceed such Covered Lender’s Covered Loan Commitment. The aggregate amount of the Premium Loans and the Total Eligible Project Cost Loan Commitment shall not exceed \$250,000,000 (such amount, as may be reduced from time to time in accordance with the terms hereof, the “**Total Covered Loan Commitment**”). The aggregate amount of Covered Loans outstanding at any point in time shall not exceed the Total Covered Loan Commitment.

(b) **Commercial Loans.** Subject to the terms and conditions set forth in this Agreement, each Commercial Lender hereby agrees, severally and not jointly, to advance to the Borrower from time to time during the Commercial Loan Commitment Period such loans as the Borrower may request under Section 3.1 (*Delivery of a Utilization Request*) (individually, a “**Commercial Loan**” and, collectively the “**Commercial Loans**”) in a principal amount at any time outstanding not to exceed such Commercial Lender’s Commercial Loan Commitment. Commercial Loans shall be made *pro rata* among the Commercial Lenders in accordance with their respective Commercial Loan Commitment. The aggregate amount of the Commercial Loan Commitments shall not exceed the Down Payment (such amount,

as may be reduced from time to time in accordance with the terms hereof, the “**Total Commercial Loan Commitment**”). The aggregate amount of Commercial Loans outstanding at any point in time shall not exceed the Total Commercial Loan Commitment.

## **2.2 Finance Parties’ Rights and Obligations.**

- (a) No Lender shall be responsible for the failure of any other Lender (“**Defaulting Lender**”) to so make its Loans, it being understood that no Lender shall be responsible for making Loans if the corresponding conditions in Article 11 (*Conditions Precedent*) are not met.
- (b) Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Finance Party under the Finance Documents.
- (c) No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (d) The rights of each Finance Party under, or in connection with, the Finance Documents are separate and independent rights.
- (e) Any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with this paragraph (e). The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by the Borrower which relates to a Finance Party’s participation in a Loan or its role under a Finance Document (including any such amount payable to an Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- (f) The Borrower agrees and acknowledges that (i) the OeKB Guarantee is a separate arrangement and the Borrower shall have no right or recourse against the Lenders in respect of or arising by reason of any payment made by the OeKB Guarantor to any Covered Lender pursuant to the OeKB Guarantee and (ii) the OeKB Guarantor may, at any time in accordance with the OeKB Guarantee and the OeKB General Terms and Conditions applicable thereto, instruct any one or more of the ECA Agent, the Facility Agent or the Covered Lenders to suspend or cease performing any or all of its obligations contained hereunder and the ECA Agent, the Facility Agent or the Covered Lenders, as applicable, shall be required to comply with such instruction.

## **2.3 Purpose and Use of Proceeds.**

- (a) The Borrower shall apply the proceeds of Eligible Project Cost Loans solely to pay Eligible Project Costs.
- (b) The Borrower shall apply the proceeds of the Premium Loans solely to pay the OeKB Guarantee Premium.

- (c) The Borrower shall apply the proceeds of Commercial Loans in accordance with this Agreement and shall use the proceeds of the Commercial Loans solely to pay the Down Payment.

#### **2.4 Monitoring.**

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to any Finance Document.

#### **2.5 Evidence of Indebtedness.**

- (a) Each Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. Such account or accounts shall, to the extent not inconsistent with the notations made by the Facility Agent in the Register, be prima facie evidence of such Indebtedness of the Borrower absent manifest error; *provided*, that the failure of any Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any repayment Obligations of the Borrower hereunder.
- (b) Promptly following the request of any Lender, the Borrower will execute and deliver to such Lender a promissory note in form and substance acceptable ECA Agent (each a “**Note**”) with blanks appropriately completed in conformity herewith to evidence its obligation to pay the principal of, and interest on, the Covered Loan, Commercial Loan and/or Premium Loan, as applicable, made to it by such Lender; *provided, however*, that the decision of any Lender to not request a Note shall in no way detract from the Borrower’s obligation to repay such Loan and other amounts owing by the Borrower to such Lender.

### **Article 3 UTILIZATION OF LOANS**

#### **3.1 Delivery of a Utilization Request.**

- (a) Subject to the conditions referred to in Article 11 (*Conditions Precedent*) having been satisfied in accordance with the provisions of this Agreement and to the provisions of Section 2.1 (*Loans*), the Loans may be utilized by delivery to the Facility Agent, as provided below, of a duly completed Utilization Request not later than 12:00 p.m. New York time (i) in the case of the Covered Loan Utilization Request – Premium Loan, three (3) Business Days prior to the proposed Utilization Date of the Premium Loan and (ii) in the case of all other Utilization Requests, seven (7) Business Days prior to the proposed Utilization Date.
- (b) Each Covered Loan Utilization Request shall be substantially in the form of Schedule C-1 (*Covered Loan Utilization Requests*), delivered by the Borrower (or by the Exporter as the case may be); and shall include all certifications and documentation required therein. The Borrower hereby agrees that it will designate in any Covered Loan Utilization Request – Disbursement (*Schedule C-1, Part I*) that (i) all Eligible Project Cost Loans shall be funded

(A) directly to the Exporter to such account of the Exporter described in the Covered Loan Utilization Request – Disbursement (*Schedule C-1, Part I*) for the purpose described in Section 2.3(a) (*Purpose and Use of Proceeds*) or (B) in the case of reimbursement of Eligible Project Costs, directly to the Borrower to such account of the Borrower described in the Covered Loan Utilization Request – Reimbursement (*Schedule C-1, Part II*) and (ii) all Premium Loans shall be funded directly to the OeKB Guarantor to satisfy payment of the OeKB Guarantee Premium as described in the Covered Loan Utilization Request – Premium Loan (*Schedule C-1, Part III*).

The Borrower agrees that any Covered Loan Utilization Request – Disbursement (*Schedule C-1, Part I*), including the Exporter’s Certificate – Disbursement (*Schedule D, Part I*) and relevant Supporting Documentation, shall be sent directly by the Exporter to the Facility Agent.

- (c) Each Commercial Loan Utilization Request shall be substantially in the form of Schedule C-2 (*Commercial Loan Utilization Request*) and shall include all certifications and documentation required therein.

### **3.2 Completion of a Utilization Request.**

- (a) Each Utilization Request is irrevocable and shall not be regarded as having been duly completed unless:
  - (i) solely for a Utilization of Covered Loans, (A)(1) the Covered Loan Utilization Request – Reimbursement (*Schedule C-1, Part II*) includes a certification by the Borrower that the Utilization is required for the purpose set out in Section 2.3(a) (*Purpose and Use of Proceeds*) and (2) the Covered Loan Utilization Request – Disbursement (*Schedule C-1, Part I*) includes, if foreseen under Schedule G “Payment Steps”, the Completion Certificate signed by the Borrower and the Exporter and, (B) the Covered Loan Utilization Request includes Supporting Documentation with respect to the Eligible Project Costs to be financed with the applicable Utilization of Covered Loans and, (C) the proposed Utilization Date is a Business Day within the Covered Loan Commitment Period;
  - (ii) solely for a Utilization of Commercial Loans, (A) the Commercial Loan Utilization Request includes a certification by the Borrower that the Utilization is required for the purpose set out in Section 2.3(c) (*Purpose and Use of Proceeds*) and (B) the proposed Utilization Date is a Business Day within the Commercial Loan Commitment Period;
  - (iii) the currency and amount of the Utilization comply with Section 3.3 (*Currency and Amount*);
  - (iv) the Utilization Request specifies the account or bank to which the proceeds of the Loan are to be credited;
  - (v) the proposed Interest Period specified therein complies with Article 5 (*Interest, Interest Periods and Fees*); and

- (vi) the Utilization Request is executed by a Person duly authorized to do so on behalf of the Borrower as evidenced by an up-to-date Officer's Certificate or by an Exporter authorized person;
- (b) Only four (4) Utilization Requests (which may consist of no more than (i) two (2) Utilizations from the Borrower and (ii) two (2) Utilizations from the Exporter) may be delivered in any calendar month. For the avoidance of doubt, the delivery of a Covered Loan Utilization Request – Premium Loan (*Schedule C-1, Part III*) shall not count towards the limitation as described under this Section 3.2(b) (*Completion of a Utilization Request*).

### **3.3 Currency and Amount.**

- (a) The currency specified in a Utilization Request shall be U.S. Dollars.
- (b) The amount of each proposed Utilization shall be a minimum of \$1,000,000 except (i) subject to Section 3.2(b) (*Completion of a Utilization Request*), one (1) Utilization from the Borrower and one (1) Utilization from the Exporter for an amount less than \$1,000,000 in any calendar month; or (ii) an amount equal to the Unused Commitments.

### **3.4 Notification of Utilization of the Loan.**

Following the delivery of a duly completed Utilization Request as provided in Section 3.1(b) (*Delivery of a Utilization Request*), the Facility Agent shall promptly, but in all cases, on or prior to 12:00 p.m. New York time on the date that falls three (3) Business Days prior to the proposed Utilization Date for any Loan notify each Lender and, in the case of Covered Loans, the ECA Agent of the proposed Utilization Date, Interest Period and the amount of such Lender's share of the proposed Loan.

### **3.5 Lenders' Participation.**

- (a) If the conditions set out in this Agreement (including the applicable conditions in Article 11 (*Conditions Precedent*)) have been met, and subject to Article 4 (*Repayment, Prepayment and Cancellation*), each Lender shall make its participation in each Loan available by 10:00 a.m. Frankfurt time, on or prior to the applicable Utilization Date through its lending office to the Facility Agent's Account.
- (b) The amount of each Lender's participation in each Loan shall be *pro rata* to its Unused Commitment immediately prior to making such Loan.

### **3.6 Partial Payments.**

If the Facility Agent receives a payment for application against amounts due in respect of this Agreement that is insufficient to discharge all the amounts then due and payable by the Borrower under this Agreement, the Facility Agent shall apply such payment towards the Obligations of the Borrower under this Agreement in the following order:

- (i) **first**, in or towards payment *pro rata* of any unpaid amount owing to the Facility Agent and the ECA Agent under this Agreement;

- (ii) **second**, in or towards payment *pro rata* as between the Covered Loans and Commercial Loans of any accrued interest, fee or commission due but unpaid under this Agreement;
- (iii) **third**, in or towards payment *pro rata* as between the Covered Loans and Commercial Loans of any principal due but unpaid under this Agreement; and
- (iv) **fourth**, in or towards payment *pro rata* as between the Covered Loans and Commercial Loans of any other sum due but unpaid under this Agreement;

## **Article 4**

### **REPAYMENT, PREPAYMENT AND CANCELLATION**

#### **4.1 Repayments.**

- (a) The Borrower shall repay the Utilizations made to it in accordance with the terms of this Agreement (irrespective of whether Loan proceeds were made to it or the Exporter as provided in Section 3.1(b) (*Delivery of a Utilization Request*)).
- (b) Except as such repayment may be modified pursuant to Section 4.2 (*Mandatory Prepayment*), Section 4.4 (*Voluntary Prepayment*) or Section 4.9 (*Adjustment in case of disbursement after First Repayment Date*) the Borrower shall, commencing on the First Repayment Date and on each Repayment Date thereafter, make a repayment of the Loans determined in accordance with Section 4.10 (*Repayment Schedules*).
- (c) The Borrower shall not reborrow any part of the Loans which are repaid or prepaid.
- (d) The Borrower shall repay the aggregate Loans (whether principal, interest, fees or otherwise) in full to the extent they are outstanding under or in respect of the Loan on the Final Maturity Date.

#### **4.2 Mandatory Prepayment.**

- (a) If an ECA Mandatory Prepayment Event occurs, and without limitation to any other remedies available to the Lenders as a result of any Event of Default triggered by such breach, each Lender's Covered Loan Commitments shall be automatically reduced to zero and within thirty (30) days after the ECA Mandatory Prepayment Event, the Borrower shall prepay in full all amounts outstanding under this Agreement with respect to the Class of Covered Loans in accordance with Section 4.7 (*Application*).
- (b) Upon the receipt of a refund of all or a portion of the OeKB Guarantee Premium from the OeKB Guarantor to the Borrower, the Borrower shall prepay the Covered Loans in an amount equal to such refund.
- (c) Upon any Change of Control, each Lender's Commitments shall be automatically reduced to zero and, within thirty (30) days after the occurrence of such Change of Control, the Borrower shall repay in full all outstanding amounts of each Class of Loans.

- (d) Not later than five (5) Business Days following (A) the Impairment of the Project Equipment Supply Agreement or the Parent PESA Guarantee, (B) the reduction of the Eligible Project Costs under the Project Equipment Supply Agreement, (C) a material provision of the Project Equipment Supply Agreement or the Parent PESA Guarantee for any reason ceasing to be valid and binding or in full force and effect except upon scheduled termination thereof or (D) it becoming unlawful for (i) the Borrower to perform in any material respect any of its obligations under the Project Equipment Supply Agreement or (ii) the Parent Guarantor to perform in any material respect any of its obligations under the Parent PESA Guarantee, the Borrower shall notify the Facility Agent thereof and the Facility Agent shall have the right to request the Borrower prepay the Loans (or in the case of a reduction of the Eligible Project Costs, in an amount corresponding to such reduction), each such prepayment to be made by the Borrower no later than thirty (30) days after receipt by the Borrower of notice from the Facility Agent.

#### **4.3 Voluntary Cancellation.**

Subject to the other terms of this Agreement, the Borrower may at any time cancel all or any part of the Commitments of any Class; *provided*, that:

- (a) it has given not less than ten (10) Business Days' prior written notice to the Facility Agent; and
- (b) if such cancellation is for only part of the outstanding Commitments:
- (i) such cancellation shall be in a minimum amount of \$5,000,000 and an integral multiple of \$1,000,000; and
- (ii) such cancellation will reduce the Commitment of each Lender of such Class *pro rata*.

#### **4.4 Voluntary Prepayment.**

Subject to the other terms of this Agreement, the Borrower may prepay all or any part of the Loans of any Class; *provided*, that:

- (a) the Borrower has given not less than ten (10) Business Days' notice to the Facility Agent and, in the case of a prepayment of Covered Loans, the ECA Agent;
- (b) subject to Section 4.8(b) (*Miscellaneous*), the Borrower simultaneously pays all accrued interest on the amount prepaid, together with all out-of-pocket costs and expenses, fees and all other amounts then due and payable under the Finance Documents and, in the case of a prepayment of Covered Loans, the OeKB Guarantee, including Break Costs (if any);
- (c) if such a prepayment is of all of the Loans of any Class then outstanding, the Loans of such Class are all repaid or prepaid simultaneously in full;
- (d) if such a prepayment is a partial prepayment of the Loans of any Class then outstanding:

- (i) such prepayment shall be in a minimum amount of \$5,000,000 and an integral multiple of \$1,000,000; and
  - (ii) such prepayment will be applied as provided in Section 4.7 (*Application*), and the Borrower shall ensure that such amounts are repaid or prepaid simultaneously; and
- (e) such a prepayment shall not cause or result in a Default or Event of Default immediately prior to and immediately following such a prepayment.

#### **4.5 Automatic Cancellation.**

Each (a) Covered Lender's Covered Loan Commitment shall terminate on the last day of the Covered Loan Commitment Period and (b) Commercial Lender's Commercial Loan Commitment shall terminate on the last day of the Commercial Loan Commitment Period, in each case, at 5:00 p.m. Frankfurt time.

#### **4.6 Right of Cancellation and Repayment in Relation to a Single Lender.**

- (a) The Borrower may at any time, cancel any available Commitments of any Lender or repay any of the Loans held by an individual Lender (together with any other accrued and unpaid amounts owing to such Lender under the Finance Documents) if such Lender claims indemnification from the Borrower under Section 7.5 (*Indemnities*) or any amount under Section 7.3 (*Change in Circumstances*). The Borrower may, while the circumstances giving rise to the requirement for that increase or indemnification continue, give notice to the Facility Agent, as applicable of cancellation of the Commitment(s) of such Lender and its intention to procure the repayment of the Loans of such Class held by such Lender;
- (b) On receipt of a notice referred to in Section 4.6(a) (*Right of Cancellation and Repayment in Relation to a Single Lender*) in relation to a Lender, the Commitments of such Lender of such Class will immediately be reduced to zero.
- (c) On the last day of the Interest Period in which the Borrower has given notice under Section 4.6(a) (*Right of Cancellation and Repayment in Relation to a Single Lender*) in relation to a Lender (or, if earlier, the date specified by the Borrower in the notice under Section 4.6(a) (*Right of Cancellation and Repayment in Relation to a Single Lender*)), the Borrower will repay all Loans made by such Lender, together with all interest, Commitment Fees and other amounts accrued under the Finance Documents through and including the date of repayment and, to the extent such Lender is a Covered Lender, under the OeKB Guarantee (if any).

#### **4.7 Application.**

- (a) Except in the case of a prepayment or repayment under Section 7.2 (*Illegality*) or Section 4.6 (*Right of Cancellation and Repayment in Relation to a Single Lender*):
  - (i) any cancellation pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall:

- (A) be applied *pro rata* between each Lender of the applicable Class; and
- (B) if in part, reduce the Commitment of each Lender of such Class *pro rata*; and
- (ii) any prepayment pursuant to this Article 4 (*Repayment, Prepayment and Cancellation*) shall be applied *pro rata* between each Loan of such Class.
- (b) If any Loan is prepaid in accordance with Section 4.2 (*Mandatory Prepayment*), such prepayment will be applied (i) in inverse chronological order to the then remaining Repayment Installments or (ii) at the Borrower's option, subject to the OeKB Guarantor's prior approval, ratably to the then remaining Repayment Installments.
- (c) If any Loan is prepaid in accordance with Section 4.4 (*Voluntary Prepayment*), such prepayment will be applied (i) in inverse chronological order to the then remaining Repayment Installments or (ii) at the Borrower's option, subject to the OeKB Guarantor's prior approval, ratably to the then remaining Repayment Installments.

#### **4.8 Miscellaneous.**

- (a) Any written notice of cancellation or prepayment under this Article 4 (*Repayment, Prepayment and Cancellation*):
  - (i) is irrevocable; and
  - (ii) unless a contrary indication appears in this Agreement, shall specify:
    - (A) the date upon which the relevant cancellation or prepayment is to be made; and
    - (B) the amount of that cancellation or prepayment.
- (b) Subject to the requirements of the other provisions of this Article 4 (*Repayment, Prepayment and Cancellation*), any prepayment under this Agreement is without premium or penalty other than Break Costs to the extent that the prepayment is made on a date other than on the last day of the current Interest Period.
- (c) Any prepayment under this Agreement shall be made together with accrued and unpaid interest through but not including such date.
- (d) No prepayment, repayment or cancellation is allowed except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Facility Agent receives a notice under this Article 4 (*Repayment, Prepayment and Cancellation*), it shall promptly forward a copy of that notice to each Lender.

#### **4.9 Adjustment in case of disbursement after First Repayment Date.**

If any Covered Loan is disbursed after the First Repayment Date, then every Repayment Installment then outstanding with respect to a Covered Loan will be increased by the amount of such Utilization divided by the number of such outstanding Repayment Installments. Where such Utilization of a Covered Loan is effected within a period of one (1) month prior to the Repayment Date, then the Repayment Installments will be adjusted only as from the second Repayment Date following the Utilization of such Covered Loan.

#### **4.10 Repayment Schedules.**

Prior to the First Repayment Date, the Facility Agent shall provide the Borrower a repayment schedule with respect to each of the Covered Loans and the Commercial Loans, which shall be aligned with the then existing Interest Payment Dates and form an integral part of this Agreement after the Borrower's written confirmation thereof (and, for the avoidance of doubt, as countersigned by the Facility Agent). In the event that this Section 4.10 (*Repayment Schedules*) applies, the Facility Agent shall provide to the Borrower a revised repayment schedule for the Covered Loans, which shall become an integral part of this Agreement after the Borrower's written confirmation thereof (and, for the avoidance of doubt, as countersigned by the Facility Agent) and replace any repayment schedule previously agreed with the Borrower, but shall, for the avoidance of doubt, not change the Repayment Dates.

### **Article 5 INTEREST, INTEREST PERIODS AND FEES**

#### **5.1 Payment of Interest.**

During the Remaining Interest Period, subject to Sections 5.6 (*Unavailability of Screen Rate*) and 5.7 (*Market Disruption for LIBOR*), interest shall accrue on each Loan at a *per annum* rate equal to LIBOR plus the Applicable Margin. During each Interest Period thereafter, subject to Section 5.8 (*Benchmark Replacement Setting*) and Section 5.9 (*Market Disruption for Term SOFR*), interest shall accrue on each Loan at a *per annum* rate equal to Adjusted Term SOFR plus the Applicable Margin. The Borrower shall pay accrued interest on the Loans on each Interest Payment Date. Accrued interest shall be calculated on the basis of a 360-day year. Accrued interest shall be paid on the basis of actual days elapsed and shall include the first day of the Interest Period but exclude the last day of such Interest Period.

#### **5.2 Default Interest.**

- (a) If the Borrower fails to pay any amount payable by it under any Finance Document or under the OeKB Guarantee on its due date, interest shall accrue on the overdue amount from the due date up to but not including the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is 2% *per annum* higher than the interest rate deferred at such time pursuant to Section 5.1 (*Payment of Interest*). Any interest accruing under this Section 5.2 (*Default Interest*) shall be immediately payable by the Borrower on written demand by the relevant Agent or Lender.

- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan;
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan;
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be 2% *per annum* higher than the rate which would have applied if the overdue amount had not become due; and
  - (iii) default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.
- (c) No accrued interest shall become due and payable other than in accordance with the provisions of Section 5.1 (*Payment of Interest*) or this Section 5.2 (*Default Interest*).

### **5.3 Limitation on Interest.**

If at any time the interest rate applicable to any Loan, together with all other amounts that are treated as interest on such Loan under Applicable Law, exceeds the maximum lawful rate under the laws of New York, the interest payable in respect of such Loan, together with all other amounts treated as interest on such Loan, shall be limited to interest calculated at the maximum lawful rate under the laws of New York.

### **5.4 Determination of Interest Periods.**

- (a) Subject to paragraph (b) below, each Interest Period for any Loan shall be of a duration of six (6) months.
- (b) The first Interest Period applicable to any Loan, whether disbursed in whole or in part, shall start on its respective Utilization Date and end six months thereafter; *provided* that additional disbursements under any Loan made within an Interest Period shall be interpolated to the then next Interest Payment Date. Each subsequent Interest Period for a Loan shall start on an Interest Payment Date and end on the day immediately before the subsequent Interest Payment Date that corresponds to the last day of such Interest Period or, if earlier, the Final Maturity Date.

### **5.5 Non-Business Days.**

If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall instead end on the next Business Day in that calendar month (if there is one) or the immediately preceding Business Day (if there is not).

## **5.6 Unavailability of Screen Rate.**

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Remaining Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the applicable Interest Period.
- (b) *Base Reference Bank Rate*: If no Screen Rate is available for LIBOR during the Remaining Interest Period for (i) U.S. Dollars, or (ii) the Remaining Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate, the applicable LIBOR shall be the Base Reference Bank Rate as of 11:00 a.m. (New York time) on the LIBOR Quotation Day for U.S. Dollars and for a period equal in length to the Interest Period of that Loan.
- (c) If no Base Reference Bank Rate is available for U.S. Dollars for the Remaining Interest Period, there shall be no LIBOR for that Loan and Section 5.10 (*Cost of Funds*) shall apply to that Loan for the Remaining Interest Period.

## **5.7 Market Disruption for LIBOR.**

If before close of business in New York on the LIBOR Quotation Day for the Remaining Interest Period the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 50% of such Class) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR then Section 5.10 (*Cost of Funds*) shall apply to that Class for the Remaining Interest Period.

## **5.8 Benchmark Replacement Setting.**

- (a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Finance Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Finance Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Finance Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Finance Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5<sup>th</sup>) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Finance Document so long as the Facility Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable in accordance with Section 5.1 (*Payment of Interest*).

- (b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Facility Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Finance Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Finance Document.
- (c) Notices; Standards for Decisions and Determinations. The Facility Agent will promptly notify the Borrower and the Lenders of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Facility Agent will promptly notify the Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to Section 5.8(d) (*Unavailability of Tenor of Benchmark*) and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Facility Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 5.8 (*Benchmark Replacement Setting*), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Finance Document, except, in each case, as expressly required pursuant to this Section 5.8 (*Benchmark Replacement Setting*).
- (d) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Finance Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Facility Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Facility Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Facility Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (e) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any pending request for a Loan during any Benchmark Unavailability Period.

## **5.9 Market Disruption for Term SOFR.**

If before close of business in New York on the Term SOFR Quotation Day for the relevant Interest Period (a) the Facility Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the then-current Benchmark (including, without limitation, because the Benchmark is not available or published on a current basis ), for such Interest Period; *provided* that no Benchmark Transition Event shall have occurred at such time; or (b) the Facility Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 50% of such Class) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of the Adjusted Term SOFR Rate then Section 5.10 (*Cost of Funds*) shall apply to that Class for the relevant Interest Period.

## **5.10 Cost of Funds.**

- (a) If this Section 5.10 (*Cost of Funds*) applies, the rate of interest on the Loan for the relevant Interest Period shall be the percentage rate *per annum* which is the sum of:
  - (i) the Applicable Margin; and
  - (ii) the rate notified to the Facility Agent by each Lender as soon as practicable and in any event by close of business on the date falling fifteen (15) Business Days after the LIBOR Quotation Day or Periodic Term SOFR Determination Day, as applicable, (or, if earlier, on the date falling three (3) Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate *per annum* the cost of the relevant Lender of funding an amount equal to its participation in the Loan from whatever source it may reasonably select.
- (b) If this Section 5.10 (*Cost of Funds*) applies and the Facility Agent or the Borrower so requires, the Facility Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders of such Class and the Borrower, be binding on all parties.
- (d) If this Section 5.10 (*Cost of Funds*) applies but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above, the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders of such Class.

## **5.11 Break Costs.**

- (a) The Borrower shall indemnify, compensate and reimburse each Lender for all Break Costs which such Lender may sustain:
  - (i) if the Borrower withdraws or reduces the amount specified for a Utilization in a

Utilization Request or fails to satisfy any of the conditions precedent specified in Article 11 (*Conditions Precedent*) after delivering a Utilization Request (unless waived by the Lenders pursuant to Section 22.4 (*Amendment and Waiver*); *provided*, that if the Borrower withdraws or reduces the amount specified for any Utilization Request, then the Applicable Margin shall be included in the calculation of Break Costs but in all other cases (including clauses (ii) and (iii) of this Section 5.11 (*Break Costs*), the Applicable Margin should not be included in the calculation of Break Costs).

- (ii) if the Borrower fails to pay any amount of principal of the Loans due and payable under a Finance Document on its due date; or
  - (iii) if any repayment or prepayment (whether mandatory or voluntary) of its Loan occurs on a date that is not the last day of the current Interest Period therefor for the Loan, in accordance with Article 4 (*Repayment, Prepayment and Cancellation*) of this Agreement.
- (b) Each Lender shall furnish to the Borrower a certificate setting forth in reasonable detail the basis and amount of each request by such Lender for compensation under this Section 5.11 (*Break Costs*), which certificate shall be conclusive and binding on the Borrower in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within three (3) Business Days after receipt thereof.

## **5.12 Fees.**

- (a) **Covered Loan Commitment Fee.** The Borrower shall pay to the Facility Agent (for the account of each Lender) a Covered Loan Commitment Fee at a rate *per annum* equal to 0.40% of the daily Unused Commitment of Covered Loans of such Covered Lender, for the period from and including the Original Effective Date to but excluding the last day of the Covered Loan Commitment Period. Accrued Covered Loan Commitment Fees shall be payable quarterly in arrears starting from the Original Effective Date, or, in the case of the last installment of the Covered Loan Commitment Fee payable hereunder, on the last day of the Covered Loan Commitment Period. No other commitment fees will be payable to the Facility Agent or the Covered Lenders on account of the Covered Loans. Notwithstanding the foregoing, no Covered Lender shall be entitled to receive any commitment fee for any period during which such Covered Lender is a Defaulting Lender (and the Borrower shall not be required to pay any commitment fee that otherwise would have been required to be paid to that Defaulting Lender).
- (b) **Commercial Loan Commitment Fee.** The Borrower shall pay to the Facility Agent (for the account of each Lender) a Commercial Loan Commitment Fee at a rate *per annum* equal to 1.00% of the daily Unused Commitment of Commercial Loans of such Commercial Lender, for the period from and including the Original Effective Date to but excluding the last day of the Commercial Loan Commitment Period. Accrued Commercial Loan Commitment Fees shall be payable quarterly in arrears starting from the Original Effective Date, in the case of the last installment of the Commercial Loan Commitment Fee payable hereunder, on the last day of the Commercial Loan Commitment Period. No

other commitment fees will be payable to the Facility Agent or the Commercial Lenders on account of the Commercial Loans. Notwithstanding the foregoing, no Commercial Lender shall be entitled to receive any commitment fee for any period during which such Commercial Lender is a Defaulting Lender (and the Borrower shall not be required to pay any commitment fee that otherwise would have been required to be paid to that Defaulting Lender).

- (c) **OeKB Guarantee Premium.** Subject to the issuance of the OeKB Guarantee, the Borrower shall pay the OeKB Guarantee Premium in the amounts, at such time and manner specified in the OeKB Guarantee, which payment shall be made with the proceeds of the Premium Loans after disbursement thereof in accordance with the terms of this Agreement.
- (d) **Other Fees.** The Borrower shall pay such other fees in the amounts and manner agreed between any Finance Party and the Borrower in any Fee Letter.

## **Article 6 TAXES**

- (a) **Defined Terms.** For purposes of this Article 6 (*Taxes*), the term “Applicable Law” includes FATCA.
- (b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of the Borrower under any Finance Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the Borrower) 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 Body 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 Article 6 (*Taxes*)), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding for Indemnified Taxes been made.
- (c) **Payment of Other Taxes by Borrower.** The Borrower shall timely pay to the relevant Governmental Body in accordance with Applicable Law, or at the option of the Facility Agent timely reimburse it for the payment of, any Other Taxes.
- (d) **Indemnification by Borrower.** The Borrower shall indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Article 6 (*Taxes*)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, other than any penalties and interest resulting from the willful misconduct or fraud of the Facility Agent or such Lender, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were

correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Facility Agent), or by the Facility Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

- (e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Facility Agent within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Facility Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.1(j) (*Assignment by Lenders*) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Facility Agent in connection with any Finance Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Body. A certificate as to the amount of such payment or liability delivered to any Lender by the Facility Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Facility Agent to set off and apply any and all amounts at any time owing to such Lender under any Finance Document or otherwise payable by the Facility Agent to the Lender from any other source against any amount due to the Facility Agent under this paragraph (e).
- (f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by the Borrower to a Governmental Body pursuant to this Article 6 (*Taxes*), the Borrower shall deliver to the Facility Agent the original or a certified copy of a receipt issued by such Governmental Body evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Facility Agent.
- (g) **Status of Lenders.** (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Finance Document shall deliver to the Borrower and the Facility Agent, at the time or times reasonably requested by the Borrower or the Facility Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Facility Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Facility Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Facility Agent as will enable the Borrower or the Facility Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in paragraphs (g)(ii)(A), (ii)(B) and (ii)(D) of this Article 6 (*Taxes*)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.
- (ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Facility Agent on or about the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Facility Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Facility Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Facility Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income Tax treaty to which the United States of America is a party (x) with respect to payments of interest under any Finance Document, executed copies of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such Tax treaty and (y) with respect to any other applicable payments under any Finance Document, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such Tax treaty;

(2) executed copies of IRS Form W-8ECI;

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

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-2 or Exhibit A-3, IRS Form W-9, and other certification documents from each beneficial owner, as applicable; *provided*, that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender

may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit A-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Facility Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Facility Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Facility Agent to determine the withholding or deduction required to be made; and

(D) each Lender shall deliver to the Borrower and the Facility Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Facility 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 or the Facility Agent as may be necessary for the Borrower and the Facility Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Facility Agent in writing of its legal inability to do so.

(h) **Treatment of Certain Refunds.** If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes (including any tax credit in lieu of a refund) as to which it has been indemnified pursuant to this Article 6 (*Taxes*) (including by the payment of additional amounts pursuant to this Article 6 (*Taxes*)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Article 6 (*Taxes*) with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Body with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Body) in the event that such indemnified party is required to repay such refund to such Governmental Body. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had

not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph (h) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

- (i) **Survival.** Each party's obligations under this Article 6 (*Taxes*) shall survive the resignation or replacement of the Facility Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Finance Document.

## **Article 7 OTHER PROVISIONS RELATING TO THE LOANS**

### **7.1 Payments Generally.**

- (a) The Borrower shall make each payment required to be made by it under this Agreement on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim.
- (b) Any amounts received after close of business on any date may, in the discretion of the Facility Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.
- (c) All such payments shall be made to the Facility Agent at the Facility Agent's Account, except that payments pursuant to Sections 7.3 (*Change in Circumstances*), 7.4 (*Payment of Out-of-Pocket Costs and Expenses*) and 7.5 (*Indemnities*) shall be made directly to the Persons entitled thereto.
- (d) The Facility Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof.
- (e) All payments under or in connection with this Agreement shall be made in U.S. Dollars unless otherwise specified.

### **7.2 Illegality.**

If any Applicable Law comes into force after the Original Effective Date, or if any change in any existing Applicable Law or in the interpretation or application thereof by any court of competent jurisdiction or Governmental Body now or hereafter makes it unlawful for a Lender to have advanced or acquired an interest in any of the Loans or to fund or otherwise maintain any of the Loans or to give effect to its obligations in respect thereof, such Lender may, by written notice thereof to the Borrower, declare its obligations under this Agreement to be terminated, and the Borrower shall immediately cancel any available Commitments of such Lender and prepay, within the time required by such law and if not so required by any time, promptly after such notice, the Loans and any other amounts owing under this Agreement (including accrued and unpaid interest) as may be applicable to, but not including, the date of such payment. If any such event shall, in the

opinion of such Lender, only affect part of its obligations under this Agreement, the remainder of this Agreement shall be unaffected and the obligations of the Borrower under the Finance Documents shall continue. Each Lender agrees to use commercially reasonable efforts to designate a different lending office if such designation will avoid the need for such notice and will not, in the judgment of such Lender, acting reasonably, otherwise be materially disadvantageous (including among others, reduction in rate of return) to such Lender. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses Incurred by any Lender in connection with any such designation or assignment.

### **7.3 Change in Circumstances.**

- (a) If the introduction of or any change in any Applicable Law relating to a Lender or any change in the interpretation or application thereof by any Governmental Body or compliance by a Lender with any request or direction of any Governmental Body:
  - (i) subjects such Lender to any Taxes (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;
  - (ii) imposes, modifies or deems applicable any reserve, liquidity, cash margin, capital, special deposit, deposit insurance or assessment, or any other regulatory or similar requirement or any additional or increased cost against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds for loans by, such Lender or any direct or indirect holding company of such Lender;
  - (iii) imposes on such Lender or any direct or indirect holding company of such Lender or requires there to be maintained by such Lender any capital adequacy, liquidity or additional liquidity capital requirement (including, without limitation, a requirement which affects such Lender's or such holding company's allocation of capital resources to its obligations) in respect of such Lender's obligations hereunder; or
  - (iv) imposes on such Lender any other condition or requirement with respect to this Agreement (provided, however, that this Section 7.3(a)(iv) (*Change in Circumstances*) shall not apply with respect to any Taxes, but shall not limit any rights or obligations arising under Section 7.3(a)(i) (*Change in Circumstances*));
- (b) and subject to paragraph (c) below, such occurrence has the effect of:
  - (i) increasing the cost to such Lender of agreeing to make or making, maintaining or funding the Loan or any portion thereof;
  - (ii) reducing the amount of the Obligations (including reduction in the rate of return) owing to such Lender;
  - (iii) directly or indirectly reducing the effective return to such Lender under this Agreement or on its overall capital as a result of entering into this Agreement or as

a result of any of the transactions or obligations contemplated by this Agreement;  
or

- (iv) causing such Lender to make any payment or to forgo any interest, fees or other return on or calculated by reference to any sum received or receivable by such Lender under this Agreement;

then, upon written request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs Incurred or reduction suffered. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

- (c) For purposes of the foregoing, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof and (ii) all requests, rules, regulations, guidelines or directives whether concerning capital adequacy or liquidity promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed a “change in Applicable Law” regardless of the date enacted, adopted, applied or issued.

#### **7.4 Payment of Out-of-Pocket Costs and Expenses.**

The Borrower shall pay to the Facility Agent and the Lenders on demand all reasonable out-of-pocket costs and expenses (including, without limitation, all reasonable fees, properly invoiced and documented out-of-pocket expenses and disbursements of outside legal counsel) (other than in the case of Section 7.4(d) (*Payment of Out-of-Pocket Costs and Expenses*) below, in which case the Borrower shall pay the Facility Agent and the Lenders on demand all out-of-pocket costs and expenses) of the Agents and the Lenders and their agents, counsel, and any receiver or receiver-manager appointed by them or by a court in connection with this Agreement and the other Finance Documents and the OeKB Guarantee, including, without limitation:

- (a) the preparation, negotiation, and completion of the Finance Documents and the OeKB Guarantee, or any actual or proposed amendment or modification thereof or any waiver thereunder and all instruments supplemental or ancillary thereto;
- (b) fees and expenses of the Lenders Incurred as part of the Lenders’ due diligence;
- (c) obtaining advice as any Agent’s or the Lenders’ rights and responsibilities under this Agreement or the other Finance Documents or the OeKB Guarantee;
- (d) the defense, establishment, protection or enforcement of any of the rights or remedies of the Lenders under this Agreement or any of the other Finance Documents or the OeKB Guarantee, including all out-of-pocket costs and expenses of establishing the validity and enforceability of, or of collection of amounts owing under, this Agreement; and

- (e) translation costs, including, but not limited to, the translation of the OeKB Guarantee from German into English.

## 7.5 Indemnities.

- (a) The Borrower shall indemnify and hold harmless each Agent, each Lender and the OeKB Guarantor and their Affiliates, officers, directors and employees (each, an “**Indemnified Party**”) from all Claims (including the properly invoiced and documented fees, out-of-pocket expenses and disbursements of outside legal counsel to the Lenders and the OeKB Guarantor in each applicable jurisdiction), which may be Incurred by any Indemnified Party as a consequence of or in respect of:
  - (i) default by the Borrower in the payment when due of any Obligation or any other Default or Event of Default hereunder which is continuing;
  - (ii) the entering into by the relevant Agents and the Lenders of this Agreement and any amendment, waiver or consent relating hereto, and the performance by such Agents and the Lenders of their obligations under this Agreement;
  - (iii) failure of the Borrower to comply with any Applicable Law, including, without limitation, any Environmental Law or applicable Anti-Corruption Laws or Sanctions, with respect to the Project Upgrades;
  - (iv) any Environmental Matter and Environmental Claim with respect to the Project Upgrades;
  - (v) the application by the Borrower of the proceeds of the Loan; or
  - (vi) any material Claim arising in connection with the Project Upgrades, except for any such Claim that a final and non-appealable court of competent jurisdiction determined arose primarily on account of the relevant Indemnified Party’s gross negligence or willful misconduct.
- (b) In connection with any Claim described in Section 7.5(a) (*Indemnities*) above, the applicable Indemnified Party shall deliver a certificate of an officer of the Facility Agent or the applicable Lender as to:
  - (i) any such Claim; and
  - (ii) containing reasonable details of the calculation (which calculation shall be, absent manifest error, *prima facie* evidence of the calculation of the amount of such Claim) and any supporting documentation, including but not limited to invoices and receipts.

**Article 8**  
**REPRESENTATIONS AND WARRANTIES**

**8.1 Representations and Warranties of the Borrower and the Parent Guarantor.**

To induce each Lender to enter into this Agreement and the other Finance Documents to which each such Lender is a party, and to induce each Lender to make available the Loans under this Agreement, each of the Parent Guarantor and the Borrower makes the representations and warranties set forth below to each Lender as of the Amendment and Restatement Effective Date and each Utilization Date.

- (a) **Borrower Organization and Good Standing.** The Borrower:
  - (i) has been duly formed and is an existing limited liability company in good standing under the laws of the State of Delaware;
  - (ii) has the requisite power and authority (corporate and other) to own its properties and conduct its business; and
  - (iii) is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.
  
- (b) **Parent Guarantor Organization and Good Standing.** The Parent Guarantor:
  - (i) has been duly incorporated and is an existing corporation in good standing under the laws of the State of Delaware;
  - (ii) has the requisite power and authority (corporate and other) to own its properties and conduct its business; and
  - (iii) is duly qualified to do business as a foreign corporation in good standing in all other jurisdictions in which its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect.
  
- (c) **Capitalization.** All outstanding Equity Interests of each Loan Party have been duly authorized and are validly issued, fully paid and non-assessable and are not subject to any pre-emptive or similar rights.
  
- (d) **No Consents Required.** No consent, approval, Authorization, or Order of, or filing with, any Governmental Body is required for the execution and delivery by a Loan Party of the Transaction Documents or the consummation of the transactions contemplated thereby (including the incurrence of Indebtedness thereunder) except (i) such as have been obtained or (ii) in the case of the Project Equipment Supply Agreement, such consents, approvals, Authorizations, Orders or filings the failure of which to obtain or make would

not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

- (e) **No Conflict.** The execution, delivery and performance by each Loan Party of the Transaction Documents to which it is or will become a party and compliance by each Loan Party with the terms thereof and the consummation of the transactions contemplated by the Transaction Documents, will not result in a breach or violation of any of the terms and provisions of, or constitute a default under:
  - (i) any statute, any rule, regulation or Order of any Governmental Body or any court, domestic or foreign, having jurisdiction over a Loan Party or such Loan Party's respective properties;
  - (ii) any agreement or instrument to which a Loan Party is a party or by which a Loan Party is bound or to which any of the properties of a Loan Party is subject; or
  - (iii) the charter, by laws or other organizational document of the a Loan Party, as applicable.
- (f) **Due Authorization.** Each Loan Party has full right, power and authority to execute and deliver the Transaction Documents to which it is or will become a party and to perform its Obligations hereunder and thereunder; and all action required to be taken for the due and proper authorization, execution and delivery of each of the Transaction Documents and the consummation of the transactions contemplated thereby has been duly and validly taken.
- (g) **Execution; Binding Obligation.** Each of the Transaction Documents to which a Loan Party, is or will become a party:
  - (i) has been, or when delivered under or in connection with this Agreement will be, duly executed and delivered by such Loan Party; and
  - (ii) constitutes, or when delivered under or in connection with this Agreement will constitute, a valid and legally binding agreement of such Loan Party, enforceable against such Loan Party, in accordance with its terms, except as enforceability may be limited by applicable bankruptcy or insolvency laws, or Applicable Law affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.
- (h) **No Defaults.**
  - (i) Neither Loan Party is:
    - (A) in violation of its respective charter or limited liability company agreement or other organizational documents;
    - (B) in default in the performance of any obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument that is material to such Loan Party, to which

such Loan Party is a party or by which such Loan Party or its property is bound; or

(C) in violation of any law or statute or any judgment, Order, rule or regulation of any court or arbitrator or Governmental Body, except for such defaults and violations in the case of these clauses (B) and (C) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) No Default or Event of Default has occurred and is continuing.

(i) **Title to Real and Personal Property.**

(i) Each Loan Party has good and marketable title to all real properties and good and indefeasible title to all other properties and assets owned by it that are material to the business of such Loan Party, in each case free from Liens, except such Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Each Loan Party holds its leased real or personal property under valid and enforceable leases free from any Liens that would materially interfere with the business of such Loan Party, except such Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party owns or leases all properties and assets necessary to conduct its business.

(j) **Licenses and Permits.** Each Loan Party possesses all Authorizations required pursuant to Applicable Law necessary to conduct its business, except to the extent that any failure to possess would not reasonably be expected to have a Material Adverse Effect. Neither Loan Party has received any notice of proceedings relating to the revocation or modification of any such Authorization that, if determined adversely to such Loan Party, would reasonably be expected to have a Material Adverse Effect.

(k) **Title to Intellectual Property.** Except as would not reasonably be expected to have a Material Adverse Effect:

(i) the Parent Guarantor owns, possesses, has the right to use or can acquire on reasonable terms adequate Intellectual Property to conduct its business;

(ii) the Parent Guarantor's conduct of its business does not infringe, misappropriate or otherwise violate any Intellectual Property of any Person;

(iii) the Parent Guarantor has not received any written notice of any claim relating to Intellectual Property; and

(iv) to the knowledge of the Parent Guarantor, the Intellectual Property of the Parent Guarantor is not being infringed, misappropriated or otherwise violated by any Person.

- (l) **Sanctions.** Neither the Parent Guarantor nor any of its Subsidiaries nor, to the knowledge of the Parent Guarantor, any of their respective directors, officers or employees, nor any agent of the Parent Guarantor or its Subsidiaries that will act in any capacity in connection with this Agreement, is a Sanctions Target. The Parent Guarantor, its Subsidiaries and, to the knowledge of the Parent Guarantor, their respective directors, officers, employees and agents are in compliance with applicable Sanctions in all material respects. To the Parent Guarantor's knowledge, none of its Subsidiaries or any of the directors, officers, employees or agents of the Borrower or its Subsidiaries has knowingly taken any action that could reasonably be expected to result in penalties being imposed against the Parent Guarantor or any of its Subsidiaries or any of their respective directors, officers, employees or agents, as applicable, under U.S. Secondary Sanctions. The Parent Guarantor has implemented policies and procedures designed to promote and achieve compliance with applicable Sanctions.

In relation to each Finance Party that notifies any Loan Party that it is a Restricted Finance Party (each a "**Restricted Finance Party**"), this Section 8.1(l) (*Sanctions*) shall only apply for the benefit of that Restricted Finance Party to the extent that the acceptance of the representation in this Section 8.1(l) (*Sanctions*) would not conflict with, or result in any such Restricted Finance Party being in violation of, or subject to liability under, any EU Anti-Boycott Regulation.

In connection with any amendment, waiver, determination or direction relating to any part of this Section 8.1(l) (*Sanctions*) of which a Restricted Finance Party does not have the benefit, the Commitment of that Restricted Finance Party (if any) will be excluded for the purpose of determining whether the consent of the Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders has been made.

- (m) **Anti-Corruption and Money Laundering Laws.** The Parent Guarantor, its Subsidiaries and, to the knowledge of the Parent Guarantor, their respective directors, officers, employees and agents are in compliance with applicable Anti-Corruption Laws and applicable Anti-Money Laundering Laws in all material respects. The Parent Guarantor has implemented policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws and applicable Anti-Money Laundering Laws.
- (n) **Compliance with Laws.** As of the date of this Agreement, each Loan Party is in compliance with all Applicable Law (other than Environmental Laws, which are the subject of Section 8.1(o)) (*Environmental Matters*)), including with respect to Project Upgrades, except where such noncompliance has not had and would not reasonably be expected to have a Material Adverse Effect.
- (o) **Environmental Matters.** Except as disclosed on Schedule 8.1(n) (*Environmental Matters*) or as would not reasonably be expected to have a Material Adverse Effect, each Loan Party:

- (i) is not in violation of any Environmental Laws or the Equator Principles;
  - (ii) maintains and is in compliance with all requisite Environmental Permits (including with respect to the development, construction and operation of the Project Upgrades);
  - (iii) does not own or operate any real property contaminated with any Hazardous Materials at levels that, to the knowledge of the Borrower, would reasonably be expected to require remedial action by the Borrower pursuant to any Environmental Laws; and
  - (iv) is not liable for any off-site disposal or contamination pursuant to any Environmental Laws, or is subject to any claim relating to any Environmental Laws, which violation, contamination, liability or claim would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, and neither Loan Party is aware of any pending investigation which would reasonably be expected to lead to such a claim.
- (p) **No Labor Disputes.** No labor dispute with the employees of any Loan Party exists or, to the knowledge of any Loan Party, is imminent that would reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, including with respect to the Project Upgrades.
- (q) **Employee Benefit Plans.** Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect:
- (i) Each Plan and Multiemployer Plan has been maintained in compliance with its terms and the requirements of any applicable statutes, Orders, rules and regulations, including but not limited to ERISA and the Code.
  - (ii) No ERISA Event has occurred or is reasonably expected to occur.
- (r) **Taxes.** Each Loan Party has timely filed all material federal, state, local and foreign income Tax returns that have been required to be filed and has paid all material Taxes indicated by such returns and all material assessments received by it to the extent that such material Taxes or assessments have become due and are not being contested in good faith by appropriate proceedings.
- (s) **Financial Statements.** Each Loan Party's Financial Statements present fairly in all material respects the consolidated financial position of each Loan Party and its consolidated Subsidiaries (if any) as of the dates shown and their results of operations and cash flows for the periods shown, and have been prepared in conformity with GAAP in the United States applied on a consistent basis throughout the periods covered thereby, except (i) as otherwise disclosed in each Loan Party's Financial Statements and (ii) in the case of Financial Statements of the Borrower, which shall have been prepared largely in conformity with GAAP in the United States other than with respect to financial statement footnotes.

- (t) **Absence of Material Adverse Effect.** Except as set forth in the Parent Guarantor’s Latest Form 10-K or the Parent Guarantor’s Latest Form 10-Q since September 30, 2022:
- (i) there has not been any material change in the capital stock or long-term Indebtedness of either Loan Party, or any dividend or distribution of any kind declared, set aside for payment, paid or made by any Loan Party on any class of capital stock (other than any regular quarterly dividend), or any Material Adverse Effect, or any development involving a prospective Material Adverse Effect, in or affecting the financial markets, business, properties, rights, assets, management, financial position, results of operations or prospects of either Loan Party; and
  - (ii) no Loan Party has entered into any transaction or agreement that is material to such Loan Party or Incurred any liability or obligation, direct or contingent, that is material to such Loan Party.
- (u) **Litigation.** As of the date of this Agreement, there are no Actions or Orders pending to which the Parent Guarantor or any of its Subsidiaries is a party or to which any property, right or asset of the Parent Guarantor or any of its Subsidiaries is subject that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and neither any such Actions or Orders nor any legal, governmental or regulatory investigations to which a Loan Party is a party or to which any property, right or asset of a Loan Party is subject that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, are, to the knowledge of a Loan Party, threatened by any Governmental Body or by others.
- (v) **Ranking.** The (i) Loans are direct and unconditional general obligations of the Borrower, and rank and will at all times rank in right of payment and otherwise at least *pari passu* with all other senior unsecured and unsubordinated Indebtedness of the Borrower and (ii) the Parent Guarantee is a direct and unconditional general obligation of the Parent Guarantor, and ranks and will at all times rank in right of payment or otherwise at least *pari passu* with all other senior unsecured and unsubordinated Indebtedness of the Parent Guarantor, in each case, whether now existing or hereafter outstanding, except for Indebtedness of the Borrower or Parent Guarantor, as applicable, having priority solely by operation of Applicable Law, such as Indebtedness relating to judicial expenses Incurred for the general benefit of creditors, Taxes payable to Governmental Bodies, and wages, salaries and other social security benefits of the employees of the Borrower or Parent Guarantor, as applicable.
- (w) **Investment Company Act of 1940.** Neither Loan Party is, and after giving effect to the transactions contemplated hereby, will be, subject to registration as an “investment company” or “controlled” by a company subject to registration as an “investment company,” within the meaning of the United States Investment Company Act of 1940, as amended.
- (x) **Margin Regulations.** No part of the application of proceeds of any Loan will violate Regulation T, U or X promulgated by the Board of Governors of the Federal Reserve System of the United States (12 C.F.R. Sections 207, 220, 221 and 224, respectively).

- (y) **Use of Proceeds.** The proceeds of all Utilizations have been and will be used in accordance with the terms and conditions of this Agreement and all applicable Finance Documents and the OeKB Guarantee.
- (z) **No Force Majeure or Early Termination Event:** No event or circumstance has occurred that:
  - (i) gives rise or might reasonably be expected to give rise to a right to terminate early, suspend performance under repudiate or cancel (in each case, in whole or in part) the Project Equipment Supply Agreement, it being understood that the Project Equipment Supply Agreement contains provisions permitting termination for convenience by the Borrower; or
  - (ii) constitutes a force majeure under and as described in the Project Equipment Supply Agreement.

## **8.2 Survival of Representations and Warranties.**

- (a) The representations and warranties made in this Agreement are made by the applicable Loan Party on the date of this Agreement, the Amendment and Restatement Effective Date, and on each Utilization Date.
- (b) The representations and warranties made in this Agreement are deemed to be made to each Finance Party by reference to the fact and circumstances then existing on each applicable date on which the representations and warranties are made notwithstanding any investigation made at any time by or on behalf of the Facility Agent or the Lenders.

## **Article 9 OeKB GUARANTEE**

Until the Commitments have expired or have been terminated in full and all Obligations have been indefeasibly paid or repaid in full, the Borrower covenants and agrees to each of the following:

### **9.1 Reimbursement of OeKB Guarantee Premium.**

If the OeKB Guarantee Premium or a portion thereof is refunded to the ECA Agent, after application in accordance with Section 4.2 (*Mandatory Prepayment*), the ECA Agent shall reimburse the Borrower in an amount equal to the amount refunded to the ECA Agent by the OeKB Guarantor promptly upon receipt of such refund from the OeKB Guarantor.

### **9.2 Borrower Payment.**

- (a) The ECA Agent shall charge to the Borrower all out-of-pocket costs and expenses Incurred by the ECA Agent in connection with any refinancing of the Covered Loan or enforcement procedures.
- (b) If the ECA Agent requests the OeKB Guarantor's consent or opinion to an amendment or a waiver requested by the Borrower under the Finance Documents, the ECA Agent shall

have the right to charge the Borrower the reasonable out-of-pocket costs and expenses Incurred in evaluating and complying with such request.

- (c) The Borrower agrees and acknowledges that its payment obligations hereunder will in no way be relieved by the OeKB Guarantee or any payment to a Covered Lender thereunder. In the case of any payment to the Facility Agent, the ECA Agent or any Covered Lender pursuant to the OeKB Guarantee, the Borrower acknowledges that the OeKB Guarantor will, in addition to any other rights which it may have under the OeKB Guarantee or otherwise, have full rights of recourse against the Borrower pursuant to its right of subrogation as referred to in clause (d) below.
- (d) Upon payment by the OeKB Guarantor of amounts due and payable hereunder in accordance with the provisions of the OeKB Guarantee, the OeKB Guarantor shall (where applicable) have the right to be subrogated to the rights of the Facility Agent, the ECA Agent and any Covered Lender (as applicable) against the Borrower in accordance with the OeKB Guarantee.

### **9.3 Payments Made Under the OeKB Guarantee.**

Each payment received by the ECA Agent from the OeKB Guarantor under the OeKB Guarantee for the account of any Covered Lender shall be paid by the ECA Agent to the Facility Agent, in immediately available funds, for distribution to each such Covered Lender.

### **9.4 Obligations under the OeKB Guarantee.**

Notwithstanding anything to the contrary in the Finance Documents, nothing in the Finance Documents shall require the Facility Agent, ECA Agent or any Covered Lender to act (or refrain from acting) in a manner that is inconsistent with the terms of the OeKB Guarantee and, in particular:

- (a) the Facility Agent, ECA Agent and each Covered Lender may disclose to the OeKB Guarantor (and any internationally recognized insurer or reinsurer (including any insurance brokers or other service providers connected thereto; *provided* that such insurance broker or service provider is subject to confidentiality obligations or a non-disclosure agreement reasonably satisfactory to the Borrower)) that provides or proposes to provide insurance coverage to one or more of any Finance Party or the OeKB Guarantor in relation to any loss suffered under or pursuant to the Finance Documents (or the OeKB Guarantee, as applicable) any information related to the Borrower, the Project Upgrades and the Finance Documents as such party may consider appropriate or necessary including, without limitation, the occurrence of a Default or an Event of Default and the Facility Agent and the ECA Agent shall be authorized to take all such actions as it may deem necessary to ensure compliance with the terms of the OeKB Guarantee;
- (b) the ECA Agent shall be authorized to take all such actions as it may deem necessary to ensure compliance with the terms of the OeKB Guarantee;
- (c) the Borrower acknowledges and agrees that (i) each Covered Lender's rights to receive payment from the Borrower under this Agreement shall be covered pursuant to the OeKB

Guarantee and (ii) the OeKB Guarantor may, at any time and in accordance with the OeKB Guarantee, instruct any one or more of the ECA Agent, the Facility Agent or the Covered Lenders to suspend or cease performing any or all of its obligations contained hereunder, and such of the ECA Agent, Facility Agent and Covered Lenders shall be required to comply with any such instruction; and

- (d) unless a contrary indication appears in the Project Equipment Supply Agreement, any instructions given to the Facility Agent by the ECA Agent shall override any conflicting instructions given by any other Finance Party and will be binding on all Finance Parties.

#### **9.5 Other Agreements of the Covered Lenders.**

- (a) The Facility Agent and each Covered Lender acknowledges that it has received a copy of the preliminary approval letter issued in connection with the OeKB Guarantee and the OeKB General Terms and Conditions and agrees to such terms and conditions. The Facility Agent and each Covered Lender authorizes the ECA Agent to receive the OeKB Guarantee on behalf of itself, the Facility Agent and each Covered Lender and to exercise any and all rights and perform any and all obligations arising under the OeKB Guarantee on behalf of itself, the Facility Agent and each Covered Lender. Upon receipt of the OeKB Guarantee by the ECA Agent, the ECA Agent shall promptly forward a copy thereof to the Facility Agent and each Covered Lender.
- (b) Each Covered Lender authorizes the ECA Agent to follow any instructions of the OeKB Guarantor in accordance with the terms and conditions of the OeKB Guarantee and acknowledges that any Covered Lender's failure to comply with such instructions or the terms and conditions of the OeKB Guarantee may result in lapse of coverage thereunder.
- (c) Each Covered Lender agrees that neither the ECA Agent nor any of its officers, directors, agents or employees shall be liable for any action taken or omitted by it or them under instructions from the OeKB Guarantor which it is or they are required to take under the OeKB Guarantee or in connection therewith.
- (d) Each Covered Lender agrees that any communication between any Covered Lender and the OeKB Guarantor in connection with the OeKB Guarantee or any Finance Document shall be conducted by and through the ECA Agent.
- (e) The ECA Agent shall inform the OeKB Guarantor of any increase or material change in any risk covered by the OeKB Guarantee to the extent it is required to do so under the terms of the OeKB Guarantee or for the purposes of ensuring the continuing validity of the OeKB Guarantee.
- (f) No Finance Party shall be liable in respect of any loss, damage or expense caused by its act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the OeKB Guarantor. Any such decision or instructions from the OeKB Guarantor in the exercise or non-exercise of its rights shall be binding on the ECA Agent and the Covered Lenders. In the absence of instructions, the ECA Agent may act as it considers to be in the best interests of all the Covered Lenders and the OeKB Guarantor.

- (g) Without duplication to the provisions of Section 7.5 (*Indemnities*), the ECA Agent is subject to certain obligations under the OeKB Guarantee which ECA Agent would not be liable if it was not the ECA Agent. Accordingly, the Borrower agrees to indemnify and hold harmless the ECA Agent against any cost, loss or liability Incurred by it as ECA Agent under the OeKB Guarantee and for any cost, loss or liability for which the ECA Agent may be liable to the OeKB Guarantor in respect of the OeKB Guarantee.

## **Article 10 COVENANTS**

Until the Commitments have expired or have been terminated in full and all Obligations have been indefeasibly paid or repaid in full, the Parent Guarantor and the Borrower, as applicable, covenants and agrees to each of the following:

### **10.1 Reporting Requirements; Notices.**

- (a) The Parent Guarantor and the Borrower shall furnish to the Facility Agent (for delivery to each Lender):

- (i) **Quarterly Statements.** Within ninety (90) days after the end of each Fiscal Quarter of the Parent Guarantor (other than periods ending on the last day of the Fiscal Year of the Parent Guarantor) :

- (A) an unaudited consolidated balance sheet of the Parent Guarantor as of the close of such quarterly period;
- (B) an unaudited consolidated income statement of the Parent Guarantor; and
- (C) an unaudited consolidated cash flow statement of the Parent Guarantor;

in each case, for such Fiscal Quarter, prepared in accordance with GAAP, containing any applicable notes. Such Financial Statements shall be, deemed furnished on the earlier of the date posted to the Parent Guarantor's website or the date publicly available on the U.S. Securities and Exchange Commission's website.

- (ii) **Annual Consolidated Statements.** Within ninety (90) days after the end of each Fiscal Year of the Parent Guarantor:

- (A) audited Financial Statements of the Parent Guarantor consisting of a consolidated balance sheet as of the end of such Fiscal Year,
- (B) a consolidated income statement of the Parent Guarantor; and
- (C) a consolidated cash flow statement of the Parent Guarantor;

in each case, for such Fiscal Year, prepared in accordance with GAAP, containing any applicable notes and certified by independent public accountants of recognized international standing. Such Financial Statements shall be, (x) deemed furnished

on the earlier of the date notified in writing to the Facility Agent that they have been posted to the Parent Guarantor's website or that they have been made publicly available on the U.S. Securities and Exchange Commission's website and (y) if requested in writing by the ECA Agent, accompanied by the then most recent ratings report for the Parent Guarantor produced by any Ratings Agency.

(iii) **Annual Unconsolidated Statements.**

(A) (x) Within ninety (90) days after the first quarter during which they are available (which shall not be later than the first quarter of the Fiscal Year ending 2025), unaudited unconsolidated Financial Statements of the Borrower for the year ending with such quarter in which such Financial Statements are available, and (y) thereafter, within ninety (90) days after the end of each Fiscal Year of the Borrower; provided that, the Borrower shall not be required to deliver such Financial Statements pursuant to this Section 10.1(a)(iii)(A) if Financial Statements are delivered for such time under Section 10.1(a)(iii)(B); and

(B) Within ninety (90) days after the earlier to occur of (i) the Fiscal Year of the Borrower during which the Borrower is required by Applicable Law or otherwise required by contract to prepare audited Financial Statements of the Borrower and (ii) the Fiscal Year of the Borrower during which the Borrower voluntarily prepares such audited Financial Statements of the Borrower, unconsolidated audited Financial Statement of the Borrower for such Fiscal Year, prepared in accordance with GAAP, containing any applicable notes and certified by independent public accountants of recognized international standing.

(iv) **Material Adverse Environmental & Social Events.** The Borrower shall promptly notify and forward a brief summary report to the Facility Agent upon the occurrence of any severe incident outside of the ordinary course or severe accident on the Mini-Mill2 Project site that relates to any of the following:

(A) any accidents involving serious injuries or fatalities;

(B) any fires or explosions;

(C) any leaks of Hazardous Materials outside of the ordinary course and reasonably expected to require the Borrower to conduct soil or groundwater cleanup pursuant to Environmental Law;

(D) any notices of violation issued or regulatory enforcement action taken by any Governmental Body against the Borrower pursuant to any Environmental Law which directly or indirectly lead to implementation delays in relation to the Project Upgrades; and

(E) any strikes or neighborhood resident protests related to environmental or social matters.

Each such report shall include an outline of planned corrective actions for mitigating and resolving such accident or incident disclosed pursuant to clauses (A) through (E) listed above, as applicable, to the extent corrective actions are required in the Borrower's reasonable judgment or by Applicable Law.

- (v) **Construction Period Reporting.** Within ninety (90) days from the (i) Amendment and Restatement Effective Date, (ii) the end of each six (6) month period commencing on the Amendment and Restatement Effective Date until the Final Acceptance, and (iii) the end of each Fiscal Year following the Final Acceptance, the Borrower shall deliver a semi-annual, or an annual report, as applicable, that shall provide a summary of the following:
  - (A) The status of approvals (including new permits, permit extensions or renewals granted, outline for permits to be applied for) and status of compliance with regulatory requirements in relation to the Project Upgrades;
  - (B) If applicable, description of any material non-compliance stipulated by any Governmental Body in relation to the Project Upgrades, and any planned mitigation measures (defining, among others, responsibilities, targets and timeframes for corrective actions); and
  - (C) If applicable, status of outstanding corrective actions identified in the summary report required by the last sentence of Section 10.1(a)(iv) (*Material Adverse Environmental & Social Events*).
- (b) Each Loan Party will furnish written notice of each of the following events, occurrences, and conditions to the Facility Agent promptly, and in any event, other than with respect to clause (b)(ix) hereof, within seven Business Days after any officer of such Loan Party has knowledge thereof:
  - (i) the occurrence of any Default or Event of Default;
  - (ii) the filing or commencement of any action, suit or proceeding, labor dispute or the assertion, notice or other communication in respect of any Environmental Claim relevant in any material respect to the development of the Project Upgrades or any threatened action, suit or proceeding, labor dispute or Environmental Claim, by or before any arbitrator or other Governmental Body against or affecting such Loan Party that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;
  - (iii) the occurrence of any other circumstances, act, or condition with respect to the adoption, material amendment, interpretation, or repeal of any Applicable Law or the Impairment of any Governmental Body or the Impairment or threatened Impairment of any Governmental Body or written notice of the failure of such Loan Party to comply with the terms and conditions of any approval by a Governmental Body that results in or would reasonably be expected to result in a Material Adverse Effect;

- (iv) the occurrence of an ERISA Event, other than a prohibited transaction with respect to a Plan (within the meaning of Section 406 of ERISA or Section 4975 of the Code for which an exemption is not available) that results or would reasonably be expected to result in a Material Adverse Effect;
- (v) the occurrence of any change in Applicable Law (or, to the knowledge of such Loan Party, in the interpretation of any Applicable Law) by a Governmental Body that results in, or would reasonably be expected to result in any Transaction Document being terminated or becoming invalid, illegal or unenforceable;
- (vi) the occurrence of any event or development that results in, or would reasonably be expected to result in, a Material Adverse Effect;
- (vii) copies of any amendments of or waivers under the Project Equipment Supply Agreement;
- (viii) following any request therefore, such information regarding the operations, business affairs and financial condition of such Loan Party or compliance with the terms of the Finance Documents, the Project Equipment Supply Agreement or the Parent PESA Guarantee, as the Facility Agent may reasonably request; and
- (ix) upon the Borrower entering into any debt instrument with any creditor, with an aggregate principal amount of such Indebtedness is greater than \$100,000,000.00.

Each notice delivered under this Section 10.1 (*Reporting Requirements; Notices*) shall either (a) be accompanied by a statement of an Authorized Officer of such Loan Party setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto or (b) be deemed to have been delivered on the date on which such Loan Party provides written notice to the Facility Agent that such information has been posted on the website address at <https://www.sec.gov/cgi-bin/browse-edgar?CIK=x&owner=exclude&action=getcompany&Find=Search>.

## **10.2 Continuation of Business and Maintenance of Existence.**

Each Loan Party shall (a) continue to engage in business of the same general type as now conducted by it and those lines of business reasonably related or incidental thereto and (b) do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence in accordance with its organizational documents and the rights (charter and statutory) and corporate franchises of such Loan Party; *provided, however*, that neither Loan Party shall be required to preserve, with respect to itself, any right or franchise, if (i) its Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Loan Party and (ii) the loss thereof is not disadvantageous in any material respect to the shareholders of such Loan Party.

## **10.3 Compliance Certificate; Notice of Default.**

Each Loan Party shall deliver to the Facility Agent within one hundred twenty (120) days after the end of its Fiscal Year a Compliance Certificate certifying as to whether an Event of Default has

occurred and, if such Authorized Officer knows of the occurrence of an Event of Default, specifying the details thereof and any action taken or proposed to be taken with respect thereto. The Compliance Certificate shall also notify the Facility Agent should the relevant Fiscal Year end on any date other than the current Fiscal Year end date.

#### **10.4 Ranking.**

The Borrower shall ensure that the (i) Loans will at all times be direct and unconditional general obligations of the Borrower, ranking in right of payment and otherwise at least *pari passu* with all other senior unsecured and unsubordinated Indebtedness of the Borrower and (ii) the Parent Guarantee will at all times be a direct and unconditional general obligation of the Parent Guarantor, ranking in right of payment and otherwise at least *pari passu* with all other senior unsecured and unsubordinated Indebtedness of the Parent Guarantor, in each case, whether now existing or hereafter outstanding, except for Indebtedness of the Borrower or Parent Guarantor, as applicable, having priority solely by operation of Applicable Law, such as Indebtedness relating to judicial expenses Incurred for the general benefit of creditors, Taxes payable to any Governmental Body, and wages, salaries and other social security benefits of the employees of the Borrower or the Parent Guarantor, as applicable, and its Subsidiaries.

#### **10.5 Limitation on Liens.**

Except for Permitted Liens:

- (a) The Parent Guarantor shall not Incur, and shall not permit any of its Subsidiaries to Incur, any Lien upon (i) any Principal Property of the Parent Guarantor or any Principal Property of a Subsidiary or (ii) any shares of stock or other Equity Interests or Indebtedness of any Subsidiary that owns a Principal Property (whether such Principal Property, shares of stock or other Equity Interests or Indebtedness is now existing or owned or hereafter created or acquired), in each case, unless prior to or at the same time, the Loans (together with, at the option of the Parent Guarantor, any other Indebtedness of the Parent Guarantor or any Subsidiary ranking *pari passu* in right of payment with the Loans) are equally and ratably secured with or, at the option of the Parent Guarantor, prior to such other Indebtedness.
- (b) Any Lien created for the benefit of shareholders pursuant to the preceding clause (a) shall provide by its terms that such Lien shall be automatically and unconditionally released and discharged upon the release and discharge of such Lien.

Notwithstanding the restrictions set forth in clauses (a) and (b) above, the Parent Guarantor and its Subsidiaries shall be permitted to Incur Indebtedness secured by a Lien which would otherwise be subject to the restrictions in clauses (a) and (b) above without equally and ratably securing the Loans; *provided*, that, after giving effect to such Indebtedness, the aggregate amount of all Indebtedness secured by Liens (not including any Permitted Liens), together with all Attributable Debt outstanding pursuant to Section 10.6 (*Limitation on Sale and Leaseback Transactions*), does not exceed 17.5 % of the Consolidated Net Tangible Assets of the Parent Guarantor calculated as of the date of the creation or Incurrence of the Lien. The Parent Guarantor and its Subsidiaries also may, without equally and ratably securing the Loans, create or Incur Liens that extend, renew,

substitute or replace (including successive extensions, renewals, substitutions or replacements), in whole or in part, any Lien permitted pursuant to the preceding sentence.

#### **10.6 Limitation on Sale and Leaseback Transactions.**

- (a) The Parent Guarantor shall not directly or indirectly, and shall not permit any of its Subsidiaries that own a Principal Property directly or indirectly to, enter into any Sale-Leaseback for the sale and leasing back of any Principal Property, whether now owned or hereafter acquired, unless:
- (i) such transaction was entered into prior to the Original Closing Date;
  - (ii) such transaction was for the sale and leasing back to the Parent Guarantor or one of its Subsidiaries of any property by the Parent Guarantor or one of its Subsidiaries;
  - (iii) such transaction involves a lease for not more than three years (or which may be terminated by the Parent Guarantor or its Subsidiaries within a period of not more than three years);
  - (iv) the Parent Guarantor would be entitled to Incur Indebtedness secured by a Lien with respect to such Sale-Leaseback without equally and ratably securing the Loans pursuant to the last paragraph of Section 10.5 (*Limitation on Liens*); or
  - (v) the Parent Guarantor applies an amount equal to the net proceeds from the sale of such property to the purchase of other property or assets used or useful in its business or to the retirement of long-term Indebtedness within 365 days before or after the effective date of any such Sale-Leaseback; *provided*, that, in lieu of applying such amount to the retirement of long-term Indebtedness, the Parent Guarantor may cause the Borrower to apply the proceeds to prepay the Loans pursuant to Section 4.4 (*Voluntary Prepayment*).
- (b) Notwithstanding the restrictions set forth in clause (a) above, the Parent Guarantor and its Subsidiaries may enter into any Sale-Leaseback which would otherwise be subject to the foregoing restrictions, if after giving effect thereto the aggregate amount of all Attributable Debt with respect to such transactions, together with all Indebtedness outstanding pursuant to the last paragraph of Section 10.5 (*Limitation on Liens*), does not exceed 17.5 % of the Consolidated Net Tangible Assets of the Parent Guarantor calculated as of the closing date of the Sale-Leaseback.

#### **10.7 Sanctions and Anti-Corruption Laws.**

The Borrower shall not and the Parent Guarantor shall not permit the Borrower to, directly or indirectly, use any part of the proceeds of the Loans, or lend, contribute or otherwise make available such proceeds to any other Person: (a) in violation of any applicable Anti-Corruption Law; (b) to fund, finance or facilitate any agreement, transaction, dealing or business with or for the benefit of a Sanctions Target (or involving any property thereof) or involving any Sanctioned Jurisdiction; or (c) in any other manner that would result in a violation of Sanctions by any Loan Party or any Lender. In relation to each Restricted Finance Party, this Section 10.7 (*Sanctions and*

*Anti-Corruption Laws*) shall only apply for the benefit of that Restricted Finance Party to the extent that the acceptance of the covenants in this Section 10.7 (*Sanctions and Anti-Corruption Laws*) would not conflict with, or result in any such Restricted Finance Party being in violation of, or subject to liability under, any EU Anti-Boycott Regulation.

In connection with any amendment, waiver, determination or direction relating to any part of this Section 10.7 (*Sanctions and Anti-Corruption Laws*) of which a Restricted Finance Party does not have the benefit, the Commitment of that Restricted Finance Party (if any) will be excluded for the purpose of determining whether the consent of the Majority Lenders has been obtained or whether the determination or direction by the Majority Lenders has been made.

### **10.8 Environmental Matters.**

Each Loan Party shall promptly after obtaining knowledge thereof, notify the Facility Agent (for delivery to each Lender) of (a) any Environmental Claim that is instituted or threatened against the Parent Guarantor or its Subsidiaries and (b) any Environmental Matter, in each case, that would reasonably be expected to have a Material Adverse Effect. Each Loan Party shall, if remedial or corrective action is required pursuant to Environmental Law, prepare a corrective action plan or similar remedial plan to mitigate and remedy the facts giving rise to the applicable Environmental Claim or Environmental Matter and, if requested by any Lender and to the extent permitted by Applicable Law, deliver to the Facility Agent and the Lenders a copy of the final version of any such corrective action plan or similar remedial plan to the extent approved by the applicable Governmental Body.

### **10.9 Compliance with All Applicable Law and Material Contractual Obligations**

Each Loan Party shall:

- (a) comply with all Environmental Laws and Equator Principles in all material respects;
- (b) obtain, maintain and comply in all material respects with all requisite Environmental Permits;
- (c) comply with all Applicable Law (other than Environmental Laws); and
- (d) comply with all Contractual Obligations;

in each case, with respect to subclauses (c) and (d) except where failure to do so does not or would not reasonably likely to have a Material Adverse Effect.

It is understood that “in all material respects” as used with respect to subclauses (a) and (b) means in all respects irrespective of the cost of any failure to comply, obtain or maintain.

### **10.10 Project Equipment Supply Agreement**

The Borrower shall:

- (a) be in compliance in all material respects with the Project Equipment Supply Agreement;

- (b) not amend or waive any material provisions under the Project Equipment Supply Agreement which could reasonably be expected to be relevant for the interests of the Facility Agent, the ECA Agent and/or the OeKB Guarantor with respect to the deliveries and/or services under the Project Equipment Supply Agreement (including, without limitation, any amendment which changes or has the effect of changing the Export Contract Value, the Eligible Project Costs, the payment terms or the scope of work);
- (c) notify the ECA Agent of any other amendments to the Project Equipment Supply Agreement no later than seven (7) Business Days following the closing of such amendment;
- (d) submit to the ECA Agent all copies of amendments to the Project Equipment Supply Agreement no later than seven (7) Business Days following the closing of such amendment; and
- (e) inform the ECA Agent of any event under or with respect to the Project Equipment Supply Agreement enabling the Borrower and/or Primetals to cancel, suspend, rescind or terminate the Project Equipment Supply Agreement in whole or in part.

The Parent Guarantor shall:

- (i) be in compliance in all material respects with the Parent PESA Guarantee;
- (ii) not amend or waive any material provisions under the Parent PESA Guarantee which could reasonably be expected to be relevant for the interests of the Facility Agent, the ECA Agent and/or the OeKB Guarantor with respect to the deliveries and/or services under the Project Equipment Supply Agreement or the Parent PESA Guarantee (including, without limitation, any amendment which changes or has the effect of changing the Export Contract Value, the Eligible Project Costs, the payment terms or the scope of work);
- (iii) notify the ECA Agent of any other amendments to the Parent PESA Guarantee no later than seven (7) Business Days following the closing of such amendment;
- (iv) submit to the ECA Agent all copies of amendments to the Parent PESA Guarantee no later than seven (7) Business Days following the closing of such amendment; and
- (v) inform the ECA Agent of any event under or with respect to the Parent PESA Guarantee enabling the Parent PESA Guarantee and/or Primetals to cancel, suspend, rescind or terminate the Parent PESA Guarantee in whole or in part.

#### **10.11 Know Your Customer.**

Each Loan Party will promptly on any Lender's written request supply to it any documentation or other evidence that is reasonably required by that Lender (whether for itself or on behalf of any Person to whom that Lender may, or may intend to, transfer any of its rights or Obligations under this Agreement) to enable such Lender:

- (a) to carry out and be satisfied it has complied with all necessary “know your customer” requirements that that Lender is obliged to carry out under all Applicable Law pursuant to the transactions contemplated in this Agreement; and
- (b) to comply with its obligations under all Applicable Law to prevent money laundering and corruption and to conduct ongoing monitoring of the business relationship with such Loan Party.

#### **10.12 Maintenance of Properties.**

The Parent Guarantor will, and will cause each of its Subsidiaries to (a) maintain from time to time all property that is material to the conduct of its business at such time in good working order and condition (ordinary wear and tear excepted), and (b) maintain with financially sound and reputable insurance companies insurance on its property as are usually reasonably maintained by, and against at least such risks as are usually insured against in the same general area by, companies engaged in the same or a similar business would be (in any event including all risk property business interruption insurance, workers compensation and such other insurances that would be reasonable and prudent from time to time), in each case in such amounts and with only such deductibles as are commonly available in the market at such time; *provided* that the Parent Guarantor may, but shall not be obligated to, implement programs of self-insurance in the ordinary course of business and in accordance with industry standards for a company of similar size so long as reserves are maintained in accordance with GAAP for the liabilities associated therewith).

#### **10.13 Right of the Lenders to Inspect Property.**

Each Loan Party shall, at its own cost, permit authorized representatives designated by the Facility Agent or the ECA Agent to visit and inspect its properties, including its books and records and the Project Upgrades, once per Fiscal Year, at reasonable times and with reasonable prior notice; *provided* that if (a) an Event of Default or severe accident or incident described in Section 10.1(a)(iv) (*Material Adverse Environmental & Social Events*) has occurred and is continuing, or (b) requested by the OeKB Guarantor in writing, the Facility Agent, the ECA Agent, the OeKB Guarantor or any other designated authorized designee thereto, may conduct an inspection visit more than once per Fiscal Year at reasonable times and with reasonable prior notice. The OeKB Guarantor, the Facility Agent, the ECA Agent or any such designated authorized designee thereto, shall, in all cases, comply with the applicable Loan Party’s rules regarding safety and security while visiting such Loan Party’s facilities.

#### **10.14 Accuracy of Information.**

Each Loan Party will ensure that no report, financial statement, certificate or other information furnished (other than projected financial information) by or on behalf of such Loan Party to the Facility Agent or any Lender in connection with this Agreement, the Project Equipment Supply Agreement or any other Transaction Document or any amendment or other modification hereof or thereof (in each case as modified or supplemented by other information so furnished), taken as a whole, shall contain any material misstatement of fact or shall omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided*, that with respect to projected financial information, each Loan

Party will ensure only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

#### **10.15 Obligations of the Loan Parties.**

Each Loan Party shall perform its obligations under each Finance Document to which it is a party notwithstanding any failure by the Seller (as defined in the Project Equipment Supply Agreement) to fulfil its obligations under any commercial arrangement entered into with any Loan Party or otherwise, and no Loan Party shall use any failure as an excise, defense, set-off or counterclaim in respect of its obligations under any Finance Document.

#### **10.16 Further Assurances.**

Promptly upon request by the Facility Agent, or any Lender through the Facility Agent, each Loan Party shall (a) correct any material defect or error that may be discovered in any Transaction Document or in the execution, acknowledgment, filing or recordation thereof and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Facility Agent, or any Lender through the Facility Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Transaction Documents.

#### **10.17 Merger, Consolidation or Sale of Assets.**

No Loan Party shall, in a single transaction or through a series of related transactions, consolidate or merge with or into any other Person, or, directly or indirectly, sell or convey substantially all of its assets to another Person or group of affiliated Persons, except that any Loan Party may consolidate or merge with, or sell or convey substantially all of its assets to another Person if:

- (a) such Loan Party is the continuing Person or the successor Person (if other than the Borrower) is solvent, organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and such Person expressly assumes all obligations of such Loan Party, under the Finance Documents and, with respect to the Parent Guarantor, the Parent PESA Guarantee, including payment of the principal and interest on the Loans in the case of the Borrower, and the performance and observance of all of the obligations of this Agreement and the Parent PESA Guarantee to be performed by such Loan Party; and
- (b) immediately after giving effect to such transaction and the assumption of the obligations as set forth in clause (a) above, no Default or Event of Default shall have occurred and be continuing under this Agreement.

For purposes of this Section 10.17 (*Merger, Consolidation or Sale of Assets*) only, “substantially all of its assets” means, at any date, a portion of the non-current assets reflected in such Loan Party’s consolidated balance sheet as of the end of the most recent quarterly period that represents at least 66% of the total reported value of such assets.

### **10.18 Amendments to Documents.**

No Loan Party will amend, modify or waive any of its rights under its certificate of formation or limited liability agreement or other organizational documents, in each case if the effect of such amendment, modification or waiver would be materially adverse to such Loan Party's ability to comply with its obligations under any Transaction Document.

### **10.19 Financial Covenants in Other Agreements.**

No Loan Party shall agree to any debt instrument with any senior unsecured and unsubordinated creditor, (i) in the case of the Parent Guarantor, with an aggregate principal amount of such senior unsecured and unsubordinated Indebtedness that is greater than \$100,000,000.00, and (ii) in the case of the Borrower, that is guaranteed by the Parent Guarantor, in each case, that has more favorable covenants or events of default without also providing the same financial covenant or event of default *mutatis mutandis* for the benefit of Lenders under this Agreement.

### **10.20 Evidence of Transfer.**

The Loan Parties shall, no later than (i) the Closing Date, deliver to the Facility Agent evidence of transfer to the Borrower of title to equipment originally sold to the Parent Guarantor under the PESA and (ii) December 31, 2023, evidence of physical transfer of such equipment to site of the Mini-Mill2 Project.

## **Article 11 CONDITIONS PRECEDENT**

### **11.1 Conditions Precedent to the Amendment and Restatement Effective Date.**

The closing date and effective date of this Agreement shall occur on the Business Day on which the following conditions shall be satisfied or waived by each Lender (the "**Amendment and Restatement Effective Date**"), and the Facility Agent shall give notice of the satisfaction or waiver of the conditions set forth in this Section 11.1 (*Conditions Precedent to the Closing Date*) to the Lenders and the Borrower (and with respect to the delivery of such notice, the Facility Agent shall be entitled to assume that the conditions precedent in clause (j) (*Absence of Default*) and clause (k) (*No Material Adverse Effect*) have been fulfilled unless the Facility Agent has received actual notice to the contrary from the Borrower or a Lender):

- (a) **Execution of this Agreement and the Fee Letters.** The Amendment and Restatement Agreement and the Fee Letters shall have been duly executed and delivered by the Borrower, the Facility Agent and each Lender identified on the signature pages thereof.
- (b) **Payment of Fees.**
  - (i) The fees payable on the Amendment and Restatement Effective Date in accordance with the Fee Letters have been paid prior to or on the Amendment and Restatement Effective Date; and

- (ii) All fees payable in accordance with the Finance Documents and all out-of-pocket costs and expenses due at such time (including fees and disbursements of outside counsel to the Facility Agent) have been paid.
- (c) **Financial Statements.** The Parent Guarantor shall have delivered to the Facility Agent copies of the audited Financial Statements of the Parent Guarantor for the Fiscal Year ended December 31, 2021 and unaudited financial statements of the Parent Guarantor for the three-month period ended June 30, 2022, together with a certificate from an Authorized Officer certifying that such Financial Statements fairly present, in all material respects, the financial condition and results of operations and cash flows of the Parent Guarantor, for the relevant Fiscal Year or semi-annual period, in all cases prepared in accordance with GAAP except to the extent set forth therein and subject, in the case of the Financial Statements for the three-month period ended June 30, 2022, to year-end audit adjustments and the absence of footnotes.
- (d) **Corporate Documents.** Each Loan Party shall have delivered to the Facility Agent an Officer's Certificate, dated as of the Amendment and Restatement Effective Date, certifying (i) that attached to such certificate is a true and complete copy of the charter and by-laws or limited liability company agreement (or equivalent documents), as applicable, of such Loan Party as in effect on the date of such certificate; (ii) that attached to such certificate is a true and complete copy of all documents evidencing the corporate authority of such Loan Party, including resolutions duly adopted by its Board of Directors or other authorized governing body of such Loan Party for (x) the approval of the execution, delivery and performance of the Amendment and Restatement Agreement, the Fee Letters and each other document to be delivered by such Loan Party from time to time in connection herewith or therewith and the transactions contemplated hereby and thereby and (y) authorizing a named person or persons to sign, execute and deliver each such document and any documents to be delivered by it pursuant thereto, and that such documents are true, complete and correct and in full force and effect (or, if applicable, certifying that such resolutions are not necessary for such Authorization under Applicable Law); and (iii) as to the incumbency and specimen signature of each Authorized Officer of such Loan Party executing this Agreement and the Fee Letters on behalf of such Loan Party.
- (e) **Certificates.** Each Loan Party shall have delivered to the Facility Agent certificates of an Authorized Officer of such Loan Party, dated as of the Amendment and Restatement Effective Date, certifying that each statement contained therein shall be true and correct as of the Amendment and Restatement Effective Date and certifying that: (i) each of the representations and warranties of such Loan Party contained in this Agreement and in the Parent Guarantee (in the case of the Parent Guarantor) is true and correct in all material respects on the Amendment and Restatement Effective Date as if made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date); *provided*, that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualifications therein) in all respects on such respective dates, (ii) no Event of Default has occurred and is continuing on such date or will result from the consummation

of the transactions contemplated by this Agreement or the Fee Letters and (iii) since September 30, 2022, no event, condition, circumstance, action, suit or proceeding at law or in equity or by or before any Governmental Body or arbitral tribunal or other body affecting such Loan Party has occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

- (f) **Legal Opinion.** The Facility Agent and each Lender shall have received an opinion of Milbank LLP, New York counsel to the Borrower and the Parent Guarantor in form and substance reasonably satisfactory to the Facility Agent and each Lender.
- (g) **OeKB Guarantee.** The ECA Agent shall have received a reaffirmation of the OeKB Guarantee.
- (h) **Parent Guarantee.** (A) The Parent Guarantee shall have been issued in favor of the Facility Agent on behalf of the Finance Parties and shall be in full force and effect and (B) a true, complete and original copy of the Parent Guarantee shall have been received by the Facility Agent.
- (i) **Assignment and Assumption Agreement.** Immediately prior to the Amendment and Restatement Effective Date, the Parent Guarantor shall have assigned all of its rights and obligations in, to and under the Original Credit Agreement, and all its liabilities and obligations arising thereunder, to the Borrower pursuant to the Assignment and Assumption Agreement.
- (j) **Absence of Default.** No Default or Event of Default shall have occurred and be continuing.
- (k) **No Material Adverse Effect.** Since September 30, 2022, no event, condition or circumstance affecting the Borrower or the Parent Guarantor shall have occurred that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.
- (l) **Know Your Customer Requirements.** (i) The Lenders and the Facility Agent shall have received, on or prior to the Amendment and Restatement Effective Date, all documentation and other information reasonably requested by the Lenders at least three (3) Business Days prior to the Amendment and Restatement Effective Date in order to allow such Lenders to comply with applicable “know your customer” rules and regulations and Anti-Money Laundering Laws and (ii) at least two (2) Business Days prior to the Amendment and Restatement Effective Date, the Borrower shall have delivered a Beneficial Ownership Certification.
- (m) **Project Equipment Supply Agreement.** The Facility Agent shall have received duly executed copies of the (i) PESA Assignment and Assumption Agreement, (ii) the Parent PESA Guarantee and (iii) any amendments to the PESA entered into prior to the Amendment and Restatement Effective Date.

- (n) **Exporter's Undertaking.** The Facility Agent shall have received a duly executed copy of any amendments, supplements or other modification of the Exporter's Undertaking in form and substance reasonably acceptable to the Facility Agent.
- (o) **Exporter's Declaration.** The Facility Agent shall have received a duly executed copy of any amendments, supplements or other modification to the Exporter's Declaration in form and substance reasonably acceptable to the Facility Agent.
- (p) **Construction Schedule.** The Facility Agent shall have received copies of any amendments, supplements or other modification to the construction schedule and timeline with respect to the Project Upgrades in form and substance reasonably acceptable to the Facility Agent.
- (q) **Evidence of Transfer.** The Facility Agent shall have received an executed copy of that certain lease assignment and assumption agreement by and among the Borrower and the Parent Guarantor in a form reasonably satisfactory to the Facility Agent, evidencing transfer to the Borrower of title to equipment originally sold to the Parent Guarantor under the PESA.
- (r) The OeKB Guarantor shall have acknowledged in writing the relocation of the Project Upgrade (as defined in the Original Credit Agreement) and the change of the borrower under the Original Credit Agreement from United States Steel Corporation to Exploratory Ventures, LLC to the ECA Agent.

For the avoidance of doubt, documents listed under the limbs (g), (n) and (o) of this Section 11.1 shall not be disclosed to the Borrower.

## 11.2 Additional Conditions Precedent to Covered Loans.

The obligation of each Lender to make any Covered Loan hereunder (including its initial Covered Loan) shall become effective on the Business Day during the Covered Loan Commitment Period on which the following conditions shall be satisfied or waived by each Lender (each, a "**Covered Loan Additional Closing Date**"), and the Facility Agent shall give notice of the satisfaction or waiver of the conditions set forth in this Section 11.2 (*Additional Conditions Precedent to Covered Loans*) to the Lenders and the Borrower:

- (a) **Representations and No Default.** (i) Each of the representations and warranties of the Loan Parties contained in this Agreement and of the Parent Guarantor contained in the Parent Guarantee is true and correct in all material respects on the Covered Loan Additional Closing Date as if made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date); *provided*, that any representation or warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualifications therein) in all respects on such respective dates and (ii) no Default or Event of Default has occurred and is continuing on such date or will result from the consummation of such borrowing.

- (b) **Certificates.** Each Loan Party shall have delivered to the Facility Agent certificates of an Authorized Officer of such Loan Party, dated as of the Covered Loan Additional Closing Date, certifying that each statement contained in clause (a) above shall be true and correct as of the Covered Loan Additional Closing Date; *provided* that this paragraph 11.2(b) shall not apply in the case of a Covered Loan Utilization Request—Disbursement (*Schedule C-1, Part I*) is being delivered by the Exporter.
- (c) **Covered Loan Utilization Request.** The Borrower or the Exporter, as the case may be, shall have delivered to the Facility Agent a Covered Loan Utilization Request in accordance with Section 3.1 (*Delivery of a Utilization Request*).
- (d) **[Reserved]**
- (e) **OeKB Guarantee.**
  - (i) The OeKB Guarantee shall be in full force and effect;
  - (ii) the OeKB Guarantee shall provide cover in relation to the proposed Covered Loan and in respect of all Covered Loans outstanding as of the date of delivery of the Covered Loan Utilization Request; and
  - (iii) the Borrower shall have delivered such additional information, documentation or clarification that the ECA Agent advises (acting upon request of the OeKB Guarantor) is necessary to ensure that the requirements of, or conditions to, the OeKB Guarantee are satisfied; *provided*, that the ECA Agent uses its reasonable endeavors to request such additional information, documentation or clarification as far as reasonably possible in advance of the proposed date of disbursement of the Covered Loan.
- (f) **Evidence of Final Acceptance.** As to the final disbursement of the Covered Loan, the Facility Agent shall have received satisfactory evidence that the Final Acceptance has taken place.
- (g) **Exporter's Certificate.** The Facility Agent shall have received a duly executed copy of the Exporter's Certificate in form and substance reasonably acceptable to the Facility Agent.

### 11.3 Additional Conditions Precedent to Commercial Loans.

The obligation of each Lender to make any Commercial Loan hereunder (including its initial Commercial Loan) shall become effective on the Business Day during the Commercial Loan Commitment Period on which the following conditions shall be satisfied or waived by each Lender (each, a “**Commercial Loan Additional Closing Date**”), and the Facility Agent shall give notice of the satisfaction or waiver of the conditions set forth in this Section 11.3 (*Additional Conditions Precedent to Commercial Loans*) to the Lenders and the Borrower:

- (a) **Representations and No Default.** (i) Each of the representations and warranties of the Loan Parties contained in this Agreement and of the Parent Guarantor contained in the

Parent Guarantee is true and correct in all material respects on the Commercial Loan Additional Closing Date as if made on and as of such date (except to the extent such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date); *provided*, that any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualifications therein) in all respects on such respective dates and (ii) no Default or Event of Default has occurred and is continuing on such date or will result from the consummation of such borrowing.

- (b) **Certificates.** Each Loan Party shall have delivered to the Facility Agent certificates of an Authorized Officer of such Loan Party, dated as of the Commercial Loan Additional Closing Date, certifying that each statement contained in clause (a) above shall be true and correct as of the Commercial Loan Additional Closing Date.
- (c) **Commercial Loan Utilization Request.** The Borrower shall have delivered to the Facility Agent a Commercial Loan Utilization Request in accordance with Section 3.1 (*Delivery of a Utilization Request*).

## **Article 12**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **12.1 Events of Default.**

Until the Commitments have expired or have been terminated in full and all Obligations have been indefeasibly paid or repaid in full, the occurrence of any of the following events, following the lapse of the applicable cure period (if any) set forth below, or the issuance of written notice (if any) in respect thereof, shall constitute an “**Event of Default**”:

- (a) the Borrower fails to pay on or before the due date, any amount due to the Lenders (unless the failure to pay is caused by an administrative or technical error which is remedied within three (3) Business Days);
- (b) either Loan Party shall default in the due performance or observance of any term, covenant, warranty, condition or provision of a Finance Document to which it is a party, not otherwise specified in this Section 12.1 (*Events of Default*) and, in the case of defaults other than under any of Section 2.3 (*Purpose and Use of Proceeds*), 10.1(a)(iii) (*Annual Unconsolidated Statements*), 10.1(b) (*Reporting Requirements; Notices*), 10.2 (*Continuation of Business and Maintenance of Existence*), 10.5 (*Limitation on Liens*), 10.6 (*Limitation on Sale and Leaseback Transactions*), Section 10.7 (*Sanctions and Anti-Corruption Laws*), 10.12 (*Maintenance of Properties*) or 10.17 (*Merger, Consolidation or Sale of Assets*), 10.18 (*Amendments to Documents*), and 10.19 (*Financial Covenants in Other Agreements*) such breach remains unremedied for a period of thirty (30) days or more after the earlier of (i) written notice from the Facility Agent to the Borrower and (ii) knowledge of such breach by an officer of either Loan Party;
- (c) the entry by a court having jurisdiction in the premises of (i) an Order for relief in respect of either Loan Party in an involuntary case or proceeding under any applicable U.S. federal

or state bankruptcy, insolvency, reorganization or other similar law or (ii) an Order adjudging either Loan Party a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of either Loan Party under Applicable Law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the either Loan Party or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such Order for relief or any such other Order unstayed and in effect for a period of thirty (30) consecutive days;

- (d) the commencement by a Loan Party of a voluntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of an Order for relief in respect of either Loan Party in an involuntary case or proceeding under any applicable U.S. federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under Applicable Law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of either Loan Party or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, its inability to pay its debts generally as they become due, the admission by it in writing thereof, or the taking of corporate action by either Loan Party in furtherance of any such action;
- (e) one or more ERISA Events occurs which individually or in the aggregate has, or would reasonably be expected to have, a Material Adverse Effect;
- (f) either Loan Party fails to comply with any material provision of the Project Equipment Supply Agreement or the Parent PESA Guarantee and such breach remains unremedied beyond any applicable grace period in the Project Equipment Supply Agreement or the Parent PESA Guarantee to which it is a party;
- (g) any representation or statement made or deemed to be made by either Loan Party in any Finance Document or any other document delivered by or on behalf of such Loan Party by an Authorized Officer of such Loan Party under or in connection with any Transaction Document is or proves to have been incorrect or incomplete, to the extent not already qualified by materiality, in any material respect when made or deemed to be made (except to the extent such representation or warranty expressly relates to an earlier date, and in such case, shall be true and correct on and as of such earlier date) and in each case if the circumstances so misrepresented are susceptible to cure and not corrected within five (5) days after the earlier of (i) written notice from the Facility Agent to the Borrower and (ii) knowledge of such breach by an officer of either Loan Party;
- (h)
  - (i) it becomes unlawful for either Loan Party to perform in any material respect any of its Obligations under any Finance Document;

- (ii) any obligation or obligations of either Loan Party under any of the Finance Documents are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents; or
  - (iii) any Finance Document ceases to be in full force and effect or is alleged by a party to it (other than a Finance Party) to be ineffective;
- (i) either Loan Party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a part of its business which has, or would reasonably be expected to have, a Material Adverse Effect; *provided* that temporary suspensions in connection with maintenance in the ordinary course of business shall not constitute an Event of Default under this clause (i);
- (j)
  - (i) the Parent Guarantor or any of its Subsidiaries shall fail to make any payment (whether of principal or interest or other amount and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue unremedied for the applicable cure period, if any, provided in the document evidencing such Material Indebtedness, and the Borrower or its Subsidiary, as applicable, fails to demonstrate, to the satisfaction of the Lenders, that the default of such Material Indebtedness would not reasonably be expected to have a Material Adverse Effect;
  - (ii) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity pursuant to any document evidencing or relating to such Material Indebtedness (other than by a mandatory prepayment required due to asset sale, casualty or condemnation (other than a total loss) or debt or equity issuance), and such Loan Party fails to demonstrate, to the satisfaction of the Lenders, that the acceleration of such Material Indebtedness would not reasonably be expected to have a Material Adverse Effect;
- (k) one or more judgments for the payment of money in an aggregate amount exceeding \$100,000,000 shall be rendered against the Parent Guarantor or any of its Subsidiaries and shall remain undischarged for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any asset of the Parent Guarantor or its Subsidiary, as applicable, to enforce any such judgment; and
- (l) the Parent Guarantee shall cease to be in full force and effect.

## **12.2 Remedies upon Default.**

- (a) Upon the occurrence of an Event of Default:
- (i) under Section 12.1(c) or Section 12.1(d) (*Events of Default*) to the extent permitted by Applicable Law, the Obligations shall automatically and immediately become due and payable and the Facility Agent shall take the actions set forth in paragraph (b) below (other than paragraph (b)(i));
  - (ii) all outstanding Loans shall bear interest in accordance with Section 5.2 (*Default Interest*).
- (b) Upon the occurrence, and during the continuance, of any Event of Default, the Majority Lenders or the Facility Agent as instructed by the Majority Lenders may, by notice given to the Borrower, take any of the following actions:
- (i) declare all Obligations to be immediately due and payable; and
  - (ii) to the extent permitted by Applicable Law:
    - (A) take such actions and commence such proceedings as may be permitted at law or in equity; and
    - (B) cancel any or all Unused Commitments,
- and all of the foregoing without any additional notice, presentment, demand, protest, notice of protest, dishonor or any other action except as required by law. The rights and remedies of the Facility Agent and the Lenders hereunder are cumulative and are in addition to and not in substitution for any other rights or remedies provided by Applicable Law or by any of the other Finance Documents.
- (c) The Facility Agent will use commercially reasonable efforts to notify the Borrower and each Lender upon its satisfaction as to the cessation of an Event of Default without undue delay upon obtaining actual knowledge thereof, it being understood that no failure or delay on the part of the Facility Agent to provide any such notice will (i) give rise to any claim by the Borrower or any Lender against the Facility Agent or (ii) extend the period during which an Event of Default exists.

## **Article 13 CHANGES TO PARTIES**

### **13.1 Assignment by Lenders.**

- (a) This Agreement and the other Finance Documents shall inure to the benefit of and be binding upon the parties hereto and thereto, their respective successors and any permitted assignee of some or all of the parties' rights or obligations under this Agreement and the other Finance Documents as permitted under this Section 13.1 (*Assignment by Lenders*).

- (b) A Lender (the “**Existing Lender**”) may assign or transfer all or any part of its rights in respect of the Obligations, this Agreement and the other Finance Documents to or in favor of any Lender, any Affiliate of any Lender or the OeKB Guarantor upon notice to the Facility Agent and the Borrower and have its corresponding obligations hereunder and thereunder assumed by such Person; *provided*, that:
- (i) except with respect to an assignment or transfer to any Lender or Affiliate of any Lender, no Lender shall be permitted to make a partial assignment or transfer of Loans in a principal amount of less than \$5,000,000 and, if greater, in an amount which is an integral multiple of \$500,000;
  - (ii) the Facility Agent’s and the Borrower’s consent to assignment shall be required (which consent shall not be unreasonably withheld, delayed or conditioned) for any assignment to a Person other than any Lender, any Affiliate of any Lender or the OeKB Guarantor; unless an Event of Default has occurred and is continuing and in such case a Lender may make an assignment or transfer to any Person with the Facility Agent’s consent and such transfer or assignment shall not require the consent of the Borrower and shall not be subject to any restriction (including those set forth in this Section 13.1 (*Assignment by Lenders*)); *provided*, that no Loans may be assigned to any Sanctions Target; this restriction shall not apply to any Restricted Finance Party if and to the extent it would result in any violation of, conflict with or liability under any EU Anti-Boycott Regulation;
  - (iii) no assignment or transfer may be made to the Borrower or any Affiliate thereof; and
  - (iv) with respect to Covered Loans, the consent of the ECA Agent acting on behalf of the OeKB Guarantor shall be required.
- (c) If the Borrower has not given the Facility Agent notice of its objection to an assignment of a Loan within five (5) Business Days after receiving notice of such assignment, the Borrower shall be deemed to have consented to the assignment. Any assignment made hereunder shall become effective when the Facility Agent executes a duly completed and executed Transfer Certificate which is delivered by the Existing Lender and the Permitted Transferee. Any such assignee shall be treated as a party to this Agreement and the OeKB Guarantee for all purposes of this Agreement and the OeKB Guarantee and the other Finance Documents and shall be entitled to the full benefit hereof and thereof and shall be subject to the obligations of the Lenders to the same extent as if it were an initial party in respect of the rights assigned to it and obligations assumed by it and the Lender making such assignment shall be released and discharged accordingly.
- (d) If the consent of the Borrower is required for any assignment, the Facility Agent shall not be obligated to enter into a Transfer Certificate if the Borrower withholds its consent.
- (e) The Lenders may provide to any potential permitted assignee or transferee such information, including Confidential Information, concerning this Agreement, the other Finance Documents, the OeKB Guarantee and the financial position and the operations of

the Borrower as, in the reasonable opinion of the Lenders, may be relevant or useful in connection with this Agreement, the other Finance Documents or any portion thereof proposed to be acquired by such assignee or transferee; *provided*, that each recipient of such information agrees not to disclose such information to any other Person except as permitted pursuant to Section 20.1(d) (*Confidential Information*).

- (f) The Facility Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices at KfW IPEX-Bank GmbH, Palmengartenstrasse 5-9, 60325 Frankfurt am Main, Germany a copy of each assignment delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “**Register**”). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Facility Agent and the Lenders 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 and any Lender, at any reasonable time and from time to time upon reasonable prior notice.
- (g) Each new Lender, by executing the relevant Transfer Certificate, confirms that the Facility Agent, has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lenders in accordance with this Agreement before the date the transfer becomes effective.
- (h) Each new Lender shall pay to the Facility Agent a processing and recordation fee of \$5,000 upon execution and delivery of the relevant Transfer Certificate.
- (i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Facility Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower’s Affiliates or Subsidiaries) (each, a “**Participant**”) in all or a portion of such Lender’s rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans owing to it); *provided*, that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower, the Facility Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement.
- (j) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided*, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver of Section 22.4 (*Amendment and Waiver*) that affects such Participant and that requires the consent of each Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on)

each Participant's interest in the Loans or other obligations under the Finance Documents (the "**Participant Register**"); *provided*, that no Lender 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 any commitments, loans, letters of credit or its other obligations under any Finance Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the proposed 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 Facility Agent (in its capacity as Facility Agent) shall have no responsibility for maintaining a Participant Register.

- (k) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.
- (l) In connection with any assignment, participation or pledge made pursuant to this Section 13.1 (*Assignment by Lenders*), the Borrower agrees to enter into such documents as may reasonably be required by a Lender to evidence such assignment, participation or pledge.

### **13.2 Assignment by Borrower.**

The Borrower shall not assign all or any part of its rights, benefits or Obligations under this Agreement or any of the other Finance Documents to which it is a party without the prior written consent of the Lenders.

### **13.3 Assignment to OeKB Guarantor.**

In the event that the OeKB Guarantor makes a payment pursuant to the OeKB Guarantee to any Covered Lender or the ECA Agent for the account of any Covered Lender, the Borrower and the Covered Lenders shall recognize the OeKB Guarantor's full rights of subrogation against the Borrower to the Covered Lender to whom the claim payment was made, including to share *pro rata* with the other Covered Lenders in any payments received and distributed according to the terms of this Agreement (subject, however, to the express provisions of Sections 4.4 (*Voluntary Prepayment*) and 4.7 (*Application*)).

## **Article 14 ADMINISTRATIVE PARTIES**

### **14.1 Appointment of the Facility Agent.**

- (a) Each Finance Party (other than the Facility Agent) hereby irrevocably appoints and authorizes the Facility Agent to act on its behalf as its agent under and in connection with the Finance Documents. By its signature below, the Facility Agent (or any successor thereto pursuant to this Article 14 (*Administrative Parties*)) accepts such appointment.
- (b) Each Finance Party (other than the Facility Agent) irrevocably authorizes the Facility Agent in such capacity to:
  - (i) take such actions, perform the duties and to exercise the rights, powers, authorities and discretions that are specifically delegated to the Facility Agent under or in connection with the Finance Documents, together with any other incidental rights, powers, authorities and discretions as are reasonably incidental thereto; and
  - (ii) enter into and deliver each Finance Document expressed to be entered into by the Facility Agent.
- (c) Each of the Finance Parties (other than the Facility Agent) hereby exempts the Facility Agent from the restrictions pursuant to section 181 of the German Civil Code (Bürgerliches Gesetzbuch) and similar restrictions applicable to it pursuant to any other Applicable Law, in each case to the extent legally possible to such Finance Party. A Finance Party which cannot grant such exemption shall notify the Facility Agent accordingly.
- (d) The provisions of this Article 14 (*Administrative Parties*) are solely for the benefit of the Finance Parties and the Borrower shall not have rights as a third-party beneficiary of any such provision.

#### **14.2 Instructions to the Facility Agent.**

- (a) Unless a contrary indication appears in a Finance Document or the OeKB Guarantee, the Facility Agent is hereby authorized by the Finance Parties party hereto to execute, deliver and perform each of the Finance Documents to which the Facility Agent is or is intended to be a part.
- (b) The Facility Agent is not authorized to act on behalf of a Lender (without first obtaining such Lender's consent) in any legal or arbitration proceedings relating to any Finance Document or the OeKB Guarantee.
- (c) The Facility Agent may:
  - (i) assume, absent actual knowledge or written notice to the contrary, that (A) any representation made by any Person in connection with any Finance Document is true, (B) no Default or Event of Default exists, (C) no Person is in breach of or in default under its obligations under any Finance Document and (D) any right, power, authority or discretion vested herein upon the other Agent has not been exercised;
  - (ii) assume, absent actual knowledge or written notice to the contrary, that any notice or certificate given by any Person has been validly given by a Person authorized to

do so and act upon such notice or certificate unless the same is revoked or superseded by a further such notice or certificate;

- (iii) assume, absent written notice to the contrary, that the address, facsimile, email and telephone numbers for the giving of any written notice to any Person hereunder is that identified in Section 21.1 (*Notices*) until it has received from such Person a written notice designating some other office of a Person to replace any such address or facsimile or email or telephone number and act upon any such notice until the same is superseded by a further such written notice; and
- (iv) employ, the out-of-pocket costs and expenses of which shall be for the account of the Borrower, attorneys, consultants, accountants or other experts whose advice or services the Facility Agent may reasonably determine is necessary (*provided*, that, in connection with an exercise of remedies following the occurrence of an Event of Default, the Facility Agent shall be permitted to employ any such Person at the reasonable expense of the Borrower as it determines to be necessary in its sole discretion), may pay reasonable and documented fees and expenses for the advice or service of any such Person and may rely upon any advice so obtained; *provided*, that the Facility Agent shall be under no obligation to act upon such advice if it does not deem such action to be appropriate.

### **14.3 Duties of the Facility Agent.**

- (a) The Facility Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) The Facility Agent shall forward promptly to a Finance Party the original or a copy of any document which it receives under this Agreement and the other Finance Documents, including non-administrative notices, certificates, reports, opinions and agreements, which are delivered to the Facility Agent for such Finance Party by any other Finance Party and shall provide a copy of all notices delivered to it or by it under each Finance Document to which it is a party to the Facility Agent.
- (c) The Facility Agent shall perform its duties in accordance with the Finance Documents and any instructions given to it by the Majority Lenders, which instructions shall be binding on all Finance Parties party hereto.
- (d) The Facility Agent shall have no responsibility for the accuracy or completeness of any information supplied by any Person in connection with the Project Upgrades or for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other document referred to herein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other Person contained in this Agreement or any other Finance Document or in any certificate or other document referred to or provided for in or received by the Facility Agent, hereunder or thereunder. The Facility Agent shall not be liable as a result of any failure by the Borrower or its Affiliates or any Person party hereto or to any other Finance Document to perform their respective obligations hereunder or under any other Finance Document or any

document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or in relation to any Finance Document, except to the extent of the Facility Agent's gross negligence, fraud or willful misconduct.

- (e) The Facility Agent is not obligated to monitor or enquire whether a Default or Event of Default has occurred. The Facility Agent shall not be deemed to have knowledge of or notice of the occurrence of a Default or Event of Default unless the Facility Agent has actual knowledge of such Default or Event of Default or has received a notice from a Finance Party, referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If the Facility Agent has received notice from a Person describing a Default or Event of Default or receives such a "Notice of Default," the Facility Agent shall give prompt notice thereof to the other Agent and each Lender. The Facility Agent shall take such action with respect to such Default or Event of Default as is provided in Article 12 (*Events of Default and Remedies*); *provided*, that, unless and until the Facility Agent shall have received such directions, it may (but shall not be obligated to) take such action or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable and in the best interest of the Finance Parties.
- (f) The Facility Agent shall not:
  - (i) be bound to inquire as to (A) whether or not any representation made by any other Person in connection with any Finance Document is true, (B) the occurrence or otherwise of any Default or Event of Default, (C) the performance by any other Person of its obligations under any of the Finance Documents or (D) any breach or default by any other Person of its obligations under any of the Finance Documents;
  - (ii) be bound to account to any Person for any sum or the profit element of any sum received by it for its own account except as provided in this Agreement; or
  - (iii) be bound to disclose to any Person any information relating to the Project Upgrades or to any Person if such disclosure would or might in its opinion, constitute a breach of any Applicable Law or otherwise be actionable at the suit of any Person.
- (g) The Facility Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).
- (h) It is understood and agreed by each Finance Party hereto (for itself and any Person claiming through it) that, except as expressly set forth herein, it has itself been and will continue to be, solely responsible for making its own independent appraisal of and investigations into, the financial condition, creditworthiness, condition, affairs, status and nature of each Person and, accordingly, each such Finance Party hereto warrants to the Facility Agent that it has not relied on and will not hereafter rely on the Facility Agent:
  - (i) in making its decision to enter into this Agreement, any other Finance Document, the OeKB Guarantee or any amendment, waiver or other modification hereto or thereto;

- (ii) to check or inquire on its behalf into the adequacy, accuracy or completeness or any information provided by any Person in connection with any of the Finance Documents or the transactions therein contemplated (whether or not such information has been or is hereafter circulated to such Person by the Facility Agent); or
- (iii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Person.

#### **14.4 Role of the Mandated Lead Arranger.**

Except as specifically provided in the Finance Documents, the Mandated Lead Arranger has no obligations of any kind to any other Finance Party under or in connection with any Finance Document or the OeKB Guarantee.

#### **14.5 No Fiduciary Duties.**

- (a) Except as specifically provided in a Finance Document:
  - (i) nothing in the Finance Documents makes an Administrative Party a trustee or fiduciary of any other person; and
  - (ii) no Administrative Party shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.
- (b) Each Lender (x) represents and warrants, as of the date of becoming a Lender party hereto, to, and (y) covenants, from the date of becoming a Lender party hereto to the date of ceasing to be a Lender party hereto, for the benefit of, the Agents, the Mandated Lead Arranger and its respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that at least one of the following is and will be true:
  - (i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the transactions contemplated by this Agreement and the Finance Documents;
  - (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the transactions contemplated by this Agreement and the Transaction Documents,

- (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the transactions contemplated by this Agreement and the Transaction Documents, (C) the entrance into, participation in, administration of and performance of the transactions contemplated by this Agreement and the Transaction Documents satisfies the requirements of subsections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the transactions contemplated by this Agreement and the Transaction Documents; or
- (iv) such other representation, warranty and covenant as may be agreed in writing between each Arranger, the Agent and such Lender.

In addition, unless subclause (i) of this clause (b) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) of this clause (b), such Lender further (x) represents and warrants, as of the date of becoming a Lender party hereto, to, and (y) covenants, from the date of becoming a Lender party hereto to the date of ceasing to be a Lender party hereto, for the benefit of, the Agents, the Mandated Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Agents, the Mandated Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Party under this Agreement or any documents related hereto).

#### **14.6 Business with the Borrower.**

- (a) Each Administrative Party may accept deposits from, lend money to and generally engage in any kind of banking or other business with the Borrower.
- (b) If it is also a Lender, each Administrative Party has the same rights and powers under the Finance Documents and, with respect to the Covered Lenders, the OeKB Guarantee, as applicable, as any other Lender and may exercise those rights and powers as though it were not an Administrative Party.
- (c) Each Administrative Party may carry on any business with the Borrower or its related entities (including acting as an agent or a trustee in connection with any other financing).

#### **14.7 Responsibility for Documentation.**

No Administrative Party is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any statement or information (whether oral or written) made, given or supplied by any person in or in connection with any Finance Document or the OeKB Guarantee, as applicable;

- (b) the legality, validity, effectiveness, adequacy, completeness or enforceability of any Finance Document, the OeKB Guarantee, as applicable, or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document, the OeKB Guarantee, as applicable; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by Applicable Law or regulation relating to insider dealing or otherwise.

#### **14.8 Exclusion of Liability.**

(a) Without limiting paragraph (a)(ii) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of any Administrative Party), no Administrative Party nor any of its respective officers, directors, employees or agents shall be liable to any Person for:

- (i) any damage, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, the OeKB Guarantee, as applicable, unless directly caused by its gross negligence, willful misconduct or fraud, as determined by a court of competent jurisdiction;
- (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the OeKB Guarantee, as applicable, or the arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, the OeKB Guarantee, as applicable; or
- (iii) without prejudice to the generality of paragraphs (a)(i) and (a)(ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalization, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third-party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) Neither the Administrative Party nor any of its officers, directors, employees or agents shall be liable to any Person for any action taken or omitted under this Agreement, under the other Finance Documents or the OeKB Guarantee, as applicable, or in connection

therewith, except to the extent caused by the gross negligence, fraud or willful misconduct of such Administrative Party, as determined by a court of competent jurisdiction. The Finance Parties party hereto each (for itself any Person claiming through it) hereby release, waive, discharge and exculpate such Administrative Party for any action taken or omitted under this Agreement, under the other Finance Documents or the OeKB Guarantee, as applicable, or in connection therewith, except to the extent caused by the gross negligence, fraud or willful misconduct of such Administrative Party as determined by a court of competent jurisdiction. Each Administrative Party will not be liable for any delay (or any related consequences) in crediting an account with an amount required under any Finance Document or the OeKB Guarantee, as applicable, to be paid by such Administrative Party if the Administrative Party has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognized clearing or settlement system used by the Administrative Party for that purpose.

- (c) No Finance Party (other than the relevant Administrative Party (as applicable)) may take any proceedings against any officer, employee or agent of an Administrative Party in respect of any claim it might have against such Administrative Party or in respect of any act or omission of any kind by such officer, employee or agent in relation to any Finance Document, the OeKB Guarantee, as applicable, except in respect of proceedings for fraud. Any officer, employee or agent of an Administrative Party may enforce and enjoy the benefit of this Section 14.8 (*Exclusion of Liability*).
- (d) Nothing in this Agreement shall obligate any Administrative Party to carry out:
  - (i) any “know your customer” or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to each Administrative Party that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by any other Administrative Party.

- (e) Without prejudice to any provision of any Finance Document or the OeKB Guarantee, as applicable, excluding or limiting an Administrative Party’s liability, any liability of an Administrative Party arising under or in connection with any Finance Document, the OeKB Guarantee, as applicable, shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of such Administrative Party or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to such Administrative Party at any time which increase the amount of such loss. In no event shall any Administrative Party be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not foreseeable, whether or not such Administrative Party has been advised of the possibility of such loss or damages and regardless of whether the claim for loss or damage is made in negligence, breach of contract, duty or otherwise.

#### **14.9 Lender's Indemnity.**

- (a) Without limiting the liability of the Borrower under the Finance Documents, each Commercial Lender shall indemnify (in proportion to such Commercial Lender's share of total outstanding Commercial Loans or, if no Commercial Loans are then outstanding, its share of the Total Commercial Loan Commitment), the Facility Agent, within three (3) Business Days of demand against any cost, loss or liability Incurred by the Facility Agent, except to the extent that the cost, loss or liability is caused by the Facility Agent's gross negligence, willful misconduct or fraud in acting as such Agent under the Finance Documents (unless the Facility Agent has been reimbursed by the Borrower pursuant to a Finance Document).
- (b) Without limiting the liability of the Borrower under the Finance Document or under the OeKB Guarantee, as applicable, each Covered Lender shall indemnify (in proportion to such Covered Lender's share of total outstanding Covered Loans or, if no Covered Loans are then outstanding, its share of the Total Covered Loan Commitment), each Agent, within three (3) Business Days of demand against any cost, loss or liability Incurred by such Agent, except to the extent that the cost, loss or liability is caused by such Agent's gross negligence, willful misconduct or fraud in acting as such Agent under the Finance Documents or the OeKB Guarantee, as applicable (unless the applicable Agent has been reimbursed by the Borrower pursuant to a Finance Document or the OeKB Guarantee, as applicable).
- (c) The Borrower shall immediately on demand reimburse any Lender for any payment such Lender makes to an Agent under this Section 14.9 (*Lender's Indemnity*).

#### **14.10 Resignation and Replacement of the Facility Agent.**

- (a) The Facility Agent may resign and appoint one of its Affiliates as successor Facility Agent by giving written notice to the Lenders and the Borrower.
- (b) Alternatively, the Facility Agent may resign by giving thirty (30) days' written notice to the Lenders and the Borrower, in which case the Majority Lenders (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may appoint a successor Facility Agent.
- (c) The Majority Lenders may remove the Facility Agent from its appointment hereunder with or without cause by giving prior written notice to that effect to the Facility Agent and the Borrower.
- (d) If the Majority Lenders have not appointed a successor Facility Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation or removal was given, the retiring Facility Agent (with the consent of the Borrower so long as no Event of Default has occurred and is continuing) may appoint a successor Facility Agent.
- (e) The retiring Facility Agent shall, at its own cost:

- (i) make available to the successor Facility Agent those documents and records and provide such assistance as the successor Facility Agent may reasonably request for the purposes of performing its functions as the Facility Agent under the Finance Documents and the OeKB Guarantee, as applicable; and
  - (ii) enter into and deliver to the successor Facility Agent those documents and effect any registrations as may be reasonably required for the transfer or assignment of all of its rights and benefits under the Finance Documents to the successor Facility Agent.
- (f) The resignation of the Facility Agent and the appointment of any successor Facility Agent shall both become effective only when the successor Facility Agent notifies all the Finance Parties that it accepts its appointment.
  - (g) On giving the notification, the successor Facility Agent shall succeed to the position of the Facility Agent and the term “Facility Agent” shall mean the successor Facility Agent.
  - (h) Upon its resignation becoming effective, the retiring Facility Agent shall be discharged from any further obligation in respect of the Finance Documents and the OeKB Guarantee, as applicable (other than its obligations under paragraph (e) above and other than any accrued liabilities) but shall remain entitled to the benefit of this Section 14.10 (*Resignation and Replacement of the Facility Agent*). The provisions of this Agreement shall inure to the retiring Facility Agent’s benefit as to any actions taken or omitted to be taken by it under this Agreement and the other Finance Documents and the OeKB Guarantee, as applicable, while it was Facility Agent. Any successor and each of the other Finance Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an initial Finance Party.
  - (i) After consultation with the Borrower, the Majority Lenders may, by notice to the Facility Agent, require it to resign under paragraph (c) above. In this event, the Facility Agent shall resign in accordance with paragraph (b) above.

**14.11 Facility Agent and ECA Agent Relationship with the Covered Lenders.**

- (a) Each of the Facility Agent and ECA Agent may treat the person shown in its records as Covered Lender at the opening of business (in the place of the Facility Agent’s or ECA Agent’s principal office, as applicable, as notified to the Finance Parties from time to time) as each Covered Lender acting through its lending office:
  - (i) entitled to or liable for any payment due under any Finance Document or OeKB Guarantee on such day; and
  - (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document or OeKB Guarantee made or delivered on such day,

unless it has received not less than five (5) Business Days’ prior notice from such Covered Lender to the contrary in accordance with the terms of this Agreement.

- (b) The Facility Agent may at any time and shall, if requested to do so by the Majority Lenders, convene a meeting of the Lenders.
- (c) Any Lender may by notice to the Facility Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or dispatched to such Lender under the Finance Documents or the OeKB Guarantee, as applicable.
  - (i) Any such notice:
    - (A) shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under a Finance Document or the OeKB Guarantee, as applicable) electronic mail address and any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made); and
    - (B) shall be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by such Lender for the purposes of the Finance Documents or the OeKB Guarantee, as applicable.
  - (ii) The Facility Agent is entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were such Lender.
- (d) The Facility Agent shall keep a record of all Finance Parties and supply any other Finance Party with a copy of the record on request. The record shall include each Lender's contact details for the purposes of the Finance Documents and the OeKB Guarantee, as applicable, and its lending office.

#### **14.12 Appointment of the ECA Agent.**

- (a) Each of the Covered Lenders irrevocably appoints the ECA Agent to act as its agent under and in connection with the OeKB Guarantee. By its signature below, the ECA Agent (or any successor thereto pursuant to this Article 14 (*Administrative Parties*)) accepts such appointment.
- (b) Each of the Covered Lenders irrevocably authorizes the ECA Agent to:
  - (i) perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the ECA Agent under or in connection with the OeKB Guarantee together with any other incidental rights, powers, authorities and discretions; and
  - (ii) enter into and deliver on its behalf the OeKB Guarantee and agrees severally to be bound by the terms and conditions of the OeKB Guarantee as if it had executed and delivered the OeKB Guarantee for and in its own name.
- (c) Any bank or financial institution serving as ECA Agent hereunder shall have the same

rights and powers in its capacity as a Covered Lender as any other Covered Lender and may exercise the same as though it were not the ECA Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or Affiliate thereof as if it were not the ECA Agent hereunder.

- (d) Each Covered Lender expressly confirms that it releases the Facility Agent and the ECA Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other Applicable Law as provided for in paragraph (c) of Section 14.1 (*Appointment of the Facility Agent*) and this Section 14.12 (*Appointment of the ECA Agent*).

#### **14.13 Representations and Agreement.**

Each Covered Lender represents and warrants to the ECA Agent that: (a) it has reviewed the OeKB Guarantee and is aware of the provisions thereof and (b) no information provided by such Covered Lender in writing to the OeKB Guarantor prior to the date hereof was incomplete, untrue or incorrect in any respect except to the extent that such Covered Lender, in the exercise of reasonable care and due diligence prior to the giving of the information, could not have discovered the error or omission. Each Covered Lender represents and warrants that it has not taken (or failed to take), and agrees that it shall not take (or fail to take), any action that would result in the ECA Agent being in breach of any of its obligations as “Guarantee Holder” under the OeKB Guarantee, or result in the Guarantee Holder being in breach of its obligations under the OeKB Guarantee, or which would otherwise prejudice the Guarantee Holder’s ability to make a claim on behalf of the Covered Lenders under the OeKB Guarantee.

#### **14.14 Communications.**

The ECA Agent agrees to furnish promptly to the Facility Agent (for delivery to each Covered Lender) a copy of each written communication received by it from, or sent by it to, the OeKB Guarantor, the Borrower, the Facility Agent and any amendment or waiver of any of the provisions of the OeKB Guarantee, this Agreement or any other Finance Document or the transactions contemplated hereby or thereby, or from any Covered Lender pursuant to or in relation to this Agreement or any other Finance Document. The ECA Agent agrees not to take any action under the OeKB Guarantee without the consent of the Facility Agent (acting upon the instructions of the Majority Lenders). The ECA Agent agrees to furnish promptly to the Facility Agent a request for any information it reasonably requires for the purposes of fulfilling its duties under the OeKB Guarantee. Furthermore, at any time in which the OeKB Guarantor’s consent is required under the terms of the OeKB Guarantee for any consent, waiver, approval, direction, amendment, supplement or other modification or any other action to be taken by the Covered Lenders with respect to this Agreement or any other Finance Document, the ECA Agent agrees to promptly inform the Facility Agent of such consent requirement.

#### **14.15 Limitation on Right to Make Claims.**

Each Covered Lender acknowledges and agrees that it shall have no entitlement to make any claim or to take any action whatsoever under or in connection with the OeKB Guarantee except through the ECA Agent (acting upon the instructions of the Facility Agent) and that all of the rights of the

Covered Lenders under the OeKB Guarantee shall only be exercised by the ECA Agent (acting upon the instructions of the Facility Agent in accordance with the terms of this Agreement and the Finance Documents).

#### **14.16 Resignation of the ECA Agent.**

- (a) The ECA Agent may resign and appoint one of its Affiliates as successor by giving notice to the Covered Lenders and the Borrower.
- (b) Alternatively, the ECA Agent may resign by giving thirty (30) days' notice to the Covered Lenders and the Borrower, in which case the Covered Lenders, acting unanimously (after consultation with the Borrower) may appoint a successor ECA Agent.
- (c) If the Covered Lenders, acting unanimously, have not appointed a successor ECA Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring ECA Agent (with the consult of the Borrower so long as no Default or Event of Default has occurred or is continuing) may appoint a successor ECA Agent.
- (d) The retiring ECA Agent shall, at its own cost:
  - (i) make available to the successor ECA Agent such documents and records and provide such assistance as the successor ECA Agent may reasonably request for the purposes of performing its functions as ECA Agent under the Finance Documents; and
  - (ii) enter into and deliver to the successor ECA Agent those documents and effect any registrations as may be reasonably required for the transfer or assignment of all of its rights and benefits under the Finance Documents to the successor ECA Agent.
- (e) The ECA Agent's resignation notice shall only take effect upon the appointment of a successor.
- (f) Upon the appointment of a successor, the retiring ECA Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (d) above) but shall remain entitled to the benefit of Section 14.9(b) (*Lender's Indemnity*) and this Article 14 (*Administrative Parties*) (and any agency fees for the account of the retiring ECA Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Administrative Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party.
- (g) Pursuant to the terms of the OeKB Guarantee, the parties hereto acknowledge that any successor ECA Agent shall be required to act as "Guarantee Holder" under the OeKB Guarantee. The "Guarantee Holder" under the OeKB Guarantee shall not transfer the OeKB Guarantee or any rights thereunder to any successor ECA Agent or any other third party without the express written consent of the OeKB Guarantor.

#### **14.17 Replacement of the ECA Agent.**

- (a) With the consent of the Borrower (so long as no Default or Event of Default has occurred or is continuing), the Covered Lenders, acting unanimously, may, by giving thirty (30) days' notice to the ECA Agent (or, at any time the ECA Agent is an Impaired Agent, by giving any shorter notice determined by the Covered Lenders, acting unanimously) replace the ECA Agent by appointing a successor ECA Agent, which shall be acceptable to the OeKB Guarantor.
- (b) The retiring ECA Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Covered Lenders) make available to the successor ECA Agent such documents and records and provide such assistance as the successor ECA Agent may reasonably request for the purposes of performing its functions as ECA Agent under the Finance Documents.
- (c) The appointment of the successor ECA Agent shall take effect on the date specified in the notice from the Covered Lenders, acting unanimously, to the retiring ECA Agent. As from this date, the retiring ECA Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Section 14.9(b) (*Lender's Indemnity*) and this Article 14 (*Administrative Parties*) (and any agency fees for the account of the retiring ECA Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor ECA Agent and each of the other parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original party.

#### **14.18 No Liability.**

Neither the ECA Agent nor any of its officers, directors, employees or agents shall be liable to any Person for any action taken or omitted under this Agreement, the OeKB Guarantee or under the other Finance Documents or in connection therewith (including any action or omission that, in its opinion, results in or is reasonably likely to result in a breach of any term of the OeKB Guarantee), except to the extent caused by the gross negligence, fraud or willful misconduct of the ECA Agent, as determined by a court of competent jurisdiction. The Covered Lenders hereto each (for itself and any Person claiming through it) hereby releases, waives, discharges and exculpates the ECA Agent and the Facility Agent for any action taken or omitted under this Agreement, the OeKB Guarantee or under the other Finance Documents or in connection therewith, except to the extent caused by gross negligence, fraud or willful misconduct of the ECA Agent as determined by a court of competent jurisdiction. The ECA Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the OeKB Guarantee or any other Finance Document to be paid by the ECA Agent if the ECA Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognized clearing or settlement system used by the ECA Agent for that purpose.

#### **14.19 Agent's Confidentiality.**

- (a) In acting as an agent for the Finance Parties, each Administrative Party shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions and departments.
- (b) If information is received by another division or department of any Administrative Party, it may be treated as confidential to such division or department and such Administrative Party shall not be deemed to have notice of it.

#### **14.20 Consent of the OeKB Guarantor.**

- (a) At any time in which the OeKB Guarantor's consent is required under the terms of the OeKB Guarantee, for any consent, waiver, approval, direction, amendment, supplement or other modification or any other action to be taken by the Covered Lenders with respect to this Agreement or any other Finance Document, the Facility Agent shall not take such action until the ECA Agent, has notified the Facility Agent that such consent has been obtained. The Facility Agent shall notify the Covered Lenders that such consent has been obtained or denied, as the case may be.
- (b) Notwithstanding the foregoing or anything else to the contrary in this Agreement or the Finance Documents, the parties hereto acknowledge and agree that, pursuant to the terms of the OeKB Guarantee, the OeKB Guarantor shall have sole consent and approval rights over any waivers, amendments, supplements or modifications of or under this Agreement and shall, in its sole discretion, direct the voting of the Covered Lenders through the ECA Agent.

#### **14.21 Credit Appraisal by the Covered Lenders.**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document or the OeKB Guarantee, as applicable, each Covered Lender confirms to the Administrative Parties that it has been, and shall continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document and the OeKB Guarantee, including but not limited to:

- (a) the financial condition, creditworthiness, status and nature of the Borrower;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document, the OeKB Guarantee and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether such Covered Lender has recourse, and the nature and extent of such recourse, against any Finance Party or any of its respective assets under or in connection with any Finance Document, the OeKB Guarantee, the transactions contemplated by the Finance Documents, the OeKB Guarantee, or any other agreement, arrangement or document entered into made or executed in anticipation of, under or in connection with any Finance Document, the OeKB Guarantee, as applicable; and

- (d) the adequacy, accuracy and completeness of any reports and any other information provided by any Administrative Party, by any Finance Party or by any other person under or in connection with any Finance Document, the OeKB Guarantee, the transactions contemplated by the Finance Documents and OeKB Guarantee, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document and the OeKB Guarantee.

#### **14.22 Deduction from Amounts Payable by Administrative Parties.**

If any Finance Party owes an amount to any Administrative Party under the Finance Documents or the OeKB Guarantee, as applicable, such Administrative Party may, after giving notice to such Finance Party, deduct an amount not exceeding such amount from any payment to such Finance Party which such Administrative Party would otherwise be obligated to make under the Finance Documents or the OeKB Guarantee, as applicable, and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Document or the OeKB Guarantee, as applicable, such Finance Party shall be regarded as having received the amount so deducted.

#### **14.23 Notice Period.**

Where a Finance Document or the OeKB Guarantee, as applicable, specifies a minimum period of notice to be given to any Administrative Party, such Administrative Party may, at its discretion, accept a shorter notice period.

#### **14.24 Payments.**

- (a) While no Event of Default is continuing, the Borrower shall make all payments in accordance with Article 16 (*Payment Mechanics*).
- (b) Following an Event of Default that is continuing, provided the Facility Agent has declared all Obligations immediately due and payable, all payments shall be made to the Facility Agent for distribution to the Lenders in accordance with this Agreement, such that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the Applicable Percentage of the Covered Loans or Commercial Loans, as the case may be, owing to them; *provided*, that the provisions of this Section 14.24 (*Payments*) shall not be construed to apply to:
  - (i) any payment made in respect of an obligation that is secured by a Permitted Lien or that is otherwise entitled to priority over the Borrower's obligations under or in connection with the Finance Documents or the OeKB Guarantee, as applicable; or
  - (ii) any payment to which such Lender is entitled in its capacity as a party to any Finance Document or the OeKB Guarantee, as applicable.

#### **14.25 Agents as Lender.**

With respect to its Commitment and the Loans made by it, any Person serving as an Agent hereunder shall have the same rights and powers under the Finance Documents as any other Lender

and may exercise the same as though it were not such Agent. The term “Lender” or “Finance Party”, when used with respect to each Agent, shall unless otherwise expressly indicated, include such Agent in its individual capacity. Each Agent and its Affiliates may accept deposits from, lend money to, act as trustee under, act as financial advisor or in any other advisory capacity for and generally engage in any kind of business with, any Person as if such Agent were not the applicable Agent hereunder, without any duty to account therefor to the Lenders or Finance Parties.

## **Article 15**

### **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

#### **15.1 Conduct of Business by the Finance Parties.**

No provision of any Finance Document or the OeKB Guarantee, as applicable, will:

- (a) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it deems appropriate;
- (b) obligate any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) obligate any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

## **Article 16**

### **PAYMENT MECHANICS**

#### **16.1 Payments to the Agents.**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document (including as relates to any payments to be made in respect of the OeKB Guarantee), the Borrower or such Lender shall make the same available to the Facility Agent or (in the case of any disbursement or payment expressed to be made or payable under the terms of any Finance Document) to the relevant Agent, for value on the due date at the time and in U.S. Dollars.
- (b) Payment shall be made to such account as the Facility Agent specifies.

#### **16.2 Distributions by the Agents.**

Each payment received by an Agent under the Finance Documents or the OeKB Guarantee, as applicable, for another Finance Party shall, subject to Section 16.3 (*Distributions to the Borrower*) and Section 16.4 (*Clawback*), be made available by that Agent as soon as practicable after receipt to the Finance Party entitled to receive payment in accordance with the Finance Documents or the OeKB Guarantee, and:

- (a) in the case of payment for the Borrower, to the account identified in writing by the Borrower to an Agent;

- (b) in the case of payment for a Lender, for the account of its lending office; and
- (c) in the case of payment for any other Finance Party (other than the Borrower or a Lender), to such account with a bank in New York City as that Finance Party may notify to the Facility Agent by not less than five (5) Business Days' prior notice.

### **16.3 Distributions to the Borrower.**

Each Agent may (with the consent of the Borrower or in accordance with Article 17 (*Set-Off*)) apply any amount received by it for the Borrower in or towards payment (as soon as practicable after receipt) of any amount due from the Borrower under the Finance Documents. For this purpose, the relevant Agent may apply the received sum in or towards the purchase of any amount of any currency to be paid.

### **16.4 Clawback.**

- (a) Where a sum is to be paid to an Agent under the Finance Documents or the OeKB Guarantee, as applicable, for another Finance Party, such Agent is not obligated to pay that sum to that other Finance Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction such it has actually received that sum.
- (b) If an Agent pays an amount to another Finance Party and it proves to be the case that such Agent has not actually received such amount, then the Finance Party to whom such amount (or the proceeds of any related exchange contract) was paid by such Agent shall on demand refund such amount to such Agent.

### **16.5 No Set-Off by the Borrower.**

All payments to be made by the Borrower under the Finance Documents will be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim, it being understood that deduction for withholding Taxes is addressed by Article 6 (*Taxes*).

### **16.6 Business Days.**

- (a) Any payment which is due to be made on a day that is not a Business Day will be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not). If the Final Maturity Date is not a Business Day, any payment due on the Final Maturity Date shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum approved by the Finance Parties under a Finance Document and the OeKB Guarantee, interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **16.7 Currency of Account.**

- (a) Subject to paragraphs (b) below, U.S. Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document and the OeKB Guarantee.

- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are Incurred.

### **16.8 Change of Currency.**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognized by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any Obligations arising under the Finance Documents in, the currency of that country will be translated into, or paid in, the currency or currency unit of that country designated by the Facility Agent (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another will be at the official rate of exchange recognized by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Facility Agent (acting reasonably).
- (b) If a change in any currency of a country occurs (including where there is more than one currency or currency unit recognized at the same time as the lawful currency of a country), the Finance Documents will, to the extent the Facility Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise reflect the change in currency.

### **Article 17 SET-OFF**

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents and the OeKB Guarantee (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

### **Article 18 BAIL-IN PROVISIONS**

Notwithstanding anything to the contrary in any Finance Document, the OeKB Guarantee, or in any other agreement, arrangement or understanding among any such Finance Parties, each Finance Party hereto acknowledges that any liability of any Affected Financial Institution arising under any Finance Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent 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 Finance Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority; and
- (c) the variation of any term of any Finance Document or the OeKB Guarantee to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

## **Article 19**

### **CALCULATIONS AND CERTIFICATES**

#### **19.1 Day Count Conventions.**

Except as otherwise expressly provided in a Finance Document or in the OeKB Guarantee, any interest, commission or fee accruing under a Finance Document or under the OeKB Guarantee will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred sixty (360) days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

#### **19.2 Financial Calculations.**

All financial calculations to be made under, or for the purposes of, this Agreement, the OeKB Guarantee and any other Finance Document shall be made in accordance with GAAP and, except as otherwise required to conform to any provision of this Agreement, shall be calculated from the then-most-recently issued quarterly Financial Statements which the Borrower is obligated to furnish to the Finance Parties under Section 10.1(a)(i) (*Quarterly Statements*).

## **Article 20**

### **CONFIDENTIAL INFORMATION**

#### **20.1 Confidential Information.**

The Borrower and the Finance Parties each agree that it shall maintain as confidential and, without the prior written consent of the relevant party(ies), shall not disclose the terms of this Agreement

(including any interest rate or margin on any Loans, the amount of any Commitments and the amount of any fees related to the transactions contemplated by the Agreement and the other Finance Documents) and any non-public information concerning the other party or its business and operations (the “**Confidential Information**”); *provided*, that a party and the OeKB Guarantor may disclose such information:

- (a) where such information becomes publicly available or widely known by the public other than by a breach of this Agreement, or is known by the receiving party prior to the entry of this Agreement or obtained independently of this Agreement, and the disclosure of such information would not breach any other confidentiality obligations;
- (b) if required by Applicable Law or requested by any Governmental Body having jurisdiction over such party (after providing written notice to the Borrower and, to the extent practicable, giving the Borrower an opportunity to lawfully object to such disclosure);
- (c) to its Affiliates and those of its and its Affiliates’ directors, officers, employees, accountants, attorneys, agents, advisors, insurers, insurance brokers and representatives who need to have knowledge of such information in connection with this Agreement and the transactions contemplated herein;
- (d) to any Person to whom such party, in good faith, anticipates assigning an interest in this Agreement as contemplated by Section 13.1 (*Assignment by Lenders*) and such Person’s Affiliates and the representatives, consultants and advisors of such Person or its Affiliates who have a legitimate need to know such information in connection with an assignment;
- (e) to the OeKB Guarantor such Confidential Information as that Finance Party reasonably considers appropriate. The Borrower acknowledges that the OeKB Guarantor may disclose information as required by the rules, regulations or recommendations of the OECD, including, but not limited to, publishing the executive summary on the OeKB Guarantor’s website), the European Union and the information the OeKB Guarantor reasonably considers appropriate in order to arrange and manage any reinsurance or other security arrangements to cover its risk exposure;
- (f) to the Exporter; and
- (g) in connection with the exercise of any duties or remedies hereunder or any suit, action or proceeding relating to this Agreement or the OeKB Guarantee (or in satisfaction of the insureds’ obligations thereunder).

In the case of disclosure pursuant to paragraph (c), (d), (e) or (f) above, the disclosing party shall be responsible to ensure that the recipient of such Confidential Information does not disclose such information to the same extent as if it were bound by the same non-disclosure obligations of the disclosing party under this Agreement, and shall be liable to the disclosing party for any improper use or disclosure of such information by such recipient.

## **20.2 Entire Agreement Regarding Confidentiality.**

- (a) This Article 20 (*Confidential Information*) constitutes the entire agreement between the Finance Parties in relation to the obligations of the Finance Parties under the Finance Documents and the OeKB Guarantee regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- (b) No Finance Party will be liable for any loss, cost, liability or other claim in connection with the Confidential Information beyond reasonably foreseeable losses and will not be liable for lost profits or consequential or punitive damages.

### **20.3 Inside Information.**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### **20.4 Continuing Obligations.**

The obligations in this Section 20.4 (*Continuing Obligations*) are continuing and, in particular, will survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Borrower under or in connection with the Finance Documents and the OeKB Guarantee (pursuant to the terms of the Finance Documents) have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

## **Article 21 NOTICES**

### **21.1 Notices.**

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as hereinafter provided. Any such notice, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the day of sending, or if delivered by hand shall be deemed to have been received at the time it is delivered to the applicable address noted below. Notices of change of address shall also be governed by this Article 21 (*Notices*). Notices and other communications shall be addressed as follows:

- (a) if to any Loan Party:

600 Grant Street, 61<sup>st</sup> Floor  
Pittsburgh, Pennsylvania 15219  
Attention: Arne Jahn, Laurie Wiggins

Email(s): Arnie Jahn ([ASJahn@uss.com](mailto:ASJahn@uss.com)), Laurie Wiggins ([LAWiggins@uss.com](mailto:LAWiggins@uss.com))

Copy to:

600 Grant Street, Room 1874  
Pittsburgh, Pennsylvania 15219  
Attention: Scotland M Duncan (Scot)  
Email(s): [smduncan@uss.com](mailto:smduncan@uss.com)

or at such other address, facsimile number or email address as a party hereto from time to time directs in writing to the other parties hereto.

(b) if to the Facility Agent:

KfW IPEX-Bank GmbH  
Palmengartenstrasse 5-9  
60325 Frankfurt am Main  
Germany  
Attention: Alena Alemasova  
Contract Management – Metals & Mining (X1a3)  
Email: [alena.alemasova@kfw.de](mailto:alena.alemasova@kfw.de)  
Telephone number: +49 69 7431 9117

or at such other address, facsimile number or email address as a party hereto from time to time directs in writing to the other parties hereto.

(c) if to the ECA Agent:

KfW IPEX-Bank GmbH  
Palmengartenstrasse 5-9  
60325 Frankfurt am Main  
Germany  
Attention: Alena Alemasova  
Contract Management – Metals & Mining (X1a3)  
Email: [alena.alemasova@kfw.de](mailto:alena.alemasova@kfw.de)  
Telephone number: +49 69 7431 9117

(d) if to the Lenders, at the addresses noted on Schedule A (*Commitments*); and

(e) in accordance with Section 22.5 (*English Language*), any notices and communications given in respect of this Agreement shall be given in the English language, or if given in any other language, that notice or communication shall be accompanied by an English translation of it (if requested by the OeKB Guarantor or the ECA Agent), which shall be certified as being a true and correct translation of the notice or communication.

## **21.2 Notification of Address and Fax Number.**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to this Article 21 (*Notices*) or changing its own address or fax number, the Facility Agent shall notify the other Finance Parties.

### **21.3 Electronic Communication.**

- (a) Any communication to be made between any of the Finance Parties under or in connection with the Finance Documents and the OeKB Guarantee, may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if the relevant Finance Parties:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their electronic mail address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above made between any two Finance Parties will be effective only when actually received (or made available) in readable form.
- (c) Any electronic communication which would otherwise become effective on a non-working day or after business hours in the place of receipt will be deemed only to become effective on the next working day in that place.
- (d) Any reference in a Finance Document to a communication being sent or received will be construed to include that communication being made available in accordance with this Section 21.3 (*Electronic Communication*).

## **Article 22 GENERAL**

### **22.1 Partial Invalidity.**

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of the Finance Documents or the OeKB Guarantee; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other provision of the Finance Documents or the OeKB Guarantee.

## **22.2 Reliance and Non-Merger.**

All covenants, agreements, representations and warranties of the Borrower made herein or in any other Finance Document or in any certificate or other document signed by any of its directors or officers and delivered by or on behalf of the Borrower pursuant hereto or thereto are material, shall be deemed to have been relied upon by the Facility Agent and each Lender notwithstanding any investigation heretofore or hereafter made by the Facility Agent, the Lenders or Lenders' counsel or any employee or other representative of any of them and shall survive the execution and delivery of this Agreement and the other Finance Documents until all Obligations owed to the Facility Agent or the Lenders under this Agreement and the other Finance Documents shall have been satisfied and performed in full and the Lenders shall have no further obligation to make the Loans hereunder.

## **22.3 Remedies and Waivers.**

- (a) No investigation by or on behalf of any Finance Party, into the affairs of the Borrower will prejudice any rights or remedies held by or on behalf of a Finance Party under the Finance Documents or the OeKB Guarantee.
- (b) No failure to exercise, nor any delay in exercising, on the part of or on behalf of any Finance Party, any right or remedy under a Finance Document or the OeKB Guarantee will operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document or the OeKB Guarantee. No election to affirm any Finance Document on the part of or on behalf of any Finance Party will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document or the OeKB Guarantee are cumulative and not exclusive of any rights or remedies provided by law and may be waived only in writing and specifically.

## **22.4 Amendment and Waiver.**

- (a) Except as otherwise expressly provided in this Agreement and subject to paragraph (c) and paragraph (d) below, any term of the Finance Documents may be amended, modified, waived or supplemented only with the consent of the (i) Parent Guarantor, (ii) Borrower and (iii) Majority Lenders, or, to the extent it is a party, the Facility Agent (acting on behalf of the Majority Lenders), and any such amendment, waiver, modification or supplement shall be binding on all parties.
- (b) (i) Any waiver or modification of any provision of this Agreement that has the effect (either immediately or at some later time) of enabling the Borrower to satisfy a condition precedent to the making of a Loan of any Class shall not be effective against the Lenders of such Class for purposes of the Commitments of such Class unless the Majority Lenders of such Class shall have concurred with such waiver or modification and (ii) no waiver or modification of any provision of this Agreement or any other Finance Document that would reasonably be expected to adversely affect the Lenders of any Class in a manner that does not affect all Classes equally shall be effective against the Lenders of such Class unless the Majority Lenders of such Class shall have concurred with such waiver or modification.

- (c) Except as otherwise expressly provided in the relevant agreement or document, no waiver, consent, annulment, modification or supplement of any term or condition of any Finance Document may be given or granted by the Borrower or the Lenders.
- (d) Notwithstanding paragraph (a) above, an amendment, modification, supplement or waiver that relates to the rights, duties, protections or obligations of the Agents or the Mandated Lead Arranger (each in their capacity as such) may not be effected without the consent of the Agents or the Mandated Lead Arranger (as the case may be).
- (e) Notwithstanding paragraph (a) above, each Lender shall be required to consent in writing to any amendment, modification, supplement or waiver of:
  - (i) the definition of “Majority Lenders” or any other provision in the Finance Documents or the OeKB Guarantee specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant thereunder;
  - (ii) Section 11.1 (*Conditions Precedent to the Closing Date*), Section 11.2 (*Additional Conditions Precedent to Covered Loans*) and Section 11.3 (*Additional Conditions Precedent to Commercial Loans*);
  - (iii) a reduction in the Applicable Margin, or a reduction in the amount of any payment of principal, interest, fees or other amounts payable to a Lender under the Finance Documents;
  - (iv) an increase in, or an extension of, a Commitment or the Total Commitments;
  - (v) a change to the order of application of any reduction in the Commitments or any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 4.2 (*Mandatory Prepayment*), Section 4.3 (*Voluntary Cancellation*), and Section 4.4 (*Voluntary Prepayment*);
  - (vi) a term or provision of a Finance Document that expressly requires the consent, approval or instructions of each Lender;
  - (vii) the right of a Lender to assign or transfer its rights or obligations under the Finance Documents in accordance with Section 13.1 (*Assignment by Lenders*);
    - (A) this Section 22.4 (*Amendment and Waiver*);
    - (B) Section 22.8 (*Remedies Cumulative*); or
  - (viii) change any provision in the Finance Documents relating to the *pro rata* nature of the Utilizations or any amount payable thereunder.
- (f) To the extent required by the OeKB General Terms and Conditions, the Lenders may need to receive prior written consent of the OeKB Guarantor prior to providing their consent in connection with an amendment or waiver that relates to:

- (i) an extension of the date of payment of any amount to a Lender under the Finance Documents;
- (ii) an increase in, or an extension of, a Commitment or the Total Commitments; or
- (iii) any other amount or provision that requires the consent of the OeKB Guarantor in accordance with the OeKB General Terms and Conditions.

## **22.5 English Language.**

- (a) Except for the OeKB Guarantee and certain communications with the OeKB Guarantor, which shall be in German, any communication made under or in connection with any Finance Document or the OeKB Guarantee shall be in English.
- (b) All other documents provided under or in connection with any Finance Document shall be:
  - (i) in English; or
  - (ii) if not in English, accompanied by an English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **22.6 Further Assurances.**

Whether before or after the happening of an Event of Default, the Borrower shall at its own expense do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, things, agreements, documents and instruments in connection with this Agreement, the other Finance Documents or the OeKB Guarantee as the Facility Agent may reasonably request from time to time for the purpose of giving effect to the terms of this Agreement, the other Finance Documents or the OeKB Guarantee, all promptly upon the request of the Facility Agent.

## **22.7 Judgment Currency.**

If for the purpose of obtaining or enforcing judgment in any court it is necessary to convert a sum due hereunder or under any other Finance Document in U.S. Dollars into another currency (the “**Judgment Currency**”), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures a Finance Party, as applicable, could purchase such U.S. Dollars in the United States of America with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of the Borrower in respect of any such sum due from it to such Finance Party hereunder or under any other Finance Document (an “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following the receipt by such Entitled Person of any sum adjudged to be due hereunder or under any other Finance Document in the Judgment Currency, such Entitled Person may in accordance with normal banking procedures purchase and transfer U.S. Dollars to the United States of America with the amount of the Judgment Currency so adjudged to be due; and the Borrower hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person on demand, in U.S. Dollars, for the amount (if any) by which the sum originally due to such Entitled

Person in U.S. Dollars hereunder or under any other Finance Document exceeds the amount of the U.S. Dollars so purchased and transferred.

## **22.8 Remedies Cumulative.**

Subject to Applicable Law, no failure or delay on the part of any Finance Party in exercising any right, power or privilege hereunder or under any other Finance Document or the OeKB Guarantee and no course of dealing between the Borrower or any its Affiliates, on the one hand and any Finance Party, on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Finance Document or the OeKB Guarantee preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Finance Document or the OeKB Guarantee expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Finance Party to any other or further action in any circumstances without notice or demand.

## **22.9 Entire Agreement.**

This Agreement, the other Finance Documents and the OeKB Guarantee constitute the entire agreement between the parties pertaining to the subject matter described herein and therein. There are no warranties, conditions or representations (including any that may be implied by statute) and there are no agreements in connection with such subject matter except as specifically set forth or referred to in this Agreement, the other Finance Documents and the OeKB Guarantee. No reliance is placed on any warranty, representation, opinion, advice or assertion of fact made either prior to, contemporaneously with, or after the entering into of this Agreement, the other Finance Documents or the OeKB Guarantee, or any amendment or supplement thereto, by any party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, to any other party to this Agreement or any of the other Finance Documents or its directors, officers, partners, employees or agents, where applicable, except to the extent that the same has been reduced to writing and included as a term of this Agreement or any of the other Finance Documents or the OeKB Guarantee.

## **22.10 Governing Law; Jurisdiction.**

- (a) THIS AGREEMENT AND EACH OF THE OTHER FINANCE DOCUMENTS (UNLESS SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN), THE RELATIONSHIP BETWEEN THE FINANCE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS AGREEMENT OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
- (b) Except as provided in clause (d) below, each party hereto hereby irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of

any kind or description, whether in law or equity, whether in contract, or in tort or otherwise, against any other party hereto in any way relating to this Agreement or the other Finance Documents governed by New York law or the transactions relating hereto or thereto, in any forum other than the Supreme Court of the State of New York sitting in New York County or the United States District Court of the Southern District of New York and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

- (c) Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Finance Document brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
- (d) Nothing in this Section 22.10 (*Governing Law; Jurisdiction*) shall limit the right of the Finance Parties to refer any claim against the Borrower to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by any Finance Parties before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

#### **22.11 Service of Process.**

- (a) The Borrower and the Parent Guarantor each irrevocably acknowledges and agree that service of process in any such action or proceeding may be effected by mailing a copy thereof by first class mail, postage prepaid, together with two copies of a statement of service by mail and acknowledgment of receipt, with a postage-prepaid return envelope addressed to the sender, to the Borrower at their address set forth in Article 21 (*Notices*) or at such other address of which the Facility Agent shall have been notified pursuant to Article 21 (*Notices*).
- (b) This Section 22.11 (*Service of Process*) does not affect any other method of service allowed by Applicable Law.
- (c) To the extent that the Borrower or the Parent Guarantor may, in any action or proceeding arising out of or relating to any of the Finance Documents, be entitled under any Applicable Law to require or claim that any Finance Party post security for costs or take similar action, the Borrower and the Parent Guarantor hereby irrevocably waives and agrees not to claim the benefit of such entitlement.

#### **22.12 Waiver of Jury Trial.**

EACH OF THE PARTIES HERETO HEREBY EXPRESSLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER FINANCE DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

#### **22.13 USA PATRIOT Act.**

To the extent that it is subject to the requirements of the USA PATRIOT Act or any other Anti-Money Laundering Laws, each Finance Party hereby notifies the Borrower that, pursuant to the requirements of the USA PATRIOT Act or any other Anti-Money Laundering Laws applicable to such Finance Party and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network (as published at 81 FR 29397, 31 CFR 1010, 1020, 1023, 1024, and 1026), it is required to obtain, verify and record information that identifies the Borrower and its direct and indirect beneficial owners, which information includes the name and address of such Persons and other information that will allow such Finance Party, as the case may be, to identify the Borrower and its direct and indirect beneficial owners in accordance with the USA PATRIOT Act or any other Anti-Money Laundering Laws applicable to such Finance Party and the customer due diligence requirements for financial institutions of the Financial Crimes Enforcement Network. The Borrower agrees that it will promptly provide each Finance Party with such information as it may request in order for such Finance Party, respectively, to satisfy the requirements of the USA PATRIOT Act or any other Anti-Money Laundering Laws applicable to such Finance Party.

#### **22.14 Counterparts.**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts (including email or facsimile), with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

#### **22.15 No Third-Party Beneficiaries.**

The agreement of the Lenders to make the Loans to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower and the Finance Parties, and no other Person (including any contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project Upgrades) shall have any rights under this Agreement or under any other Finance Document or with respect to any extension of credit contemplated by this Agreement.

## **22.16 Severability.**

Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated in this Agreement are fulfilled to the extent possible.

## **22.17 Survival.**

All covenants, agreements, representations and warranties made by the Borrower and/or the Parent Guarantor herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans. The provisions of Sections 7.3 (*Change in Circumstances*), 7.4 (*Payment of Out-of-Pocket Costs and Expenses*) and 7.5 (*Indemnities*) and Article 14 (*Administrative Parties*) and Article 20 (*Confidential Information*) shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Commitments or the termination of this Agreement or any provision hereof.

## **22.18 Reinstatement.**

The Obligations of the Borrower and the Parent Guarantor under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower or the Parent Guarantor in respect of the Obligations is rescinded or shall be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower and the Parent Guarantor each agree that it will indemnify each Finance Party on demand for all reasonable and documented out-of-pocket costs and expenses (including fees of counsel) Incurred by such Finance Party in connection with such rescission or restoration, including any such reasonable and documented out-of-pocket costs and expenses Incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

## **22.19 Amendment and Restatement.**

(a) On the Amendment and Restatement Effective Date, the Original Credit Agreement shall be amended and restated in its entirety by this Agreement, and the Original Credit Agreement shall thereafter be of no further force and effect, except that the Borrower, the Agents, and the Lenders agree that (i) the incurrence by the Borrower of “Obligations” under and as defined in the Original Credit Agreement (whether or not such “Obligations” are contingent as of the Amendment and Restatement Effective Date) shall continue to exist under and be evidenced by this Agreement and the other Finance Documents and (ii) except

as expressly stated herein or otherwise amended, the other Finance Documents are ratified and confirmed as remaining unmodified and in full force and effect with respect to all Obligations. This Agreement is not in any way intended to constitute a novation of the obligations and liabilities existing under the Original Credit Agreement or evidence payment of all or any portion of such obligations and liabilities.

(b) The terms and conditions of this Agreement and the Agents' and the Lenders' rights and remedies under this Agreement and the other Finance Documents shall apply to all of the Indebtedness incurred under the Original Credit Agreement.

(c) On and after the Amendment and Restatement Effective Date, (i) all references to the Original Credit Agreement (or to any amendment or any amendment and restatement thereof) in the Finance Documents (other than this Agreement) shall be deemed to refer to the Original Credit Agreement, as amended and restated hereby (as it may be further amended, modified or restated) and (ii) all references to any section (or subsection) of the Original Credit Agreement or in any Finance Document (but not herein) shall be amended to become, *mutatis mutandis*, references to the corresponding provisions of this Agreement.

(d) Except as expressly provided herein or in any other Finance Document, all terms and conditions of the Finance Documents remain in full force and effect unless specifically amended hereby or by any other Finance Document.

*[Signature pages follow]*

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first written above.

**EXPLORATORY VENTURES, LLC,**  
as Borrower

By: /s/ Arne Jahn  
Name: Arne Jahn  
Title: Treasurer

**UNITED STATES STEEL CORPORATION,**  
as Parent Guarantor

By: /s/ Arne Jahn  
Name: Arne Jahn  
Title: Vice President – Treasurer and Chief Risk  
Officer

**KFW IPEX-BANK GMBH,**  
as Facility Agent and ECA Agent

By: /s/ Peter Eysel  
Name: Peter Eysel  
Title: Director

By: /s/ Matthias Blömer  
Name: Matthias Blömer  
Title: Vice President

**KFW IPEX-BANK GMBH,**  
as Mandated Lead Arranger and ECA Structuring  
Bank

By: /s/ Peter Eysel  
Name: Peter Eysel  
Title: Director

By: /s/ Matthias Blömer  
Name: Matthias Blömer  
Title: Vice President

**KFW IPEX-BANK GMBH,**  
as Lender

By: /s/ Peter Eysel  
Name: Peter Eysel  
Title: Director

By: /s/ Matthias Blömer  
Name: Matthias Blömer  
Title: Vice President

**SCHEDULE 8.1(n)**  
**ENVIRONMENTAL MATTERS**

- *Penn Environment, Clean Air Council, ACHD v. United States Steel Corporation* – Clean Air Act Citizens Suit filed in the Western District of Pennsylvania, Federal Court, in April 2019 against the Edgar Thomson Plant, the Irvin Plant and the Clairton Plant for alleged air permit violations at each of the three plants.

**SCHEDULE A  
COMMITMENTS**

**Covered Loan Lender Commitment**

Initial Lender	Commitment (\$)	Address for Notices
KFW IPEX-BANK GMBH	Up to \$250,000,000 for the purpose of financing (a) 85% of the Eligible Project Costs, and (b) 100% of the OeKB Guarantee Premium	KFW IPEX-BANK GMBH Palmengartenstrasse 5-9 60325 Frankfurt am Main Germany Attention: Alena Alemasova Contract Management – Metals & Mining (X1a3) Email: Email: <a href="mailto:alena.alemasova@kfw.de">alena.alemasova@kfw.de</a> Telephone number: +49 69 7431 9117

**Commercial Loan Lender Commitment**

Initial Lender	Commitment (\$)	Address for Notices
KFW IPEX-BANK GMBH	Up to the Down Payment	KFW IPEX-BANK GMBH Palmengartenstrasse 5-9 60325 Frankfurt am Main Germany Attention: Alena Alemasova Contract Management – Metals & Mining (X1a3) Email: Email: <a href="mailto:alena.alemasova@kfw.de">alena.alemasova@kfw.de</a> Telephone number: +49 69 7431 9117

**SCHEDULE B**  
**FORM OF TRANSFER CERTIFICATE**

(Delivered pursuant to Section 13.1(c) (*Assignment by Lenders*) of  
the Credit Agreement)

Date of this Transfer Certificate: \_\_\_\_\_.

For Transfer Date: \_\_\_\_\_.

KfW IPEX-Bank GmbH  
Palmengartenstrasse 5-9  
60325 Frankfurt am Main  
Germany  
Attention: Alena Alemasova  
Contract Management – Metals & Mining (X1a3)  
Email: [alena.alemasova@kfw.de](mailto:alena.alemasova@kfw.de)  
Telephone number: +49 69 7431 9117

Exploratory Ventures, LLC, as Borrower  
600 Grant Street, 61st Floor  
Pittsburgh, Pennsylvania 15219  
Attention: Arne Jahn, Laurie Wiggins  
Email(s): Arne Jahn ([ASJahn@uss.com](mailto:ASJahn@uss.com)), Laurie Wiggins ([LAWiggins@uss.com](mailto:LAWiggins@uss.com))

Copy to:

600 Grant Street, Room 1874  
Pittsburgh, Pennsylvania 15219  
Attention: Scotland M Duncan (Scot)  
Email(s): [smduncan@uss.com](mailto:smduncan@uss.com)

Ladies and Gentlemen:

Exploratory Ventures, LLC– Credit Agreement

1. [Permitted Transferee] (the “**Transferee**”) delivers this Transfer Certificate to you pursuant to that certain Amended and Restated Credit Agreement, dated as of December 22, 2022 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “**Borrower**”), KfW IPEX-Bank GmbH (“**KfW IPEX-Bank**”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. Capitalized terms used but not defined herein shall have the respective meanings ascribed thereto in, or incorporated by reference in, the Credit Agreement.

2. The Lender confirms that the Lender’s participation set forth on Schedule I (“**Schedule**”) hereto is an accurate summary of its participation in the Commitments and requests the Transferee

to accept and procure the transfer to the Transferee of the Percentage Transferred (set forth in Schedule I) of the Lender's participation specified in the Schedule hereto by counter-signing and delivering this Transfer Certificate to the Facility Agent, ECA Agent and the Borrower at their respective addresses for the service of notices specified in the Credit Agreement or as otherwise notified by them pursuant to the terms thereof.

3. The Transferee hereby requests, subject to Section 13.1 of the Credit Agreement (*Assignment by Lenders*), the Facility Agent, ECA Agent and the Borrower to accept this Transfer Certificate as being delivered to the Facility Agent, ECA Agent and the Borrower pursuant to and for the purposes of Section 13.1 of the Credit Agreement (*Assignment by Lenders*) so as to take effect in accordance with the terms thereof on the Transfer Date stated above or on such later date as may be determined in accordance with the terms thereof.

4. The Transferee confirms that it has received a copy of each of the Finance Documents together with such other information as it has required in connection with this transaction and that it has not relied and will not hereafter rely on the Lender to check or inquire on its behalf into the legality, validity, effectiveness, adequacy, accuracy or completeness of any such information and further agrees that it has not relied and will not rely on the Lender to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of the Borrower or any other party to any of the Transaction Documents.

5. The Lender makes no representation or warranty and assumes no responsibility with respect to the legality, validity, effectiveness, adequacy, accuracy or enforceability of any of the Transaction Documents or any document relating thereto and assumes no responsibility for the financial condition of any party thereto or for the performance and observance by such party of any of its obligations under any of the Transaction Documents or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

6. The Lender hereby gives notice that nothing herein or in the Finance Documents (or any document relating thereto) shall oblige it to (i) accept a re-transfer from the Transferee of the whole or any part of its rights, benefits and/or obligations under the Credit Agreement transferred pursuant hereto or (ii) support any losses directly or indirectly sustained or incurred by the Transferee for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to any of the Transaction Documents (or any document relating thereto) of its obligations under any such document. The Transferee hereby acknowledges the absence of any such obligation as is referred to in clause (i) or (ii) above.

7. This Transfer Certificate shall be governed by the law of the State of New York of the United States of America and shall for all purposes be governed by and construed in accordance with the law of such state; *provided, however*, that to the extent any terms of this Transfer Certificate are incorporated in and made part of any other Finance Documents, any such term so incorporated shall for all purposes of such Finance Documents be governed by and construed in accordance with the law governing the Finance Documents into which such term is so incorporated.

[8. This Transfer Certificate becomes effective upon acceptance by the Borrower.]<sup>1</sup>

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<sup>1</sup> Include if the Borrower's consent is required pursuant to Section 13.1 of the Credit Agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Certificate as of the respective dates set forth below.

KfW IPEX-Bank GmbH,  
as Facility Agent and ECA Agent

By \_\_\_\_\_  
Name:  
Title:  
Date:

*[Existing Lender]*

By \_\_\_\_\_  
Name:  
Title:  
Date:

[Accepted and Agreed:

Exploratory Ventures, LLC,  
as the Borrower

By \_\_\_\_\_  
Name:  
Title:  
Date:]<sup>2</sup>

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<sup>2</sup> Include if the Borrower's consent is required pursuant to Section 13.1 of the Credit Agreement.

**SCHEDULE C-1  
COVERED LOAN UTILIZATION REQUESTS**

**PART I  
FORM OF COVERED LOAN UTILIZATION REQUEST  
– DISBURSEMENT NO. [•] –**

From: [Primetals], as Exporter

To: KfW IPEX-Bank GmbH, as Facility Agent and ECA Agent

Cc: Exploratory Ventures, LLC, as Borrower

Dated:

Ladies and Gentlemen:

1. We refer to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. This is a Covered Loan Utilization Request for a disbursement to the Exporter under the terms to the Credit Agreement and relates to “payment step” no [•] as described under Schedule G (“*Payment Steps*”) of the Credit Agreement. All capitalized terms used, but not otherwise defined, herein have the meanings ascribed to such terms in the Credit Agreement.
2. In connection with the Project Equipment Supply Agreement, an Eligible Project Cost Loan shall be borrowed on the following terms:

Proposed Utilization Date: [•] which is a Business Day within the  
Covered Loan Commitment Period

Amount: \$[\_\_\_\_\_]³

We confirm that the Amount is due and payable, [and latest due date is as per attached Exporter’s Certificate(s) – Disbursement].

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<sup>3</sup> Note to Draft: Pursuant to Section 3.3(b), the amount of each proposed Loan shall be a minimum of \$1,000,000, except for one Utilization from the Borrower and one Utilization from the Exporter for an amount less than \$1,000,000 in any calendar month.

3. We refer to the attached Exporter's Certificate and Supporting Documentation and certify that the information specified therein is true and accurate and has not been amended or superseded as of the date of this Covered Loan Utilization Request.
4. This Eligible Project Cost Loan is to be made in respect of amounts due and payable under the Project Equipment Supply Agreement for [Eligible Goods and Services]/[Eligible Local Costs] in connection with invoice no [•] which is attached as part of the Supporting Documentation hereto.
5. The proceeds of this Eligible Project Cost Loan should be credited to the Exporter's account with the following details:

Account Number:

Account Holder:

Bank name:

ABA:

Reference:

6. We confirm that all documents supplied by us with respect to this Covered Loan Utilization Request are true copies and you may rely on the accuracy and completeness of all information and documents provided regarding this Covered Loan Utilization Request.
7. This Covered Loan Utilization Request is irrevocable.
8. THIS COVERED LOAN UTILIZATION REQUEST, THE RELATIONSHIP BETWEEN THE FINANCE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS COVERED LOAN UTILIZATION REQUEST OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Yours faithfully

.....  
 (Primetals Technologies Austria GmbH)

.....  
 (Primetals Technologies USA LLC)

In each case an Authorized Signatory for and on behalf of the Exporter  
**[Primetals]**

**PART II**  
**FORM OF COVERED LOAN UTILIZATION REQUEST**  
**– REIMBURSEMENT NO. [ • ] –**

From: Exploratory Ventures, LLC, as Borrower

To: KfW IPEX-Bank, as Facility Agent and ECA Agent

Dated:

Ladies and Gentlemen:

1. We refer to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. This is a Covered Loan Utilization Request for a reimbursement to the Borrower under the terms to the Credit Agreement. All capitalized terms used, but not otherwise defined herein, have the meanings ascribed to such terms in the Credit Agreement.
2. We wish to borrow an Eligible Project Cost Loan on the following terms:

Proposed Utilization Date: [•] which is a Business Day  
within the Covered Loan Commitment  
Period

Amount: \$[\_\_\_\_]⁴
3. We refer to the attached Exporter’s Certificate and Supporting Documentation and certify that, to our knowledge, the information specified therein is true and accurate and has not been amended or superseded at the date of this Covered Loan Utilization Request.
4. This Covered Loan Utilization Request is to be made for the purposes of reimbursing amounts paid under the Project Equipment Supply Agreement in relation to [Eligible Goods and Services]/[Eligible Local Costs] by the Borrower.
5. The proceeds of this Eligible Project Cost Loan should be credited to the Borrower account detailed under Section 16.2(a) (*Distributions by the Agents*) of the Credit Agreement.
6. We confirm each of the following:
  - (a) the proceeds of the proposed Utilization will be used only for the purpose set forth in Section 2.3(a) (*Purpose and Use of Proceeds*) of the Credit Agreement;

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⁴ Note to Draft: Pursuant to Section 3.3(b), the amount of each proposed Loan shall be a minimum of \$1,000,000, except for one Utilization from the Borrower and one Utilization from the Exporter for an amount less than \$1,000,000 in any calendar month.

- (b) the currency and amount of the proposed Utilization comply with Section 3.3 (*Currency and Amount*) of the Credit Agreement;
  - (c) the Interest Period of the proposed Utilization complies with Article 5 (*Interest, Interest Period, and Fees*) of the Credit Agreement;
  - (d) each of the conditions specified in Section 3.1 (*Delivery of a Utilization Request*), Section 3.2 (*Completion of a Utilization Request*) and Section 11.2 (*Additional Conditions Precedent to Covered Loans*) of the Credit Agreement are satisfied on the date of this Covered Loan Utilization Request and shall be satisfied immediately after the Covered Loan is made on the Utilization Date or, if not so satisfied on either date, has in each case been waived by the Facility Agent in accordance with the Credit Agreement;
  - (e) the representations and warranties of the Borrower set forth in Article 8 (*Representations and Warranties*) of the Credit Agreement are true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such date (after giving effect to the Utilization requested hereunder); provided, that, to the extent that such representations or warranties specifically refer to an earlier date, they shall be true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such earlier date;
  - (f) no Default or Event of Default has occurred and is continuing or would result after giving effect to the Utilization requested hereunder;
  - (g) since [December 31, 2021], no event, circumstance or condition has occurred and is continuing that has had or would reasonably be expected to have a Material Adverse Effect; and
  - (h) we have no actual knowledge that any ECA Mandatory Prepayment Event has occurred and is continuing.
7. This Covered Loan Utilization Request is irrevocable.
  8. THIS COVERED LOAN UTILIZATION REQUEST, THE RELATIONSHIP BETWEEN THE FINANCE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS COVERED LOAN UTILIZATION REQUEST OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
  9. The undersigned is an Authorized Officer of the Borrower.
  10. The above certifications are effective as of the date of this Covered Loan Utilization Request and shall continue to be effective as of the date of the Utilization being requested. If any of these certifications is no longer valid as of or prior to the date of the requested Utilization, we undertake to immediately notify the Facility Agent.

Yours faithfully

.....

Borrower Authorized Signatory for and on behalf of the Borrower  
Exploratory Ventures, LLC

**PART III**  
**FORM OF COVERED LOAN UTILIZATION REQUEST**  
**– PREMIUM LOAN –**

From: Exploratory Ventures, LLC, as Borrower  
To: KfW IPEX-Bank, as Facility Agent and ECA Agent  
Dated:

Ladies and Gentlemen:

1. We refer to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. This is a Covered Loan Utilization Request for a Premium Loan under the terms to the Credit Agreement. All capitalized terms used, but not otherwise defined herein, have the meanings ascribed to such terms in the Credit Agreement.
2. We wish to borrow a Premium Loan on the following terms:

Proposed Utilization Date: [•] which is a Business Day  
within the Covered Loan Commitment  
Period

Amount: \$[\_\_\_\_]⁵
3. The proceeds of this Premium Loan should be disbursed directly to the OeKB Guarantor.
4. We confirm each of the following:
  - (a) the proceeds of the proposed Utilization are required for the purpose set out in Section 2.3(a) (*Purpose and Use of Proceeds*) of the Credit Agreement;
  - (b) the currency and amount of the proposed Utilization comply with Section 3.3 (*Currency and Amount*) of the Credit Agreement;
  - (c) the Interest Period of the proposed Utilization complies with Article 5 (*Interest, Interest Period, and Fees*) of the Credit Agreement;
  - (d) each of the conditions specified in Section 3.1 (*Delivery of a Utilization Request*), Section 3.2 (*Completion of a Utilization Request*) and Section 11.2 (*Additional Conditions Precedent to Covered Loans*) of the Credit Agreement are satisfied on the date of this Covered Loan Utilization Request and shall be satisfied immediately after the Covered

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<sup>5</sup> Note to Draft: Pursuant to Section 3.3(b), the amount of each proposed Loan shall be a minimum of \$1,000,000, except for one Utilization from the Borrower and one Utilization from the Exporter for an amount less than \$1,000,000 in any calendar month.

Loan is made on the Utilization Date or, if not so satisfied on either date, has in each case been waived by the Facility Agent in accordance with the Credit Agreement;

- (e) the representations and warranties of the Borrower set forth in Article 8 (Representations and Warranties) of the Credit Agreement are true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such date (after giving effect to the Utilization requested hereunder); provided, that, to the extent that such representations or warranties specifically refer to an earlier date, they shall be true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such earlier date;
  - (f) no Default or Event of Default has occurred and is continuing or would result after giving effect to the Utilization requested hereunder;
  - (g) since September 30, 2019, no event, circumstance or condition has occurred and is continuing that has had or would reasonably be expected to have a Material Adverse Effect; and
  - (h) we have no actual knowledge that any ECA Mandatory Prepayment Event has occurred and is continuing.
5. This Covered Loan Utilization Request is irrevocable.
6. THIS COVERED LOAN UTILIZATION REQUEST, THE RELATIONSHIP BETWEEN THE FINANCE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS COVERED LOAN UTILIZATION REQUEST OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.
7. The undersigned is an Authorized Officer of the Borrower.
8. The above certifications are effective as of the date of this Covered Loan Utilization Request and shall continue to be effective as of the date of the Utilization being requested. If any of these certifications is no longer valid as of or prior to the date of the requested Utilization, we undertake to immediately notify the Facility Agent.

Yours faithfully

.....

Authorized Signatory for and on behalf of the Borrower  
**Exploratory Ventures, LLC**



*Request*) and Section 11.3 of the Credit Agreement (*Additional Conditions Precedent to Commercial Loans*) are satisfied on the date of this Commercial Loan Utilization Request and shall be satisfied immediately after the Commercial Loan is made on the Utilization Date or, if not so satisfied on either date, has in each case been waived by the Facility Agent in accordance with the Credit Agreement;

(e) the representations and warranties of the Borrower set forth in Article 8 of the Credit Agreement (*Representations and Warranties*) are true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such date (after giving effect to the Utilization requested hereunder); *provided*, that, to the extent that such representations or warranties specifically refer to an earlier date, they shall be true and correct in all material respects (or, if qualified by “materiality,” “Material Adverse Effect” or similar language, in all respects after giving effect to such qualification) as of such earlier date;

(f) no Default or Event of Default has occurred and is continuing or would result after giving effect to the Utilization requested hereunder; and

(g) since September 30, 2019, no event, circumstance or condition has occurred and is continuing that has had or would reasonably be expected to have a Material Adverse Effect.

5. This Commercial Loan Utilization Request is irrevocable.

6. THIS COMMERCIAL LOAN UTILIZATION REQUEST, THE RELATIONSHIP BETWEEN THE FINANCE PARTIES HERETO AND ANY CLAIM OR DISPUTE (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) RELATING TO THIS COMMERCIAL LOAN UTILIZATION REQUEST OR SUCH OTHER FINANCE DOCUMENT OR SUCH RELATIONSHIP SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

7. The undersigned is a Person duly authorized to execute this Utilization Request on behalf of the Borrower as evidenced by the Officer’s Certificate attached hereto.

8. The proceeds of this Commercial Loan should be disbursed to the following account.

Beneficiary Name:  
Beneficiary Address:  
Bank Name:  
Bank Address:  
Account Number:  
Swift Code:

9. The above certifications are effective as of the date of this Commercial Loan Utilization Request and shall continue to be effective as of the date of the Utilization being requested. If any of these certifications is no longer valid as of or prior to the date of the requested Utilization, we undertake to immediately notify the Facility Agent.

Yours faithfully

.....

Authorized Signatory for and on behalf of the Borrower

**SCHEDULE D**  
**FORMS OF EXPORTER’S CERTIFICATE**

**Part I: Form of Exporter’s Certificate - Disbursement**

From: [Primetals], as Exporter  
To: KfW IPEX-Bank GmbH, as Facility Agent and ECA Agent  
Copy to: Exploratory Ventures, LLC, as Borrower  
Dated:

Dear Sirs

1. We refer to the Amended and Restated Credit Agreement dated as of December 22 , 2022 (the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. All capitalized terms used, but not otherwise defined herein, have the meanings ascribed to such terms in the Credit Agreement. This is the Exporter’s Certificate issued in respect of Covered Loan Utilization Request – Disbursement No. [•].

2. We confirm that:

(a) the copy/ies of the commercial invoice(s) attached to the Request [was/were] issued by us in respect of the following goods and services:

Item	Description	Amount	Signature	Date of Certificate [Latest Due Date]
------	-------------	--------	-----------	---------------------------------------

The total amount due equals to USD [•] (the “Utilization Amount”).

(b) The Utilization Amount remains due and payable but unpaid to us. The Utilization Amount should be paid to the Exporter’s account as described under the Covered Loan Utilization Request – Disbursement No. [•].

(c) We attach the following Supporting Documentation: [\_\_].

3. We confirm that:

(a) the Utilization Amount does not include any sums which have been the subject of any other Exporter’s Certificate;

(b) the Project Equipment Supply Agreement is in full force and effect;

(c) all relevant authorizations necessary for the export and import of the goods and services described above have been obtained and are in full force and effect;

- (d) we have received the Down Payment from the Borrower which amount to in aggregate at least USD [•];
- (e) the Eligible Goods and Services have been supplied in accordance with the Project Equipment Supply Agreement and are consistent with the description given by us in our application to the OeKB Guarantor in relation to the Project Equipment Supply Agreement and the OeKB Guarantee; and
- (f) we are not aware of any notification of the OeKB Guarantor requesting that further advances/deliveries/services be suspended or terminated under the Credit Agreement and/or the Project Equipment Supply Agreement (unless such notice has been withdrawn by the OeKB Guarantor).

4. THIS CERTIFICATE, AND ANY NON-CONTRACTUAL OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH IT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Yours faithfully

.....  
(Primetals Technologies Austria GmbH)

.....  
(Primetals Technologies USA LLC)

In each case an Authorized Signatory for and on behalf of the Exporter  
**[Primetals]**

## Part II: Form of Exporter's Certificate - Reimbursement

From: [Primetals], as Exporter

To: KfW IPEX-Bank GmbH, as Facility Agent and ECA Agent

Copy to: Exploratory Ventures, LLC, as Borrower

Dated:

Dear Sirs

1. We refer to the Amended and Restated Credit Agreement dated as of December 22, 2022 (the "Credit Agreement") by and among, inter alia, Exploratory Ventures, LLC as Borrower (the "Borrower"), KfW IPEX-Bank GmbH ("KfW IPEX-Bank") as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time. All capitalized terms used, but not otherwise defined herein, have the meanings ascribed to such terms in the Credit Agreement. This is the Exporter's Certificate issued in respect of Covered Loan Utilization Request – Reimbursement No. [•].
2. We represent and warrant that:
  - (a) we have received payments in an aggregate amount of USD [•] paid between [date] and [date] from the Borrower in accordance with the Project Equipment Supply Agreement and which relate to "payment step" no [•] as described under Schedule G ("*Payment Steps*") of the Credit Agreement (the "Relevant Payment(s)") in relation to Eligible Project Costs under the Project Equipment Supply Agreement as evidenced by the attached true copy of an account statement of the Exporter;
  - (b) we have received the Down Payment from the Borrower for Eligible Project Costs under the Project Equipment Supply Agreement which amount to in aggregate at least USD [•] as evidenced by the attached true copy/ies of [an] account statement(s) of the Exporter;
  - (c) the Relevant Payment(s) do not include any payment in respect of which we have already provided an Exporter's Certificate or in respect of which we have provided a Covered Loan Utilization Request;
  - (d) the Eligible Project Costs have been supplied in accordance with the Project Equipment Supply Agreement and are consistent with the description given by us in our application to the OeKB Guarantor in relation to the Project Equipment Supply Agreement and the OeKB Guarantee;
  - (e) the Project Equipment Supply Agreement is in full force and effect;
  - (f) all authorizations (including any consents, licences, export licences, permits, clearances any other relevant authorizations) required in respect of the Eligible Project

Costs to be supplied and/or rendered in accordance with the Project Equipment Supply Agreement have been obtained and remain in full force and effect; and

- (g) we are not aware of any notification of the OeKB Guarantor requesting that further advances/deliveries/services be suspended or terminated under the Credit Agreement and/or the Project Equipment Supply Agreement (unless such notice has been withdrawn by the OeKB Guarantor).
- 3. We confirm that all documents supplied by us with respect to the relevant Covered Loan Utilization Request are true copies and you may rely on the accuracy and completeness of all information and documents provided regarding this Covered Loan Utilization Request.
- 4. THIS CERTIFICATE, AND ANY NON-CONTRACTUAL OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH IT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

Yours faithfully

.....  
(Primetals Technologies USA LLC)

.....  
(Primetals Technologies Austria GmbH)

In each case an Authorized Signatory for and on behalf of the Exporter  
**[Primetals]**

**Part III: Form of Completion Certificate concerning the Project Equipment Supply Agreement (this “Completion Certificate”)**

From: Exploratory Ventures, LLC, as Borrower

Primetals, as Exporter

To: KfW IPEX-Bank, as Facility Agent and ECA Agent

Dated:

Dear Sirs

We refer to the:

1. Amended and Restated Credit Agreement dated as of December 22 , 2022 (the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time
2. Project Equipment Supply Agreement (as defined in the Credit Agreement)
3. Commercial Invoice No. [●] dated [●] and issued by [Primetals Technologies Austria GmbH][Primetals Technologies USA LLC] in relation to the Covered Loan Utilization Request with disbursement no. [●] (hereafter “Exporter’s Invoice”)
4. Supporting Documentation

We certify that, subject to all terms, rights, conditions and obligations of the Parties under the Project Equipment Supply Agreement, all work related to the Project Equipment Supply Agreement as described under the corresponding Exporter’s Invoice has been [completed]/[delivered] by the Exporter and approved by the Borrower under and pursuant to the Project Equipment Supply Agreement.

5. The undersigned is an Authorized Officer of the Borrower.
6. The Borrower hereby also confirms that on the date of this Completion Certificate, Section 11.2(a) of the Agreement remains correct in all respects.

Terms defined in the Agreement shall have the same meaning in this Completion Certificate unless given a different meaning in this Completion Certificate.

Yours faithfully

For Exploratory Ventures, LLC

For Primetals Technologies USA LLC

.....

.....

**Authorized Signatory**

**Authorized Signatory**

**SCHEDULE E**  
**APPLICABLE MARGIN**

Covered Loan: 0.95% *per annum*

Commercial Loan: 3.80% *per annum*

**SCHEDULE F  
COMPLIANCE CERTIFICATE**

To: KfW IPEX-Bank GmbH  
Palmengartenstrasse 5-9  
60325 Frankfurt am Main  
Germany  
Attention: Alena Alemasova  
Contract Management – Metals & Mining (X1a3)  
Email: [alena.alemasova@kfw.de](mailto:alena.alemasova@kfw.de)  
Telephone number: +49 69 7431 9117

From: Exploratory Ventures, LLC  
600 Grant Street, 61st Floor  
Pittsburgh, Pennsylvania 15219  
Attention: Arne Jahn, Laurie Wiggins  
Email(s): Arnie Jahn ([ASJahn@uss.com](mailto:ASJahn@uss.com)), Laurie Wiggins ([LAWiggins@uss.com](mailto:LAWiggins@uss.com))

Copy to:

600 Grant Street, Room 1874  
Pittsburgh, Pennsylvania 15219  
Attention: Scotland M Duncan (Scot)  
Email(s): [smduncan@uss.com](mailto:smduncan@uss.com)

Date: [ ]<sup>8</sup>

Re: Amended and Restated Credit Agreement, dated as of December 22, 2022, by and among, inter alia, Exploratory Ventures, LLC (the “**Borrower**”), KfW IPEX-Bank GmbH (“**KfW IPEX-Bank**”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”).

The undersigned hereby certifies as of the date hereof that [he/she] is an Authorized Officer of the Borrower as evidenced by an up-to-date Officer’s Certificate, and that, as such, [he/she] is authorized by to execute and deliver this Compliance Certificate to the Facility Agent on the behalf of the Borrower, and hereby further certifies without personal liability on behalf of the Borrower, as follows:

1. This Compliance Certificate is furnished pursuant to Section 10.3 of the Credit Agreement (*Compliance Certificate; Notice of Default*). Unless otherwise defined in this Compliance Certificate, terms defined in the Credit Agreement are used in this Compliance Certificate with the same meanings given to them in the Credit Agreement, and the rules of construction of the Credit Agreement apply to this Compliance Certificate.

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<sup>8</sup> To be delivered within 120 days after the end of Fiscal Year, in each case, until the Final Maturity Date.

2. The undersigned has read and is familiar with the Credit Agreement including, in particular, the definitions of the various financial terms used in the Credit Agreement, the covenants and Events of Default contained in the Credit Agreement.

3. The undersigned has made, or has caused to be made under his/her supervision, such examinations or investigations as are, in the undersigned's opinion, necessary to furnish this Compliance Certificate, and the undersigned has furnished this Compliance Certificate with the intent that it may be relied upon by the Lenders as a basis for determining compliance by the Borrower with the covenants and obligations under the Credit Agreement as of the date of this Compliance Certificate.

4. This Compliance Certificate is delivered for the Fiscal Year ended [ ] and attached hereto as Schedule I are the Borrower's audited annual consolidated financial statements for such Fiscal Year.

5. No Default or Event of Default has occurred and is continuing on the date of this Compliance Certificate.

*[Signature page follows]*

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of \_\_\_\_\_ ,

**EXPLORATORY VENTURES, LLC** as  
Borrower

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE G  
PAYMENT STEPS**

[Omitted.]

**EXHIBIT A-1**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Not  
Partnerships For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

DATE: \_\_\_\_\_, 20\_

Reference is hereby made to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time.

Pursuant to the provisions of Article 6 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Facility Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Facility Agent, and (ii) the undersigned shall have at all times furnished the Borrower and the Facility Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A-2**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Not Partnerships  
For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

DATE: \_\_\_\_\_, 20\_

Reference is hereby made to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time.

Pursuant to the provisions of Article 6 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A-3**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Participants That Are Partnerships  
For U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

DATE: \_\_\_\_\_, 20\_\_

Reference is hereby made to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time.

Pursuant to the provisions of Article 6 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation, (c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code,

(d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (B) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A-4**

**FORM OF  
U.S. TAX COMPLIANCE CERTIFICATE  
(For Foreign Lender Parties That Are Partnerships For  
U.S. Federal Income Tax Purposes)**

U.S. TAX COMPLIANCE CERTIFICATE

DATE: \_\_\_\_\_, 20\_

Reference is hereby made to the Amended and Restated Credit Agreement dated as of December 22, 2022 (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”) by and among, inter alia, Exploratory Ventures, LLC as Borrower (the “Borrower”), KfW IPEX-Bank GmbH (“KfW IPEX-Bank”) as Mandated Lead Arranger and ECA Structuring Bank, KfW IPEX-Bank as Facility Agent and ECA Agent, and the Lenders party thereto from time to time.

Pursuant to the provisions of Article 6 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan (s)) in respect of which it is providing this certificate, (b) its direct or indirect partners or members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Finance Document, neither the undersigned nor any of its direct or indirect partners or members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners or members is a ten-percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (e) none of its direct or indirect partners or members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Facility Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners or members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W- 8BEN-E or

(ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W- 8BEN-E from each of such partner’s or member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (A) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Facility Agent, and (B) the undersigned shall have at all times furnished the Borrower and the Facility Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments. For the avoidance of doubt, any reference herein to any IRS Form shall be deemed to include any applicable successor form.

In witness whereof, the undersigned has duly executed and delivered this U.S. Tax Compliance Certificate as of the date first above written.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

CHIEF EXECUTIVE OFFICER CERTIFICATION

I, David B. Burritt, certify that:

1. I have reviewed this quarterly report on Form 10-Q of United States Steel Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

October 27, 2023

/s/ David B. Burritt

David B. Burritt

President and Chief Executive Officer

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Jessica T. Graziano, certify that:

1. I have reviewed this quarterly report on Form 10-Q of United States Steel Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

October 27, 2023

/s/ Jessica T. Graziano

Jessica T. Graziano

Senior Vice President and Chief Financial Officer

CHIEF EXECUTIVE OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350

I, David B. Burritt, President and Chief Executive Officer of United States Steel Corporation, certify that:

- (1) The Quarterly Report on Form 10-Q of United States Steel Corporation for the period ending September 30, 2023, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the foregoing report fairly presents, in all material respects, the financial condition and results of operations of United States Steel Corporation.

/s/ David B. Burritt

David B. Burritt

President and Chief Executive Officer

October 27, 2023

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to United States Steel Corporation and will be retained by United States Steel Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

CHIEF FINANCIAL OFFICER  
CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350

I, Jessica T. Graziano, Senior Vice President and Chief Financial Officer of United States Steel Corporation, certify that:

- (1) The Quarterly Report on Form 10-Q of United States Steel Corporation for the period ending September 30, 2023, fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the foregoing report fairly presents, in all material respects, the financial condition and results of operations of United States Steel Corporation.

/s/ Jessica T. Graziano

Jessica T. Graziano  
Senior Vice President and Chief Financial Officer

October 27, 2023

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to United States Steel Corporation and will be retained by United States Steel Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

**United States Steel Corporation**  
**Mine Safety Disclosure**  
**(Unaudited)**

For the quarter ended September 30, 2023 follows:

Mine (Federal Mine Safety and Health Administration (MSHA) ID)	Total # of Significant & Substantial violations under §104(a) <sup>(a)</sup>	Total # of orders under §104(b) <sup>(a)</sup>	Total # of unwarrantable failure citations and orders under §104(d) <sup>(a)</sup>	Total # of violations under §110(b)(2) <sup>(a)</sup>	Total # of orders under §107(a) <sup>(a)</sup>	Total dollar value of proposed assessments from MSHA	Total # of mining related fatalities	Received Notice of Pattern of Violations under §104(e) <sup>(a)</sup> (yes/no)?	Received Notice of Potential to have Pattern under §104(e) <sup>(a)</sup> (yes/no)?	Total # of Legal Actions Pending with the Mine Safety and Health Review Commission as of Last Day of Period <sup>(b)</sup>	Legal Actions Initiated During Period	Legal Actions Resolved During Period
Mt. Iron (2100820, 2100282)	—	—	—	—	—	\$332,041	—	no	no	91	109	62
Keewatin (2103352)	—	—	—	—	—	\$—	—	no	no	—	5	8

<sup>(a)</sup> References to Section numbers are to sections of the Federal Mine Safety and Health Act of 1977.

<sup>(b)</sup> Includes all legal actions pending before the Federal Mine Safety and Health Review Commission, together with the Administrative Law Judges thereof, for each of our iron ore operations. These actions may have been initiated in prior quarters. All but one of the legal actions were initiated by us to contest citations, orders or proposed assessments issued by the Federal Mine Safety and Health administrations. One legal action was initiated by an employee under Section 105(c) of the Mine Act. As of the last day of the period, all 91 legal actions were to contest citations and proposed assessments.