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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 01, 2023

5E ADVANCED MATERIALS, INC.

(Exact name of Registrant as Specified in Its Charter)

Delaware	**001-41279**	**87-3426517**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(IRS Employer Identification No.)**

9329 Mariposa Road, Suite 210 **Hesperia, California** **(Address of Principal Executive Offices)**	**92344** **(Zip Code)**

Registrant's Telephone Number, Including Area Code: (442) 221-0225

(Former Name or Former Address, if Changed Since Last Report)

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

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☒ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common Stock	FEAM	The Nasdaq Global Select Market

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

Emerging growth company ☒

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

Item 1.01 Entry into a Material Definitive Agreement.

On December 1, 2023, 5E Advanced Materials, Inc. (the "Company or "5E") extended the effectiveness of the previously announced standstill agreement (the "Standstill Agreement"), by and among the Company, BEP Special Situations IV LLC ("Bluescape"), Alter Domus (US) LLC ("Collateral Agent"), Ascend Global Investment Fund SPC for and on behalf of Strategic SP ("Ascend"), and Mayfair Ventures Pte Ltd from December 1, 2023 to December 5, 2023 at 5:00 pm Pacific Standard Time (the "Standstill Extension").

On December 5, 2023, the Company entered into a Restructuring Support Agreement (the "Restructuring Support Agreement") with Bluescape, Collateral Agent, and Ascend in connection with certain restructuring and recapitalization transactions with respect to the Company's capital structure (collectively the "Transaction"), including its senior secured convertible notes (the "Convertible Notes") issued pursuant to that certain Note Purchase Agreement (the "Note Purchase Agreement"), dated August 11, 2022, by and among the Company, Bluescape and Collateral Agent.

Pursuant to the Restructuring Support Agreement, the parties agreed to implement the Transaction either as an:

- **Out-of-Court Restructuring**: A recapitalization through, among other things: (i) a placement of up to $35 million at a price of $1.025 per share (the "Placement") of the Company's common stock to Ascend and certain other investors (the "Investor Group") and Bluescape if it exercises its options to participate in the Placement, (ii) an amendment to the conversion price applicable to the Convertible Notes, (iii) an amendment to the minimum cash covenant to reduce the minimum cash required to $7.5 million under the terms of the Note Purchase Agreement, (iv) a deletion of the issuer conversion feature under the terms of the Note Purchase Agreement, (v) an extension of the maturity of the Convertible Notes by one year to August 15, 2028, (vi) an increase in the paid-in-kind interest from 6% to 10%, (vii) the designation of a member of the Company's Board of Directors (the "Board") by each of Ascend and Bluescape, and (ix) the acquisition of 50% of the outstanding Convertible Notes by the Investor Group from Bluescape (clauses (i) through (ix), together, the "Out-of-Court Restructuring"), in each case subject to certain conditions, including that the Company's stockholders approve the Out-of-Court Restructuring at a special meeting of stockholders; or
- **In-Court Restructuring**: To the extent that the terms of or the conditions precedent to the Out-of-Court Restructuring cannot be timely satisfied or waived, the Company shall file voluntary pre-packaged cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in a United States Bankruptcy Court pursuant to a pre-packaged plan of reorganization (the "Pre-Packaged Chapter 11 Plan") pursuant to which, among other things, all existing equity interests of the Company shall be extinguished, with Bluescape and the Investor Group each owning 50% of any equity interests in the Company upon the effective date of the Pre-Packaged Chapter 11 Plan.

Capitalized terms not otherwise defined herein shall have the meanings given to them in the Restructuring Support Agreement. The foregoing summary of the Restructuring Support Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Restructuring Support Agreement a copy of which is filed with this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

Additionally, in connection with the anticipated Placement, on December 5, 2023, the Company entered into (i) a subscription agreement (the "Ascend Subscription Agreement") with Ascend and (ii) a subscription agreement (the "5ECAP Subscription Agreement") with 5ECAP, LLC ("5ECAP") pursuant to which Ascend and 5ECAP shall subscribe for and purchase shares of the Company's common stock upon the consummation of the Out-of-Court Restructuring contemplated by the Restructuring Support Agreement. The foregoing summary is qualified in its entirety by reference to the Ascend Subscription Agreement and 5ECAP Subscription Agreement, attached hereto as Exhibits 10.2 and 10.3, respectively, and incorporated by reference herein.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure of the Placement contained in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference. The securities offered pursuant to the Placement will be issued in a private placement exempt from registration pursuant to Section 4(a)(2) of the Securities Act of 1933. This summary is qualified in its entirety by reference to the full text of the Restructuring Support Agreement, the Ascend Subscription Agreement, and the 5ECAP Subscription Agreement, attached hereto as Exhibits 10.1, 10.2, and 10.3, respectively, and incorporated by reference herein.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On December 5, 2023, the Board, in connection with entry into the Transaction and at the request of Ascend, announced the appointment of Stefan Selig as a director of the Board, effective on December 5, 2023 pursuant to an offer letter (the "Selig Offer Letter") attached hereto as Exhibit 10.4. The Board has not appointed Mr. Selig to any committees of the Board at this time. Mr. Selig will initially be compensated as follows: $35,000 per month, payable in advance, for a term of six months. Mr. Selig does not have any family relationship with any other director or executive officer of the Company, and there are no transactions or proposed transactions to which the Company is a party, or intends to be a party, in which Mr. Selig has, or will have, a material interest subject to disclosure under Item 404(a) of Regulation S-K. There are no arrangements or understandings with any other person pursuant to which Mr. Selig was appointed

as a director, except as described above. Concurrent with his appointment, Mr. Selig has tendered his resignation as a member of the Board effective June 5, 2024.

Mr. Selig, age 60, is an accomplished banker and senior executive who has served in prominent leadership roles in both the private and public sectors. Throughout his career, Mr. Selig has earned a reputation as a trusted counselor known for his strategic and financial expertise and judgment. In 2017, Mr. Selig founded BridgePark Advisors LLC to provide personalized advice to a select group of CEOs, board of directors, and institutional and high net worth investors on business strategy, mergers and acquisitions, financing, corporate governance, activism, and litigation. Previously, Mr. Selig served as President Obama's Under Secretary of Commerce for International Trade at the U.S. Department of Commerce from 2014 to 2016. Before joining the Obama Administration, Mr. Selig was the Executive Vice Chairman of Global Corporate & Investment Banking at Bank of America Merrill Lynch. During his 15 years at the bank, he was also Vice Chairman of Global Investment Banking; Global Head of Mergers & Acquisitions with responsibility for Global Technology, Media and Telecommunications and Global Financial Sponsors Groups; Chairman of the Fairness Opinion Review Committee; and a Member of Risk and Reputation and New York Market Committees. Prior to Bank of America, Mr. Selig held various senior investment banking positions on Wall Street. Mr. Selig earned a Bachelor of Arts degree in Economics from Wesleyan University and a Masters of Business Administration from Harvard University.

The foregoing summary is qualified in its entirety by reference to the Selig Offer Letter attached hereto as Exhibit 10.4 and is incorporated by reference herein.

In connection with the Transaction, the Company entered into an installment based cash-retention program, which include (i) a Retention Agreement for the Company's Chief Executive Officer Susan Brennan (the "Brennan Retention Agreement"), and (ii) a Retention Agreement for the Company's Chief Financial Officer Paul Weibel (the "Weibel Retention Agreement," and together with the Brennan Retention Agreement, the "Retention Agreements"), pursuant to which each of Ms. Brennan and Mr. Weibel is eligible to receive up to $412,500 and $287,500, respectively, in a successful Out-of-Court Restructuring, and eligible to receive up to $381,300 and $268,800, respectively, in the event of a Chapter 11 case (collectively, the "Bonuses"). The Bonuses will enable the Company to retain and motivate Ms. Brennan and Mr. Weibel through the consummation of the Transaction.

Under the terms of the Retention Agreements, each of Ms. Brennan and Mr. Weibel will be required to repay the Bonuses to the Company in the event that they resign from their respective positions prior to December 31, 2024 or their employment is terminated other than due to involuntary termination by the Company without cause (as such term is defined in the Retention Agreements). The foregoing summary is qualified in its entirety by reference to the Brennan Retention Agreement and the Weibel Retention Agreement, each of which is attached hereto as Exhibit 10.5 and Exhibit 10.6, respectively, and which are incorporated herein by reference.

Item 7.01 Regulation FD Disclosure.

On December 3, 2023, the Company issued a press release announcing the Standstill Extension (the "Standstill Extension Press Release"). A copy of the Standstill Extensions Press Release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

On December 6, 2023, the Company issued a press release announcing entry into the Restructuring Support Agreement (the "RSA Press Release," and together with the Standstill Extension Press Release, the "Press Releases"). A copy of the RSA Press Release is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

The information furnished pursuant to this Item 7.01 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that Section, and shall not be deemed to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Exchange Act.

Forward-Looking Statements

The information in this Form 8-K and the attached Press Releases include "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact included in the Press Releases and this Form 8-K regarding our business strategy, plans, goal, and objectives are forward-looking statements. When used in the Press Releases and this Form 8-K, the words "believe," "project," "expect," "anticipate," "intend," "budget," "target," "aim," "strategy," "estimate," "plan," "guidance," "outlook," "intent," "may," "should," "could," "will," "would," "will be," "will continue," "will likely result," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on 5E's current expectations and assumptions about future events and are based on currently available information as to the outcome and timing of future events. We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control, incident to the extraction of the critical materials we intend to produce and advanced materials production and development. These risks include, but are not limited to: our limited operating history in the borates and lithium industries and no revenue from our proposed extraction operations at our properties; our need for substantial additional financing to execute our business plan and our ability to access capital and the financial markets; our status as an exploration stage company dependent on a single project with no known Regulation S-K 1300 mineral reserves and the inherent uncertainty in estimates of mineral resources; our lack of history in mineral production and the significant risks associated with achieving our business strategies, including our downstream processing

ambitions; our incurrence of significant net operating losses to date and plans to incur continued losses for the foreseeable future; risks and uncertainties relating to the development of the Fort Cady project, including our ability to timely and successfully complete our Small Scale Boron Facility; our ability to obtain, maintain and renew required governmental permits for our development activities, including satisfying all mandated conditions to any such permits; our ability to obtain stockholder approval for, and successfully implement, the Transaction and related matters on a timely manner or at all; the implementation of and expected benefits from certain reduced spending measures, and other risks and uncertainties set forth in our filings with the U.S. Securities and Exchange Commission (the "SEC") from time to time, including the proxy statement to be filed in connection with the Transaction and certain stockholder approvals required thereby. Should one or more of these risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. These risks are not exhaustive and the information in this Form 8-K and the attached Press Releases may be subject to additional risks. No representation or warranty (express or implied) is made as to, and no reliance should be placed on, any information, including projections, estimates, targets, and opinions contained herein, and no liability whatsoever is accepted as to any errors, omissions, or misstatements contained herein. You are cautioned not to place undue reliance on any forward-looking statements, which speak only as to the dates of the Press Releases and this Form 8-K, respectively.

No Offer or Solicitation

This document is for information purposes only and is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of a proxy, consent, or authorization in any jurisdiction or any vote or approval in any jurisdiction pursuant to the Transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offering of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended, or an exemption therefrom.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the Transaction and certain stockholder approvals required thereby. In connection with the Transaction, the Company expects to file a proxy statement on Schedule 14A with the SEC and intends to file other relevant materials with the SEC. Following the filing of the definitive proxy statement with the SEC, the Company will mail the definitive proxy statement and a proxy card to each stockholder entitled to vote at the special meeting relating to the Transaction. INVESTORS AND SECURITY HOLDERS OF THE COMPANY ARE URGED TO READ CAREFULLY AND IN THEIR ENTIRETY ALL RELEVANT DOCUMENTS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) FILED WITH THE SEC, INCLUDING THE COMPANY'S PROXY STATEMENT, WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY AND THE TRANSACTION. Copies of the proxy statement and other relevant materials and any other documents filed by the Company with the SEC may be obtained free of charge at the SEC's website, at www.sec.gov. In addition, stockholders may obtain free copies of the proxy statement and other relevant materials by directing a request to: 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344.

Participants in Proxy Solicitation

The Company and its directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the Company's stockholders in respect of the Transaction. Information about the directors and executive officers of the Company is set forth in the Company's Annual Report on Form 10-K/A filed with the SEC on October 27, 2023, and the Preliminary Proxy Statement expected to be filed with the SEC in connection with the Transaction on December 5, 2023. Other information regarding the persons who may be deemed participants in the proxy solicitations in connection with the Transaction, and a description of any interests that they have in the Transaction, by security holdings or otherwise, will be contained in the definitive proxy statement and other relevant materials to be filed with the SEC regarding the Transaction when they become available. Stockholders, potential investors and other interested persons should read the definitive proxy statement carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from the sources indicated above.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
10.1	Restructuring Support Agreement, dated December 5, 2023
10.2	Ascend Subscription Agreement, dated December 5, 2023
10.3	5ECAP Subscription Agreement, dated December 5, 2023
10.4	Selig Offer Letter, dated December 5, 2023
10.5	Brennan Retention Agreement
10.6	Weibel Retention Agreement
99.1	Standstill Press Release, dated December 3, 2023
99.2	RSA Press Release, dated December 6, 2023
104	Cover Page Interactive Data File (embedded with the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

5E Advanced Materials, Inc.

Date: December 6, 2023

By: /s/ Paul Weibel
Paul Weibel
Chief Finanical Officer

THIS RESTRUCTURING SUPPORT AGREEMENT AND THE DOCUMENTS ATTACHED HERETO COLLECTIVELY DESCRIBE A PROPOSED RESTRUCTURING FOR THE COMPANY PARTIES THAT WOULD BE EFFECTUATED THROUGH THE OUT-OF-COURT RESTRUCTURING OR, IF THE CONDITIONS THERETO ARE NOT SATISFIED OR WAIVED, THROUGH PRE-PACKAGED CHAPTER 11 CASES IN THE BANKRUPTCY COURT, AS FURTHER DESCRIBED HEREIN.

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

THIS RESTRUCTURING SUPPORT AGREEMENT DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTION DESCRIBED HEREIN, WHICH TRANSACTIONS WOULD BE SUBJECT TO THE COMPLETION OF CERTAIN DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN. THE CLOSING OF ANY TRANSACTIONS SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS AND THE APPROVAL RIGHTS OF THE PARTIES SET FORTH HEREIN AND IN SUCH DEFINITIVE DOCUMENTS.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 14.02, this "**Agreement**") is made and entered into as of December 5, 2023 (the "**Execution Date**"), by and among the following parties (each of the following described in sub-clauses (i) through (iii) of this preamble, collectively, the "**Parties**"):

i. 5E Advanced Materials, Inc. a company incorporated under the Laws of Delaware ("**FEAM**"), and each of its affiliates listed on **Exhibit A** to this Agreement that have executed and delivered counterpart signature pages to this Agreement to counsel to the Consenting Parties (the Entities in this clause (i), collectively, the "**Company Parties**");

ii. the undersigned holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, BEP Note Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the Entities in this clause (ii), collectively, the "**BEP Noteholders**"); and

1. Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1.

iii. Ascend Global Investment Fund SPC for and on behalf of Strategic SP ("**Ascend**" and, together with the other entities in clause (ii) through clause (iii), the "**Consenting Parties**").

RECITALS

WHEREAS, the Company Parties and the Consenting Parties have in good faith and at arms' length negotiated or been apprised of certain restructuring and recapitalization transactions with respect to the Company Parties' capital structure on the terms set forth in the term sheet attached as **Exhibit B** hereto (the "**Restructuring Term Sheet**" and, such transactions described in this Agreement and the Restructuring Term Sheet, the "**Restructuring Transactions**"). If all of the conditions to consummation of the Out-of-Court Restructuring are satisfied or waived by the Company Parties, the BEP Noteholders, and the New Equity Group on or prior to the Out-of-Court Outside Date (such date as may be amended or otherwise modified in accordance with the terms of this Agreement), then the Restructuring Transactions shall be consummated pursuant to the Out-of-Court Restructuring. If all of the conditions to consummation of the Out-of-Court Restructuring are not satisfied or waived by the Company Parties, the BEP Noteholders, and the New Equity Group on or prior to the Out-of-Court Outside Date (such date as may be amended or otherwise modified in accordance with the terms of this Agreement), then the Company Parties shall implement the In-Court Restructuring;

WHEREAS, prior to the consummation of the Out-of-Court Restructuring, unless the Company Parties and the Consenting Parties otherwise agree, the Company will hold the Special Meeting of the Company's stockholders to approve (i) certain amendments to the Company's Certificate of Incorporation, dated as of September 23, 2021 (the "**Charter Amendments**"), and (ii) the Out-of-Court Restructuring and the transactions contemplated thereby, including the Placement and the issuance of Company common stock upon conversion of the amended BEP Notes (collectively with the Charter Amendments, the "**Stockholder Approvals**"); and

WHEREAS, the Company Parties intend to implement the Restructuring Transactions through the Out-of-Court Restructuring; provided that the Stockholder Approvals shall be obtained and other conditions to consummation of the Out-of-Court Restructuring are satisfied or waived; provided, further, that, if the Company Parties do not obtain the Stockholder Approvals, the Company Parties intend to implement the Restructuring Transactions through the In-Court Restructuring;

WHEREAS, the "**Transaction Documents**" consist of:

i. the Restructuring Term Sheet;

ii. the subscription agreement setting forth the commitments and obligations of the parties thereto, which shall include, among other parties, 5ECAP, LLC, in connection with the Committed Placement (the "**Subscription Agreement**"), and the debt commitment letter setting forth the obligations of the parties thereto in connection with the Amended and Restated Note Purchase Agreement (the "**Debt Commitment Letter**"), in each case, attached hereto as **Exhibit C** (collectively, the "**Commitment Letters**");

iii. the proxy statement to solicit the Stockholder Approvals, the preliminary version of which (the "**Preliminary Proxy Statement**") is substantially in the form attached hereto as **Exhibit D**, will be finalized in connection with seeking the required Stockholder Approvals (the "**Proxy Statement**");

iv. the form joint prepackaged plan of reorganization under chapter 11 of the Bankruptcy Code to implement the In-Court Restructuring (if applicable), attached hereto as **Exhibit E** (the "**Plan**"); provided, that the Plan shall only constitute a Transaction Document if the Stockholder Approval fails;

v. the term sheet setting forth the terms of a potential $10 million debtor in possession financing facility (the "**DIP Facility**"), subject to any potential increase in the size of the DIP Facility in accordance with the Restructuring Term Sheet, and illustrative cash budget, attached hereto as **Exhibit F** (as may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof, the "**DIP Term Sheet**"); provided, that the DIP Term Sheet shall only constitute a Transaction Document if the Stockholder Approval fails;

vi. the amended and restated note purchase agreement, which shall require BEP to sell 50% of the outstanding principal amount of the BEP Notes held by BEP consistent with the terms and conditions set forth in the Debt Commitment Letter, in substantially the form attached hereto as **Exhibit G** (the "**Amended and Restated Note Purchase Agreement**");

vii. the amended and restated certificate of incorporation of the Company, in substantially the form attached hereto as Exhibit 1 to the Preliminary Proxy Statement (the "**A&R Charter**");

viii. the amended and restated investor and registration rights agreement, in substantially the form attached hereto as **Exhibit H** (the "**Amended and Restated Investor and Registration Rights Agreement**"); and

ix. only if the Restructuring Transactions are implemented through the Out-of-Court Restructuring, the Release Agreement (as defined herein), in substantially the form attached hereto as **Exhibit I**.

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement, the Transaction Documents, and, in the event of an In-Court Restructuring, the Plan; provided that the In-Court Restructuring is to occur only if the Stockholder Approvals are not obtained or other conditions to consummation of the Out-of-Court Restructuring are not satisfied or waived;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Definitions and Interpretation***.

1.01. Definitions. The following terms shall have the following definitions:

"**A&R Charter**" has the meaning set forth in the recitals to this Agreement.

"**Affiliate**" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such entity was a debtor in a case under the Bankruptcy Code.

"**Agreement**" has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 14.02 (including the Restructuring Term Sheet).

"**Agreement Effective Date**" means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

"**Agreement Effective Period**" means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

"**Alternative Restructuring Proposal**" means any plan, inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, asset sale, share issuance, tender offer, recapitalization, plan of reorganization, share exchange, business combination, joint venture, or similar transaction involving any one or more Company Parties or the debt, equity, or other interests in any one or more Company Parties that is an alternative to one or more of the Restructuring Transactions; provided that, for the avoidance of doubt, pursuit of a royalty agreement on future sales targeted for execution on or after February 1, 2024 shall not be deemed an "Alternative Restructuring Proposal."

"**Amended and Restated Investor and Registration Rights Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Amended and Restated Note Purchase Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Ascend**" has the meaning set forth in the preamble of this Agreement.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"**Bankruptcy Court**" means the United States Bankruptcy Court in which the Chapter 11 Cases are commenced or another United States Bankruptcy Court with jurisdiction over the Chapter 11 Cases, which United States Bankruptcy Court shall be determined by the Company, the BEP Noteholders, and the New Equity Group.

"**BEP**" means BEP Special Situations IV LLC.

"**BEP Noteholders**" has the meaning set forth in the preamble of this Agreement.

"**BEP Noteholder Option**" means the option of the BEP Noteholders, in their sole discretion, to purchase up to $10 million of the common shares at $1.025 per share in connection with the Placement.

"**BEP Noteholder Option Subscription Agreement**" means the subscription agreement, by and between the BEP Noteholders and the Company, setting forth the commitments and obligations (including the BEP Noteholders' equity placement fee of 10% of the total number of common shares acquired by the BEP Noteholders thereunder to be paid in common shares) of the parties thereto in connection with the BEP Noteholder Option, and which shall be entered into solely to the extent that the BEP Noteholders determine, in their sole discretion, to exercise the BEP Noteholder Option. The BEP Noteholder Option Subscription Agreement shall be in a form that is substantially based on the Subscription Agreement with appropriate changes acceptable to the Company and the BEP Noteholders, and reasonably acceptable to Ascend.

"**BEP Notes**" means the convertible notes of FEAM issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

"**BEP Notes Claim**" means any Claim on account of the BEP Notes.

"**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"**Causes of Action**" means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Agreement Effective Date, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

"**Chapter 11 Cases**" means, in the event of the In-Court Restructuring, the voluntary cases commenced by the Company Parties in the Bankruptcy Court under chapter 11 of the Bankruptcy Code in connection with the In-Court Restructuring.

"**Charter Amendments**" has the meaning set forth in the recitals to this Agreement.

"**Claim**" has the meaning ascribed to it in section 101(5) of the Bankruptcy Code.

"**Commitment Letters**" has the meaning set forth in the recitals to this Agreement.

"**Committed Placement**" has the meaning set forth in the Restructuring Term Sheet.

"**Company Claims/Interests**" means any Claim against, or Equity Interest in, a Company Party, including the BEP Notes Claims.

"**Company Parties**" has the meaning set forth in the preamble to this Agreement.

"**Company Releasing Party**" means each of the Company Parties, and, to the maximum extent permitted by law, each of the Company Parties on behalf of their respective Affiliates and Related Parties.

"**Confidentiality Agreement**" means an executed confidentiality agreement, including with respect to the issuance of a "cleansing letter" or other public disclosure of material non-public information agreement, in connection with any proposed Restructuring Transactions.

"**Confirmation Order**" means, in the event of an In-Court Restructuring, the confirmation order with respect to the Plan entered by the Bankruptcy Court.

"**Consenting Parties**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Parties Releasing Party**" means, each of, and in each case in its capacity as such: (a) the Consenting Parties; (b) the Trustees; (c) and to the maximum extent permitted by Law; each current and former Affiliate of each Entity in clause (a) through the following clause (d); and (d) to the maximum extent permitted by Law, each Related Party of each Entity in clause (a) through this clause (d).

"**Debtors**" means, in the event of the In-Court Restructuring, the Company Parties that commence Chapter 11 Cases.

"**Definitive Documents**" means the documents listed in Section 3.01.

"**DIP Term Sheet**" has the meaning set forth in the recitals to this Agreement.

"**Disclosure Statement**" means, in the event of the In-Court Restructuring, the related disclosure statement with respect to the Plan.

"**Effective Date**" means the date of consummation of either (x) the Out-of-Court Restructuring or (y) the In-Court Restructuring (*i.e.*, the effective date of the Plan according to its terms), as applicable.

"**Entity**" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"**Equity Interests**" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Company Party, and options, warrants, rights, or other securities or agreements to

acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Company Party (in each case whether or not arising under or in connection with any employment agreement).

"**Execution Date**" has the meaning set forth in the preamble to this Agreement.

"**First Day Pleadings**" means, in the event of the In-Court Restructuring, the first-day pleadings that the Company Parties determine are necessary or desirable to file, with the consent of the BEP Noteholders and, solely with respect to any First Day Pleadings that materially affect the New Equity Group, Ascend.

"**Holder**" means an Entity holding a Claim or Equity Interest.

"**In-Court Restructuring**" means the Restructuring Transactions to be consummated through confirmation of the Plan in the Chapter 11 Cases and other related transactions.

"**Law**" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

"**Milestones**" means the applicable milestones set forth on **Exhibit J** hereto, as such may be extended in accordance with the terms of this Agreement.

"**New Common Equity**" means the new common stock of FEAM or, in the event of the In-Court Restructuring, the new common equity interests of Reorganized FEAM, to be issued in accordance with the terms set forth in the Restructuring Term Sheet and the Subscription Agreement.

"**New Equity Group**" shall mean Ascend and such other person as may be nominated by Ascend with the reasonable consent of the BEP Noteholders.

"**Note Purchase Agreement**" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP as purchaser, and Alter Domus (US) LLC, as collateral agent, as may be amended, restated, supplemented, or otherwise modified from time to time, including pursuant to the Standstill Agreement.

"**Out-of-Court Outside Date**" has the meaning set forth in the Milestones.

"**Out-of-Court Restructuring**" means, subject to the terms and conditions provided in this Agreement, the Restructuring Transactions to be consummated on an out-of-court basis and other related transactions.

"**Parties**" has the meaning set forth in the preamble to this Agreement.

"**Permitted Transfer**" means a transfer of any Company Claims/Interests that meets

the requirements of Section 8.01.

"**Permitted Transferee**" means each transferee of any Company Claims/Interests who meets the requirements of Section 8.01.

"**Petition Date**" means the first date that any of the Company Parties commences a Chapter 11 Case.

"**Placement**" has the meaning set forth in the Restructuring Term Sheet.

"**Plan**" has the meaning set forth in the recitals to this Agreement.

"**Plan Effective Date**" means the occurrence of the Effective Date of the Plan according to its terms.

"**Plan Supplement**" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan that will be filed by the Debtors with the Bankruptcy Court.

"**Preliminary Proxy Statement**" has the meaning set forth in the recitals to this Agreement.

"**Proxy Statement**" has the meaning set forth in the recitals to this Agreement.

"**Qualified Marketmaker**" means an entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Company Claims/Interests (or enter with customers into long and short positions in Company Claims/Interests), in its capacity as a dealer or market maker in Company Claims/Interests and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

"**Related Party**" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

"**Release Agreement**" means the mutual release and agreement that shall be entered into on or about the Effective Date of the Out-of-Court Restructuring, by and between the Company Parties, the Consenting Parties, and any other party that has executed and delivered counterpart signature pages thereto.

"**Released Claim**" means, with respect to any Releasing Party, any Claim, or Cause of Action that is released by such Releasing Party under Section 13 of this Agreement.

"**Released Company Parties**" means each of, and in each case in its capacity as such: (a) Company Party; (b) current and former Affiliates of each Entity in clause (a) through the following clause (c); and (c) each Related Party of each Entity in clause (a) through this clause (c).

"**Released Consenting Parties**" means, each of, and in each case in its capacity as such: (a) Consenting Party; (b) the Trustees; (c) current and former Affiliates of each Entity in clause (a) through the following clause (d); and (d) each Related Party of each Entity in clause (a) through this clause (d).

"**Released Parties**" means each Released Company Party and each Released Consenting Party.

"**Releases"** means the releases contained in Section 13 of this Agreement.

"**Releasing Parties**" means, collectively, each Company Releasing Party and each Consenting Party Releasing Party.

"**Reorganized FEAM**" means, subject to the Restructuring Transactions and, in the event of the In-Court Restructuring, the confirmation and effectiveness of the Plan, a newly-formed Entity formed to, among other things, directly or indirectly acquire substantially all of the assets and/or stock of the Company Parties and, on the Effective Date, issue the New Common Equity.

"**Restructuring Term Sheet**" has the meaning set forth in the recitals to this Agreement.

"**Restructuring Transactions**" has the meaning set forth in the recitals to this Agreement.

"**Rules**" means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security**" means any security, as defined in section 2(a)(1) of the Securities Act.

"**Solicitation Deadline**" has the meaning set forth in the Milestones.

"**Solicitation Materials**" means all solicitation materials in respect of the Plan.

"**Special Meeting**" means a special meeting of the Company's stockholders in respect of the Stockholder Approvals.

"**Standstill Agreement**" means the standstill agreement dated November 9, 2023 by and among FEAM, BEP, Alter Domus (US) LLC, Ascend, and Mayfair Ventures Pte Ltd in connection with the Note Purchase Agreement.

"**Standstill Termination Date**" means (a) if the Company does not obtain the Stockholder Approvals, the date of the Special Meeting or (b) if the Company obtains the Stockholder Approvals, the Effective Date of the Out-of-Court Restructuring.

"**Stockholder Approvals**" has the meaning set forth in the recitals to this Agreement.

"**Termination Date**" means the date on which termination of this Agreement as to a Party is effective in accordance with Sections 11.01, 11.02, 11.03, or 11.04.

"**Transaction Documents**" has the meaning set forth in the recitals to this Agreement.

"**Transfer**" means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales or other transactions).

"**Transfer Agreement**" means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement and substantially in the form attached hereto as **Exhibit K**.

"**Trustee**" means any indenture trustee, collateral trustee, or other trustee or similar entity under the BEP Notes.

"**Voting Deadline**" has the meaning set forth in the Milestones.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(f) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of "include" or "including" is without limitation, whether stated or not; and

(j) the phrase "counsel to the Consenting Parties" refers in this Agreement to each counsel specified in Section 14.10 other than counsel to the Company Parties.

Section 2. ***Effectiveness of this Agreement***. This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Standard Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(b) the following shall have executed and delivered counterpart signature pages of this Agreement:

(i) the BEP Noteholders; and

(ii) Ascend;

(c) counsel to the Company Parties shall have given notice to counsel to the Consenting Parties in the manner set forth in Section 14.10 hereof (by email or otherwise) that the other conditions to the Agreement Effective Date set forth in this Section 2(a) have occurred or been waived; and

(d) the Commitment Letters shall have been executed and effective.

Section 3. ***Definitive Documents***.

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following:

(a) the Proxy Statement (including the Preliminary Proxy Statement);

(b) the Commitment Letters;

(c) the Amended and Restated Note Purchase Agreement;

(d) the A&R Charter;

(e) the Amended and Restated Investor and Registration Rights Agreement;

(f) only if the BEP Noteholders determine, in their sole discretion, to exercise the BEP Noteholder Option, the BEP Noteholder Option Subscription Agreement;

(g) only if the Restructuring Transactions are implemented through the Out-of-Court Restructuring, the Release Agreement; and

(h) only if the Restructuring Transactions are implemented through the In-Court Restructuring:

(i) the First Day Pleadings and all orders sought pursuant thereto;

(ii) the Plan and its exhibits, ballots, and Solicitation Materials, with appropriate changes to constitute the solicitation materials with respect to the Plan, which shall comply with all disclosure requirements under applicable Law;

(iii) the Confirmation Order;

(iv) the Disclosure Statement;

(v) the order of the Bankruptcy Court approving the Disclosure Statement and the other Solicitation Materials;

(vi) the Plan Supplement;

(vii) the motion(s) seeking approval of the Company Parties' use of cash collateral, and, if applicable, requesting approval to obtain debtor in possession financing (the "**DIP/Cash Collateral Motion**") on terms substantially the same as those set forth in the DIP Term Sheet attached as **Exhibit F** hereto, and, to the extent applicable, the credit agreement with respect to such debtor in possession financing (the "**DIP Credit Agreement**");

(viii) the order(s) approving the Company Parties' use of cash collateral, and, if applicable, the incurrence of postpetition financing pursuant to the DIP Credit Agreement on an interim basis (the "**Interim DIP/Cash Collateral Order**"); and

(ix) the order(s) approving the Company Parties' use of cash collateral, and, if applicable, the incurrence of postpetition financing pursuant to the DIP Credit Agreement (if necessary) on a final basis (the "**Final DIP/Cash Collateral Order**", and together with the Interim DIP/Cash Collateral Order, the "**DIP/Cash Collateral Orders**"); and

(i) such other definitive documentation relating to the recapitalization or restructuring of the Company Parties as is necessary or desirable to consummate the Restructuring Transactions (whether through an Out-of-Court Restructuring or an In-Court Restructuring).

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement, as they

may be modified, amended, or supplemented in accordance with Section 12. Further, the Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date shall otherwise be in form and substance acceptable to the Company Parties and the BEP Noteholders; provided that the documents set forth in Section 3.01(b), (c), and (f)(vii), (viii) and (ix) shall be in form and substance acceptable to Ascend; provided, further, that the documents set forth in Section 3.01(a), (d), (e), (f)(ii), (iii), (iv), (v), (vi) and (g)) shall be in form and substance reasonably acceptable to Ascend; provided, further, that the documents set forth in Section 3.01(f)(i) that materially affect the New Equity Group shall be in form and substance acceptable to Ascend.

Section 4. ***Commitments of the Consenting Parties***.

4.01. General Commitments, Forbearances, and Waivers.

(a) During the Agreement Effective Period, each Consenting Party agrees, in respect of all of its Company Claims/Interests, to:

(i) support the Restructuring Transactions and vote and exercise any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions;

(ii) use commercially reasonable efforts to cooperate with and assist the Company Parties in obtaining additional support for the Restructuring Transactions from the Company Parties' other stakeholders; *provided* that Ascend shall use commercially reasonable efforts to direct the New Equity Group to support the Restructuring Transactions and comply with the obligations of Ascend set forth in this Agreement to the extent reasonably practicable.

(iii) use commercially reasonable efforts to oppose any party or person from taking any actions contemplated in Section 4.02(b);

(iv) give any notice, order, instruction, or direction to the applicable Trustees necessary to give effect to the Restructuring Transactions; and

(v) negotiate in good faith and use commercially reasonable efforts to execute and implement the Definitive Documents that are consistent with this Agreement to which it is required to be a party.

(b) During the Agreement Effective Period, each Consenting Party agrees, in respect of all of its Company Claims/Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions or take any other action that is inconsistent with, or that would delay or obstruct the proposal or consummation of, the Restructuring Transactions;

(ii) propose, file, support, or vote in favor of, or consent to any Alternative Restructuring Proposal or discussion regarding the negotiation or formulation of, or otherwise pursue, any financing or other equity proposal or offer, subject to Section 7.02(b) of this Agreement;

(iii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 11 Cases, this Agreement, or the other Restructuring Transactions contemplated herein against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(v) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any of Claims against or Equity Interests in the Company Parties; or

(vi) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code.

4.02. Commitments with Respect to Chapter 11 Cases.

(k) During the Agreement Effective Period, each Consenting Party that is entitled to vote to accept or reject the Plan pursuant to its terms agrees that it shall, subject to receipt by such Consenting Party, whether before or after the commencement of the Chapter 11 Cases, of the Solicitation Materials:

(i) vote each of its Company Claims/Interests to accept the Plan by delivering its duly executed and completed ballot accepting the Plan on a timely basis following the commencement of the solicitation of the Plan and its actual receipt of the Solicitation Materials and the ballot;

(ii) to the extent it is permitted to elect whether to opt out of the releases set forth in the Plan, elect not to opt out of the releases set forth in the Plan by timely delivering its duly executed and completed ballot(s) or election forms indicating such election; and

(iii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clauses (i) and (ii) above.

(b) During the Agreement Effective Period, each Consenting Party, in respect of each of its Company Claims/Interests, will support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with any motion or other pleading or document filed by a Company Party in the Bankruptcy Court that is consistent with this Agreement.

Section 5. ***Additional Provisions Regarding the Consenting Parties' Commitments***. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Party to consult with any other Consenting Party, the Company

Parties, or any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee); (b) impair or waive the rights of any Consenting Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions or following the termination of this Agreement; and (c) prevent any Consenting Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 6. ***Commitments of the Company Parties***.

6.01. Affirmative Commitments. Except as set forth in Section 7, during the Agreement Effective Period, the Company Parties shall:

(a) support and take all steps reasonably necessary and desirable to consummate the Restructuring Transactions in accordance with this Agreement, including the applicable Milestones;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment;

(c) use commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Restructuring Transactions;

(d) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(e) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from their other material stakeholders to the extent reasonably prudent, including by engaging a proxy solicitor to solicit the Stockholder Approvals;

(f)(1) provide counsel for the BEP Noteholders a reasonable opportunity to review draft copies of all First Day Pleadings, and (2) to the extent reasonably practicable, provide a reasonable opportunity to counsel to any Consenting Parties materially affected by such filing to review draft copies of other documents that the Company Parties intend to file with Bankruptcy Court, as applicable; *provided* that the Consenting Parties shall have a reasonable opportunity to review each Definitive Document prior to filing with the Bankruptcy Court.

(g) implement and consummate the Restructuring Transactions in a timely manner and take any and all commercially reasonable and appropriate actions in furtherance of the Restructuring Transactions, as contemplated under this Agreement and the Transaction Documents; provided that the Company Parties shall not consummate the Out-of-Court Restructuring or the Restructuring Transactions unless and until all of the conditions to the effectiveness thereof set forth herein (including in the Transaction Documents) have been satisfied (or will be satisfied contemporaneously with the consummation of the Out-of-Court Restructuring) or waived with the prior written consent of the BEP Noteholders, Ascend, and the Company Parties, to the extent such party is a signatory thereto or materially adversely affected thereunder, in accordance with Section 12 hereof;

(h) upon the approval of the Company's stockholders at the Special Meeting, effect the Charter Amendments by making the necessary filings with the Secretary of State of the State of Delaware;

(i) (A) support and take all reasonable actions necessary or reasonably requested by the Consenting Parties to facilitate the solicitation, confirmation (if applicable), and consummation of the Restructuring Transactions, the Placement, or the Plan, as applicable, and the transactions contemplated thereby, and (B) not take any action directly or indirectly that is inconsistent with, or that would reasonably be expected to prevent, interfere with, delay, or impede the consummation of the Restructuring Transactions, including the Placement, the solicitation of votes on the Plan, and the confirmation and consummation of the Plan and the Restructuring Transactions, including soliciting or causing or allowing any of its agents or representatives to solicit any agreements relating to any chapter 11 plan or restructuring transaction (including, for the avoidance of doubt, a transaction premised on an asset sale under section 363 of the Bankruptcy Code) other than the Restructuring Transactions, and (C) not, nor encourage any other person to, take any action which would, or would reasonably be expected to, breach or be inconsistent with this Agreement or delay, impede, appeal, or take any other negative action, directly or indirectly, to interfere with the acceptance or implementation of the Restructuring Transactions;

(j) to the extent that the BEP Noteholders determine, in their sole discretion, to exercise the BEP Noteholder Option, the Company shall execute the BEP Noteholder Option Subscription Agreement;

(j) in the event of an In-Court Restructuring, develop and deliver to the BEP Noteholders a proposed marketing process for the sale of all or substantially all of the Company's assets; provided, that implementation of any such process shall be subject to the consent of the BEP Noteholders;

(k) actively oppose and object to the efforts of any party seeking to object to, delay, impede, or take any other action to interfere with the acceptance, implementation, or consummation of the Restructuring Transactions (including, if applicable, the timely filing of objections or written responses) to the extent such opposition or objection is reasonably necessary or desirable to facilitate implementation of the Restructuring Transactions;

(l) maintain good standing under the laws of the state in which each Company Party is incorporated or organized;

(m) timely pay all fees and expenses as set forth in Section 14.11 of this Agreement;

(n) provide, and direct their employees, officers, advisors and other representatives to provide, to the BEP Noteholders and the New Equity Group and their advisors (i) reasonable access to the Company Parties' books and records during normal business hours on reasonable advance notice to the Company Parties' representatives and without disruption to the operation of the Company Parties' business, (ii) reasonable access to the management and advisors of the Company Parties on reasonable advance notice to such persons and without disruption to the operation of the Company Parties' business, and (iii) such other information as reasonably requested; and

(o) inform counsel to the Consenting Parties promptly after becoming aware of (i) any

matter or circumstance that they know, or believe is likely, to be a material impediment to the implementation or consummation of the Restructuring Transactions; (ii) any occurrence, or failure to occur, of any event that would be reasonably likely to cause (A) any representation or warranty of any of the Company Parties contained in this Agreement or the Definitive Documents to be untrue or inaccurate in any material respect when made or deemed to have been made, (B) any covenant of any of the Company Parties contained in this Agreement or the Definitive Documents not to be or able to be satisfied in any material respect, or (C) any condition precedent contained in this Agreement or the Definitive Documents not to occur or become impossible to satisfy; (iii) any breach of this Agreement (including a breach by any Company Party); (iv) any notice of any commencement of any material involuntary insolvency proceedings, legal suit for payment of material debt, or securement of material Security from or by any person in respect of any Company Party (including, but not limited to, securement of material Security under any liens or mortgages); (v) any representation or statement made or deemed to be made by them under this Agreement that is or proves to have been materially incorrect or misleading in any respect when made or deemed to have been made; and (vi) any matter or circumstance that they know, or believe is likely to, give rise to a termination of this Agreement under Section 11.

6.02. Negative Commitments. Except as set forth in Section 7, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) take any action that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation and consummation of the Restructuring Transactions described in, this Agreement or the Plan;

(c) take any action that causes a default under the Note Purchase Agreement, unless such default has been waived by the BEP Noteholders in writing;

(d) if the Restructuring Transactions are implemented through the In-Court Restructuring, modify the Plan, in whole or in part, in a manner that is not consistent with this Agreement and the Definitive Documents in all material respects;

(e) file any motion, pleading, or Definitive Documents with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Plan;

(f) seek to enter into, amend or modify any organizational documents of the Company Parties in a manner that is inconsistent with this Agreement;

(g) (i) operate its business outside the ordinary course, taking into account the Restructuring Transactions, such that would have a materially adverse effect on the proposed Restructuring Transactions without the consent of the BEP Noteholders and Ascend or (ii) transfer any material asset or right of the Company Parties or any material asset or right used in the business of the Company Parties to any person or Entity outside the ordinary course of business such that would have a materially adverse effect on the proposed Restructuring Transactions without the consent of the BEP Noteholders and Ascend; provided, that, in any In-Court Proceeding, a

Company Party (1) filing a notice or motion seeking to undertake any such action shall not be prohibited so long as the BEP Noteholders and Ascend have provided reasonable consent to such filing; and (2) a Company Party paying Court or U.S. Trustee fees, professional fees or other expenses attendant to maintaining the Chapter 11 Cases shall not be prohibited;

(h) seek to amend or modify any Definitive Document in a manner that is inconsistent with this Agreement, including Section 3.02;

(i) engage in any material merger, consolidation, disposition, acquisition, investment, dividend, incurrence of indebtedness or other similar transaction outside of the ordinary course of business other than the Restructuring Transactions; or

(j) commence, support or join any litigation or adversary proceeding against the BEP Noteholders or the New Equity Group.

Section 7. ***Additional Provisions Regarding Company Parties' Commitments***.

7.01. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require a Company Party or the board of directors, board of managers, or similar governing body of a Company Party, after consulting with counsel, to take any action or to refrain from taking any action with respect to the Restructuring Transactions to the extent taking or failing to take such action would be inconsistent with applicable Law or its fiduciary duties or obligations under applicable Law, and any such action or inaction pursuant to this Section 7.01 shall not be deemed to constitute a breach of this Agreement.

7.02.

(a) Notwithstanding Section 7.01, from the Agreement Effective Date through the earlier of (i) consummation of the Restructuring Transactions or (ii) commencement of the Chapter 11 Cases, the Company Parties shall not, directly or indirectly, be entitled to seek, solicit, encourage, initiate, propose or support any offer or proposal from, enter into any agreement with, or engage in any discussions or negotiations with, any person or entity concerning any actual or proposed Alternative Restructuring Proposal; provided, that the Company Parties may respond to any proposal or offer for an Alternative Restructuring Proposal to the extent that the Company Parties' Chief Restructuring Officer determines in good faith, and consistent with its fiduciary duties, that such a response is necessary; provided, further, that the Company Parties shall promptly, and in no event later than 2 (two) days after receipt, provide copies of all such documentations and materials received by the Company Parties concerning such an Alternative Restructuring Proposal to the advisors to the Consenting Parties. For the avoidance of doubt, any determination to pursue an Alternative Restructuring Proposal shall be subject to the approval of the board of directors, board of managers, or similar governing body of any Company Party and the board of directors of FEAM.

(b) In the event of an In-Court Restructuring, upon the Petition Date, Section 7.02(a) shall no longer be applicable and the Company shall be entitled to seek, solicit, encourage, initiate, propose or support any offer or proposal from, enter into any agreement with, or engage in any discussions or negotiations with, any person or entity concerning any actual or proposed Alternative Restructuring Proposal; provided, that the Company Parties shall promptly, and in no

event later than 2 (two) days after receipt, provide copies of all such documentations and materials received by the Company Parties concerning such an Alternative Restructuring Proposal to the advisors to the Consenting Parties (regardless of any confidentiality provisions in such Alternative Restructuring Proposal).

7.03. Nothing in this Agreement shall: (a) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; or (b) prevent any Company Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 8. ***Transfer of Interests and Securities***.

8.01. During the Agreement Effective Period, other than as expressly contemplated by this Agreement, no Consenting Party shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Company Claims/Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless:

(a) in the case of any Company Claims/Interests, the authorized transferee is either (1) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (2) an institutional accredited investor (as defined in the Rules), or (3) a Consenting Party; and

(b) either (i) the transferee executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Party and the transferee provides notice of such Transfer (including the amount and type of Company Claim/Interest Transferred) to counsel to the Company Parties at or before the time of the proposed Transfer.

8.02. Upon compliance with the requirements of Section 8.01, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Company Claims/Interests. Any Transfer in violation of Section 8.01 shall be void *ab initio*.

8.03. This Agreement shall in no way be construed to preclude the Consenting Parties from acquiring additional Company Claims/Interests; provided, however, that (a) such additional Company Claims/Interests shall automatically and immediately upon acquisition by a Consenting Party be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Parties) and (b) such Consenting Party must provide notice of such acquisition (including the amount and type of Company Claim/Interest acquired) to counsel to the Company Parties within five (5) Business Days of such acquisition.

8.04. This Section 8 shall not impose any obligation on any Company Party to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a Consenting Party to Transfer any of its Company Claims/Interests. Notwithstanding anything to the contrary herein, to the extent a Company Party and another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply

and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

8.05. Notwithstanding Section 8.01, a Qualified Marketmaker that acquires any Company Claims/Interests with the purpose and intent of acting as a Qualified Marketmaker for such Company Claims/Interests shall not be required to execute and deliver a Transfer Agreement in respect of such Company Claims/Interests if (i) such Qualified Marketmaker subsequently transfers such Company Claims/Interests (by purchase, sale assignment, participation, or otherwise) within five (5) Business Days of its acquisition to a transferee that is an entity that is not an affiliate, affiliated fund, or affiliated entity with a common investment advisor; (ii) the transferee otherwise is a Permitted Transferee under Section 8.01; and (iii) the Transfer otherwise is a Permitted Transfer under Section 8.01. To the extent that a Consenting Party is acting in its capacity as a Qualified Marketmaker, it may Transfer (by purchase, sale, assignment, participation, or otherwise) any right, title or interests in Company Claims/Interests that the Qualified Marketmaker acquires from a holder of the Company Claims/Interests who is not a Consenting Party without the requirement that the transferee be a Permitted Transferee.

8.06. Notwithstanding anything to the contrary in this Section 8, the restrictions on Transfer set forth in this Section 8 shall not apply to the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests.

Section 9. ***Representations and Warranties of Consenting Parties***. Each Consenting Party severally, and not jointly, represents and warrants that, as of the date such Consenting Party executes and delivers this Agreement and as of the Plan Effective Date:

(a) it is the beneficial or record owner of the face amount of the Company Claims/Interests or is the nominee, investment manager, or advisor for beneficial holders of the Company Claims/Interests reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Interests other than those reflected in, such Consenting Party's signature page to this Agreement or a Transfer Agreement, as applicable (as may be updated pursuant to Section 8);

(b) it has the full power and authority to act on behalf of, vote and consent to matters concerning, such Company Claims/Interests;

(c) such Company Claims/Interests are free and clear of any pledge, lien, Security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, transfer, or encumbrances of any kind, that would adversely affect in any way such Consenting Party's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Interests referable to it as contemplated by this Agreement subject to applicable Law; and

(e) solely with respect to holders of Company Claims/Interests, (i) it is either (A) a qualified institutional buyer as defined in Rule 144A of the Securities Act or (B) an institutional

accredited investor (as defined in the Rules), and (ii) any securities acquired by the Consenting Party in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act.

Section 10. ***Mutual Representations, Warranties, and Covenants***. Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, on the Plan Effective Date:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, the Plan, and the Bankruptcy Code, no consent or approval is required by any other person or entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

Section 11. ***Termination Events***.

11.01. Consenting Party Termination Events. This Agreement may be terminated by the BEP Noteholders or by the New Equity Group, in each case, by the delivery to the Company Parties of a written notice in accordance with Section 14.10 hereof upon the occurrence of the following events:

(a) with respect to the BEP Noteholders or the New Equity Group, the breach in any material respect by a Company Party of any of the representations, warranties, or covenants of the Company Parties set forth in this Agreement that (i) is materially adverse to the BEP Noteholders or the New Equity Group, as applicable, (ii) would have a materially adverse effect on the proposed Restructuring Transactions and (iii) remains uncured for fifteen (15) Business Days after the BEP Noteholders or the New Equity Group, as applicable, transmit a written notice in accordance with Section 14.10 hereof detailing any such breach;

(b) with respect to the BEP Noteholders, the breach in any material respect by the New Equity Group of any of the representations, warranties, or covenants of the New Equity Group set forth in this Agreement that (i) is materially adverse to the BEP Noteholders and (ii) remains uncured for fifteen (15) Business Days after the BEP Noteholders transmit a written notice in accordance with Section 14.10 hereof detailing any such breach;

(c) with respect to the BEP Noteholders, the breach in any material respect by the New Equity Group of any Definitive Document that (i) is materially adverse to the BEP Noteholders and (ii) remains uncured for fifteen (15) Business Days after the BEP Noteholders transmit a written notice in accordance with Section 14.10 hereof detailing any such breach;

(d) with respect to the New Equity Group, the breach in any material respect by the BEP Noteholders of any of the representations, warranties, or covenants of the BEP Noteholders set forth in this Agreement that (i) is materially adverse to the New Equity Group and (ii) remains uncured for fifteen (15) Business Days after the New Equity Group transmits a written notice in accordance with Section 14.10 hereof detailing any such breach;

(e) with respect to the New Equity Group, the breach in any material respect by the BEP Noteholders of any of the Definitive Documents that (i) is materially adverse to the New Equity Group and (ii) remains uncured for fifteen (15) Business Days after the New Equity Group transmits a written notice in accordance with Section 14.10 hereof detailing any such breach;

(f) with respect to the BEP Noteholders or the New Equity Group, the failure of any of the Milestones to be satisfied, unless such Milestones have been reasonably waived, modified, extended or otherwise amended by the BEP Noteholders and Ascend in writing (which may be via email from counsel);

(g) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) Business Days after such terminating Consenting Parties transmit a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided, that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation set out in this Agreement;

(h) the Bankruptcy Court enters a final, non-appealable order denying confirmation of the Plan;

(i) the entry of a final, non-appealable order by the Bankruptcy Court, or the filing of a motion or application by any Company Party seeking an order (without the prior written consent of the Consenting Parties not to be unreasonably withheld), (i) converting one or more of the Chapter 11 Cases of a Company Party to a case under chapter 7 of the Bankruptcy Code, (ii) dismissing one or more of the Chapter 11 Cases of a Company Party; (iii) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in one or more of the Chapter 11 Cases of a Company Party, or (iv) rejecting this Agreement;

(j) if any of the Company Parties (i) voluntarily commences any case or files any petition seeking bankruptcy, winding up, dissolution, liquidation, administration, moratorium, receivership, reorganization or other relief in respect of the Company Parties or their debts, or of a substantial part of their assets, under any federal, state or foreign bankruptcy, insolvency, administrative, receivership or similar law now or hereafter in effect, except as contemplated by this Agreement, (ii) consents to the institution of, or fails to contest in a timely and appropriate manner, any involuntary proceeding or petition described in the preceding subsection (i), (iii) applies for or consents to the appointment of a receiver, administrator, administrative receiver, trustee, custodian, sequestrator, conservator or similar official with respect to any Company Party or Affiliate for the substantial part of such Company Party's assets; (iv) makes a general assignment or arrangement for the benefit of creditors; (v) takes any corporate action for the purpose of authorizing the foregoing; or (vi) timely contests any such involuntary proceeding or petition but such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof, or if any court order grants the relief sought in such involuntary proceeding;

(k) the Bankruptcy Court grants relief that is inconsistent with this Agreement in any material respect (in each case with such amendments and modifications as have been effected in accordance with the terms hereof); *provided* that such relief materially adversely affects the Consenting Party seeking termination;

(l) the Company Parties withdraw the Committed Placement (in the event of an Out-of-Court Restructuring) or the Plan (in the event of an In-Court Restructuring) or support therefor;

(m) five (5) Business Days after the occurrence of any court of competent jurisdiction or other competent governmental or regulatory authority issuing a ruling or an order making illegal or otherwise restricting, preventing or prohibiting the consummation of the transactions contemplated by this Agreement in a way that cannot be reasonably remedied by the Company Parties; or

(n) the Bankruptcy Court enters a final, unappealable order denying approval of the debtor-in-possession financing facility embodied in the DIP/Cash Collateral Motion.

11.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 14.10 hereof upon the occurrence of any of the following events:

(a) the breach in any material respect by the BEP Noteholders of any provision set forth in this Agreement that remains uncured for a period of fifteen (15) Business Days after the receipt by the BEP Noteholders of notice of such breach;

(b) the breach in any material respect by the BEP Noteholders of any Definitive Document that remains uncured for a period of fifteen (15) Business Days after the receipt by the BEP Noteholders of notice of such breach;

(c) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law or (ii) solely in the exercise of its fiduciary duties, to enter into an Alternative

Restructuring Proposal; *provided* that the Consenting Parties shall be provided five (5) Business Days after receipt of notice of any proposed termination under Section 11.02 to propose modifications to the Restructuring Transactions that the Company Party shall reasonably consider before terminating this Agreement pursuant to this Section 11.02;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for thirty (30) Business Days after such terminating Company Party transmits a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided, that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(e) the Bankruptcy Court enters a final, non-appelable order denying confirmation of the Plan.

11.03. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Consenting Parties; and (b) each Company Party.

11.04. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately after the Plan Effective Date.

11.05. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or causes of action. Upon the occurrence of a Termination Date prior to the Confirmation Order being entered by a Bankruptcy Court, any and all consents or ballots tendered by the Parties subject to such termination before a Termination Date shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Restructuring Transactions and this Agreement or otherwise; provided, however, any Consenting Party withdrawing or changing its vote pursuant to this Section 11.05 shall promptly provide written notice of such withdrawal or change to each other Party to this Agreement and, if such withdrawal or change occurs on or after the Petition Date, file notice of such withdrawal or change with the Bankruptcy Court. Nothing in this Agreement shall be construed as prohibiting a Company Party or any of the Consenting Parties from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of any Company Party or the ability of any Company Party to protect and reserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Party, and (b) any right of any Consenting Party, or the ability of any Consenting Party, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including

its claims against any Company Party or Consenting Party. No purported termination of this Agreement shall be effective under this Section 11.05 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement or one or more of the Transaction Documents, except a termination pursuant to Section 11.02(b) or Section 11.02(d). Nothing in this Section 11.05 shall restrict any Company Party's right to terminate this Agreement in accordance with Section 11.02(b).

Section 12. ***Amendments and Waivers***.

(a) This Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 12.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by: (a) each Company Party and (b) the following Parties, solely with respect to any modification, amendment, waiver or supplement that adversely affects the rights of such Parties and unless otherwise specified in this Agreement: (i) the BEP Noteholders; and (ii) the New Equity Group; provided, however, that if the proposed modification, amendment, waiver, or supplement has a material, disproportionate, and adverse effect on any of the Company Claims/Interests held by a Consenting Party, then the consent of each such affected Consenting Party shall also be required to effectuate such modification, amendment, waiver or supplement.

(c) Any proposed modification, amendment, waiver or supplement that does not comply with this Section 12 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 13. ***Mutual Releases; Waiver of Events of Default.***

13.01. Releases.

(a) Releases by the Company Releasing Parties. Except as expressly set forth in this Agreement, effective on (i) the Agreement Effective Date and (ii) the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby deemed released and discharged by each and all of the Company Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Company Releasing Parties would have been legally entitled to

assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Equity Interest in, a Company Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, the Company Parties (including the management, ownership, or operation thereof), the Note Purchase Agreement (including, without limitation, any "Default" (as defined in the Note Purchase Agreement) or "Event of Default" (as defined in the Note Purchase Agreement), in accordance with the terms set forth in this Section 13.07), the purchase, sale, or rescission of any Security of the Company Parties, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Transaction Documents, the Chapter 11 Cases, this Agreement, the Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with this Agreement, the Definitive Documents, the Transaction Documents, the Plan, the filing of the Chapter 11 Cases, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before, in respect of the foregoing clause (i), the Agreement Effective Date, and, in respect of the foregoing clause (ii), the Plan Effective Date.

(b) Releases by the Consenting Party Releasing Parties. Except as expressly set forth in this Agreement, effective on (i) the Agreement Effective Date and (ii) the Plan Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is hereby deemed released and discharged by each and all of the Consenting Party Releasing Parties, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any Cause of Action, directly or derivatively, by, through, for, or because of the foregoing entities, from any and all Causes of Action, whether known or unknown, including any derivative claims, asserted or assertable on behalf of any of the Company Parties would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Equity Interest in, a Company Party, based on or relating to, or in any manner arising from, in whole or in part, the Company Parties (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any Security of the Company Parties or Reorganized FEAM, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Transaction Documents, the Plan, the Chapter 11 Cases, this Agreement, the Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with this Agreement, the Definitive Documents, the Transaction Documents, the Plan, the filing of the Chapter 11 Cases, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before, in respect of the foregoing clause (i), the Agreement Effective Date and, in respect of the foregoing clause (ii), the Plan Effective Date.

13.02. No Additional Representations and Warranties. Each of the Parties agrees and acknowledges that, except as expressly provided in this Agreement and the Definitive Documents, no other Party, in any capacity, has warranted or otherwise made any representations concerning any Released Claim (including any representation or warranty concerning the existence, nonexistence, validity, or invalidity of any Released Claim). Notwithstanding the foregoing, nothing contained in this Agreement is intended to impair or otherwise derogate from any of the representations, warranties, or covenants expressly set forth in this Agreement or any of the Definitive Documents.

13.03. Releases of Unknown Claims. Each of the Releasing Parties in each of the Releases contained in this Agreement expressly acknowledges that although ordinarily a general release may not extend to Released Claims which the Releasing Party does not know or suspect to exist in its favor, which if known by it may have materially affected its settlement with the party released, they have carefully considered and taken into account in determining to enter into the above Releases the possible existence of such unknown losses or claims. Without limiting the generality of the foregoing, each Releasing Party expressly waives and relinquishes any and all rights such Party may have or conferred upon it under any federal, state, or local statute, rule, regulation, or principle of common law or equity which provides that a release does not extend to claims which the claimant does not know or suspect to exist in its favor at the time of providing the Release or which may in any way limit the effect or scope of the Releases with respect to Released Claims which such Party did not know or suspect to exist in such Party's favor at the time of providing the Release, which in each case if known by it may have materially affected its settlement with any Released Party. Each of the Releasing Parties expressly acknowledges that the Releases and covenants not to sue contained in this Agreement are effective regardless of whether those released matters or Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.

13.04. Turnover of Subsequently Recovered Assets. In the event that any Releasing Party (including any successor or assignee thereof and including through any third party, trustee, debtor in possession, creditor, estate, creditors' committee, or similar Entity) is successful in pursuing or receives, directly or indirectly, any funds, property, or other value on account of any Claim, Cause of Action, or litigation against any Released Party that was released pursuant to the Release (or would have been released pursuant to the Release if the party bringing such claim were a Releasing Party), such Releasing Party (i) shall not commingle any such recovery with any of its other assets and (ii) agrees that it shall promptly turnover and assign any such recoveries to, and hold them in trust for, such Released Party.

13.05. Certain Limitations on Releases. For the avoidance of doubt, nothing in this Agreement and the Releases contained in this Section 13 shall or shall be deemed to result in the waiving or limiting by (a) the Company Parties, or any officer, director, member of any governing body, or employee thereof, of (i) any indemnification against any Company Party, any of their insurance carriers, or any other Entity, (ii) any rights as beneficiaries of any insurance policies, (iii) wages, salaries, compensation, or benefits, (iv) intercompany claims, or (v) any interest held by a Company Party; (b) the Consenting Parties or the Trustee of any Claims, security interests, or "obligations" under and as defined in the Note Purchase Agreement, or any other financing document (except as may be expressly amended or modified by the Plan, or any other financing document under and as defined therein); and (c) any Party or other Entity of any post-Agreement

Effective Date obligations under this Agreement, the Transaction Documents, or post-Plan Effective Date obligations under the Plan, the Transaction Documents, the Confirmation Order, the Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, or any Claim or obligation arising under the Plan.

13.06. Covenant Not to Sue. Each of the Releasing Parties hereby further agrees and covenants not to, and shall not, commence or prosecute, or assist or otherwise aid any other Entity in the commencement or prosecution of, whether directly, derivatively or otherwise, any Released Claims.

13.07. Standstill; Waiver of Events of Default.

(a) Until the occurrence of the Standstill Termination Date (if any), (i) the BEP Noteholders, in their capacities as "Purchasers" under, and as defined in, the Note Purchase Agreement, hereby covenant and agree that any the BEP Noteholders shall not exercise their rights, remedies, powers, privileges and defenses under the Note Purchase Agreement with respect to the occurrence of any Default or Event of Default (other than with respect to the charging of any default interest, as may be applicable, in accordance with the terms of the Note Purchase Agreement), nor shall any Purchaser direct the Collateral Agent to do the same, and (ii) the BEP Noteholders hereby covenant and agree that it shall forbear from instituting or pursuing as against any Company Party any suit or proceeding in any court, or taking any other formal action, or sending any legal notice, concerning, or in connection with, the Note Purchase Agreement or matters arising therefrom or related thereto, and the Parties further agree that any such suit or proceeding or formal action or legal notice shall be null and void and without force or effect.

(b) Notwithstanding the foregoing Section 13.07(a), upon the Effective Date of the Out-of-Court Restructuring, the BEP Noteholders hereby automatically and irrevocably waive (a) any and all Defaults (as defined in the Note Purchase Agreement) and Events of Default (as defined in the Note Purchase Agreement) arising on or prior to the Effective Date of the Out-of-Court Restructuring, including without limitation those set forth in that certain (i) Notice of Event of Default and Reservation of Rights, dated as of September 5, 2023, by BEP to the Company and (ii) letter titled "5E's Default Under the August 11, 2022 Note Purchase Agreement", dated as of September 5, 2023, by Kirkland & Ellis LLP, counsel to BEP and delivered to the Company and (b) the imposition of, and accrual of interest at, the Default Rate (as defined in the Note Purchase Agreement) from and after the date of approval of the Stockholder Approvals by the Company's stockholders at the Special Meeting. For the avoidance of doubt, to the extent that the Stockholder Approvals are not obtained, this Section 13.07(b) shall no longer be applicable. The waiver set forth in this Section 13.07(b) is a one-time waiver.

(c) For the avoidance of doubt, to the extent applicable, the waivers set forth in this Section 13.07(a) and 13.07(b) shall apply to any Permitted Transferee pursuant to any Transfer in accordance with this Agreement.

Section 14. ***Miscellaneous***

14.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

14.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

14.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

14.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

14.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. Each Party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in the Bankruptcy Court, and solely in connection with claims arising under this Agreement: (a) irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court; (b) waives any objection to laying venue in any such action or proceeding in the Bankruptcy Court; and (c) waives any objection that the Bankruptcy Court is an inconvenient forum or does not have jurisdiction over any Party hereto.

14.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing

this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

14.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Parties were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

14.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

14.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to a Company Party, to:

5E Advanced Materials, Inc.
9329 Mariposa Road, Suite 210
Hesperia, CA 92344
Attention: Paul Weibel, Chief Financial Officer and Corporate Secretary
E-mail address: pweibel@5eadvancedmaterials.com

with copies to:

Winston & Strawn LLP
35 W. Wacker Dr.
Chicago, IL 60601
Attention: Daniel J. McGuire
E-mail address: dmcguire@winston.com

and

Pachulski Stang Ziehl & Jones LLP
919 North Market Street
17th Floor
Wilmington, Delaware 19801
Attention: Laura Davis Jones
E-mail address: ljones@pszjlaw.com

(b) if to a BEP Noteholder, to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian E. Schartz, P.C. and Allyson B. Smith
E-mail address: brian.schartz@kirkland.com,
allyson.smith@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Claire E. Stephens
E-mail address: claire.stephens@kirkland.com

(c) if to the New Equity Group, to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Adam Goldberg and George Klidonas
E-mail address: adam.goldberg@lw.com,
george.klidonas@lw.com

Any notice given by delivery, mail, or courier shall be effective when received.

14.11. Fees and Expenses. The Company Parties shall pay and reimburse all reasonable and documented fees and expenses when due (including travel costs and expenses) and all outstanding and unpaid amounts incurred in connection with the Restructuring Transactions since the inception of the applicable fee or engagement letters of the attorneys, accountants, other professionals, advisors, and consultants of each Consenting Party (whether incurred directly or on their behalf and regardless of whether such fees and expenses are incurred before or after the Agreement Effective Date), including the fees and expenses of (i) the BEP Noteholders, including Kirkland & Ellis LLP, as counsel, and (ii) the New Equity Group, including, but not limited to, Latham & Watkins LLP, as lead counsel to the New Equity Group; provided, that in the event of an In-Court Restructuring any outstanding amounts due and owing as of the Petition Date shall be paid and reimbursed prior to the Petition Date.

14.12. Independent Due Diligence and Decision Making. Each Consenting Party hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties.

14.13. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for

purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

14.14. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

14.15. Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of the Bankruptcy Court or other court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

14.16. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

14.17. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

14.18. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

14.19. Capacities of Consenting Parties. Each Consenting Party has entered into this agreement on account of all Company Claims/Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Interests.

14.20. Survival. Notwithstanding (i) any Transfer of any Company Claims/Interests in accordance with this Agreement or (ii) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 14 and the Confidentiality Agreements shall survive such Transfer and/or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof; provided that the Company's obligations set forth in Section 14.11 shall not survive with respect to any Consenting Party for whose actions or breach resulted in termination of this Agreement. For the avoidance of doubt, the Parties acknowledge and agree that if this Agreement is terminated, Section 13 shall survive such termination, and any and all Releases shall remain in full force and

effect; *provided* that if this Agreement is terminated on account of breach by a Party, such Party's Release shall be null and void.

14.20. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3.02, Section 12, or otherwise, including a written approval by the Company Parties or the Consenting Parties, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

Company Parties' Signature Page to
the Restructuring Support Agreement

5E ADVANCED MATERIALS, INC.

By: */s/ Paul Weibel*

Name: Paul Weibel

Authorized Signatory

Consenting Party Signature Page to
the Restructuring Support Agreement

BEP SPECIAL SITUATIONS IV LLC

/s/ Jonathan Siegler
Name: Jonathan Siegler
Title: Managing Director and Chief Financial Officer

Address:
BEP Special Situations IV LLC
300 Crescent Court, Suite 1860
Dallas, TX 75201

E-mail address(es): jasiegler@bluescapegroup.com

Aggregate Amounts Beneficially Owned or Managed on Account of:	
BEP Notes	$63,561,300 plus accrued and unpaid interest

Consenting Party Signature Page to
the Restructuring Support Agreement

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SP

*/s/ Mulyadi Tjandra*_____
Name: Mulyadi Tjandra
Title: Director

Address:

E-mail address(es):

EXHIBIT A

Company Parties

5E Advanced Materials, Inc.
5E Boron Americas, LLC
American Pacific Borates Pty Ltd.

EXHIBIT B

Restructuring Term Sheet

Term Sheet

Summary

The term sheet (this "**Term Sheet**") sets forth a summary of the principal terms that BEP Special Situations IV LLC ("**BEP**"), 5E Advanced Materials, Inc. ("**FEAM**") and its direct and indirect subsidiaries and affiliates (together with FEAM, the "**Company**"), and the New Equity Group as defined further below in this Term Sheet ("**NEG**," and together with BEP and FEAM, the "**Parties**") would consider in connection with a proposed transaction in respect of an equity injection, and an equitization of the current Secured Debt Facility (as defined below).

THIS TERM SHEET IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES OR DEBT OF THE COMPANY. ANY SUCH OFFER OR SOLICITATION SHALL COMPLY WITH ALL APPLICABLE SECURITIES LAWS.

THIS TERM SHEET IS PROVIDED IN CONFIDENCE AND MAY BE DISTRIBUTED ONLY WITH THE EXPRESS WRITTEN CONSENT OF THE COMPANY, BEP, AND NEG. THIS TERM SHEET IS PROVIDED IN THE NATURE OF A SETTLEMENT PROPOSAL IN FURTHERANCE OF SETTLEMENT DISCUSSIONS. ACCORDINGLY, THIS TERM SHEET IS ENTITLED TO THE PROTECTIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION AND INFORMATION EXCHANGED IN THE CONTEXT OF SETTLEMENT DISCUSSIONS. FURTHER, NOTHING IN THIS TERM SHEET SHALL BE AN ADMISSION OF FACT OR LIABILITY OR DEEMED BINDING ON THE COMPANY, BEP OR ANY OF THEIR RESPECTIVE AFFILIATES.

THIS TERM SHEET IS SUBJECT TO ONGOING REVIEW BY BEP, THE COMPANY, NEG, AND EACH OF THEIR RESPECTIVE PROFESSIONALS, IS SUBJECT TO MATERIAL CHANGE AND IS BEING DISTRIBUTED FOR DISCUSSION PURPOSES ONLY. MOREOVER, THE TREATMENT SET FORTH IN THIS TERM SHEET REMAINS SUBJECT TO ONGOING DISCUSSION AMONG THE PARTIES COVERED HEREBY.

Strategic Intent

The outstanding indebtedness of, and equity interests in, the Company will be restructured (the "**Restructuring**") through either (i) an out-of-court transaction (the "**Out of Court Restructuring**") consistent with the terms and conditions described in this Term Sheet or, to the extent the conditions precedent to consummating the Out of Court Restructuring cannot be timely satisfied then, (ii) as voluntary pre-packaged cases (the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), to be filed in a United States Bankruptcy Court of competent jurisdiction to be agreed to by BEP and NEG (the "**Bankruptcy Court**") and pursuant to a pre-packaged plan of reorganization (the "**Pre-Packaged Chapter 11 Plan**").

If the filing of the Chapter 11 Cases becomes necessary or the Company, BEP and NEG mutually determine to pursue the Chapter 11 Cases in lieu of the Out of Court Restructuring, the Company and certain of its subsidiaries and affiliates shall file the Chapter 11 Cases in the Bankruptcy Court. The Pre-Packaged Chapter 11 Plan and the disclosure statement describing the Pre-Packaged Chapter 11 Plan shall be filed on the same day as the filing of the Chapter 11 Cases or as soon thereafter as is reasonably practicable, but in no event later than the date set forth in the restructuring support agreement (the "**RSA**"). The Pre-Packaged Chapter 11 Plan shall be in all material respects consistent with this Term Sheet.

The RSA (i) shall contain a customary "fiduciary out" provision exercisable by the Company that will be subject to the negotiation and agreement by FEAM, BEP and NEG, (ii) shall allow the Company to engage in a formal marketing process in connection with the Pre-Packaged Chapter 11 Plan contemplated by this Term Sheet so long as BEP and NEG are provided regular updates and information with respect to such process in a manner satisfactory to BEP and NEG, (iii) shall contain full releases of BEP, NEG and their respective affiliates upon signing the RSA, and (iv) will contain a forbearance of any existing defaults under the Secured Debt Facility.

An illustrative example of an Out of Court Restructuring together with a "stapled" Pre-Packaged Chapter 11 Plan is attached as a slide at the end of this Term Sheet.

Chief Restructuring Officer

As a condition of the Restructuring contemplated by this Term Sheet, FEAM shall immediately appoint, and maintain appointment of, Peter Kravitz or such other person being agreed as discussed among BEP and the NEG prior to execution of this term sheet, as Chief Restructuring Officer ("**CRO**"), who shall report to the board of directors of FEAM (the "**Board**").

Out-of-Court Restructuring	
Parties:	BEP FEAM NEG
Secured Debt Facility:	"Secured Debt Facility" shall mean that certain indebtedness under that certain Note Purchase Agreement, dated as of August 11, 2022, by and between FEAM, as issuer, BEP and other persons party to such agreement, as purchasers, certain guarantors, and Alter Domus (US) LLC, as collateral agent. "Convertible Notes" shall mean the notes issued under the Secured Debt Facility.
Securities Offered:	Up to US$35 million of FEAM's common stock
New Equity Group:	Ascend Global Investment Fund SPC ("Ascend") and such other person as may be nominated by Ascend
Placement:	(1) Upon shareholder approval for the placement and closing of the placement (the "Placement"): (a) Committed Placement: US$10 million shall be allocated to the NEG; and (b) Optional Placement: Up to an additional US$25 million, US$15 million of which shall be allocated to the NEG and/or other investors (with such initial amounts and initial allocations determined at the time of the signing (and pre-announcement) of the RSA); *provided* that the final allocation of such US$15 million shall be finally determined by the NEG and may be made prior to FEAM's shareholder approval having been obtained. BEP, in its' sole discretion, shall have the option to purchase up to US$10 million of FEAM's common stock at $1.025 per share in connection with the Placement. (2) FEAM shall pay a placement fee in equity (based on the Price of Equity) to each of the NEG, investors, and BEP at the closing of its respective placements, with such fee being 10% of the respective size of the placement actually taken by the NEG, investors, and BEP. (3) Ascend shall close on its' respective commitments under the Placement within three business days after shareholder approval of the Placement. All other investors shall close on their respective commitments under the Placement within ten business days after shareholder approval of the Placement.
Price of Equity:	VWAP minus 50% 5-day VWAP pre-announcement ("Price of Equity"), which is calculated as $1.025.
Conversion Rate Amendment:	With respect to the Convertible Notes under the Secured Debt Facility: New conversion price = Price of Equity plus 50% ("Conversion Price"), which is calculated as $1.5375.
Events of Default During RSA:	(1) At signing of the RSA, BEP to forbear from accelerating the debt or pursuing any other remedies until the closing of the Placement (not to occur later than 28 February 2024). (2) At signing of the RSA, BEP temporarily waives US $10 million minimum cash covenant until the closing of the Placement (not to occur later than 28 February 2024).
Amendments to Secured Debt Facility Upon Closing:	(1) Minimum cash covenant to be amended to US$7.5 million and waived through 28 June 2024 (2) Forced conversion feature to be deleted (3) Extend maturity by one year (4) Increase PIK interest rate from 6% to 10%
Other:	(1) Short selling prohibition by BEP, NEG and their respective managers, officers, directors and affiliates. (2) The CRO, chosen by BEP and reasonably acceptable to NEG, shall be appointed immediately and maintained until closing of the Restructuring. (3) Upon shareholder approval having been obtained or such other date as may be agreed in the RSA, a Chief Transformation Officer ("CTO") (reasonably acceptable to each of BEP and NEG) shall be appointed (on terms reasonably acceptable to each of BEP and NEG) to monitor operations and assist in project delivery, and any replacement of CTO (if required) to be appointed by NEG after consultation with BEP.

Out-of-Court Restructuring	
	(4) At closing of the Placement and at any time thereafter, NEG shall have the right to designate a board member (and FEAM shall be required to nominate such board member for shareholder approval at future annual meetings or replace such director at the NEG's discretion) whenever either (i) the NEG owns (A) at least 25% of the outstanding notional amount of the Convertible Notes as at such closing or (B) common stock of FEAM representing 25% of such outstanding notional amount on the day of close of the Placement, or (ii) the NEG beneficially owns 10% or more of FEAM's common stock (including, for the avoidance of doubt, common stock into which the Convertible Notes are converted). FEAM shall be required to approve future transactions between the NEG and FEAM for purposes of qualifying such transactions under an available exemption under Section 16 of the Exchange Act. (5) At the closing of the Placement and at any time thereafter, BEP shall have the right to designate a board member (and FEAM shall be required to nominate such board member for shareholder approval at future annual meetings or replace such director at BEP's discretion) whenever either (i) BEP owns (A) at least 25% of the outstanding notional amount of the Convertible Notes as at such closing or (B) common stock of FEAM representing 25% of such outstanding notional amount on the day of close of the Placement, or (ii) BEP beneficially owns 10% or more of FEAM's common stock (including, for the avoidance of doubt, common stock into which the Convertible Notes are converted). FEAM shall be required to approve future transactions between BEP and FEAM for purposes of qualifying such transactions under an available exemption under Section 16 of the Exchange Act. (6) Upon signing of the RSA and through closing of the placement, FEAM to reimburse costs and expenses (including advisor expenses) of NEG and BEP for the Restructuring. (7) NEG to provide BEP with assurance of financing for the Placement, as may be acceptable to BEP. (8) Ascend shall at all times prior to closing of the Placement (or, in the event of the filing of the Chapter 11 Cases, prior to emergence from the Chapter 11 Cases) maintain funds in cash (which in any event shall not be below $39 million) ("Ascend Cash Condition"), and Ascend shall be responsible and liable for the full Committed Placement and obligations set forth in this Term Sheet regardless whether any other person is nominated to the NEG. In the event of a negative shareholder vote on the Out-of-Court Restructuring, Ascend shall immediately increase the Ascend Cash Condition to an amount sufficient to fund (i) the Convertible Note Purchases, and (ii) 50% of the DIP Facility (defined below). Ascend shall promptly notify BEP if at any time the Ascend Cash Condition is not met. If such Ascend Cash Condition is not met at any time prior to closing of the Placement (or emergence from the Chapter 11 Cases, as applicable), BEP shall have a unilateral termination right (but not obligation) on the Restructuring. These requirements and the commitment to fund to be documented in one or more commitment letters to be executed among the applicable parties in connection with entry into the RSA. (9) FEAM shall appoint Stefan Selig as a disinterested director to the Board at his agreed to compensation level for a term of six months. Upon his appointment, Mr. Selig shall tender his resignation effective as of the date that is six months following the date of his appointment; *provided*, that the term may be extended by mutual written agreement of Mr. Selig and FEAM (determined by an affirmative vote of all other then-serving members of the Board). Mr. Selig's compensation shall be prorated to reflect the actual term of service, based on the date of appointment as a disinterested director and continuing until the date that Mr. Selig's term as a disinterested director ceases. For the avoidance of doubt, Mr. Selig shall not be entitled to receive duplicate compensation for service as a disinterested director of FEAM's affiliates, if applicable.
Convertible Note Purchases:	At closing of the Placement, the NEG to acquire 50% of outstanding notional amount of the Convertible Notes at par from BEP post Conversion Rate Amendment (principal + PIK).
Releases:	All Parties to provide mutual releases, inclusive of directors and executive officers, upon signing of RSA and ratified upon closing of the Placement.

Pre-Packaged Chapter 11 Plan	
Term	**Description**
Parties:	BEP FEAM

Pre-Packaged Chapter 11 Plan	
Term	**Description**
	NEG
Secured Debt Facility:	"Secured Debt Facility" shall have the meaning as defined in "Out-of-Court Restructuring"
DIP Facility:	"DIP Facility" shall mean the post-petition superiority financing in an amount to be determined prior to signing of the RSA with BEP's consent, to be provided by BEP and any person mutually agreed between BEP and Ascend (collectively, the "DIP Lenders") in connection with the Chapter 11 Cases and pursuant a certain debtor-in-possession credit agreement and other definitive documents, as necessary, subject to negotiation and agreement by FEAM and the DIP Lenders; *provided* that if the size of the DIP Facility exceeds $10 million: (a) any increase of the size of the DIP Facility to between $10 million and US$20 million shall be subject to Ascend's consent, which consent shall not be unreasonably withheld, and (b) any increase resulting in the size of the DIP Facility exceeding US$20 million shall be subject to Ascend's consent.
Treatment of Existing Equity Interests	All existing equity interests of FEAM shall be extinguished upon the effective date of the Pre-Packaged Chapter 11 Plan.
Purchase of Secured Debt Facility and DIP Facility, and Conversion:	Upon the effective date of the Pre-Packaged Chapter 11 Plan: (1) NEG shall purchase from BEP, and BEP shall sell to NEG, (i) 50% of the new equity issued on account of the Convertible Notes at a purchase price equal to 100% of the aggregate principal amount of the Convertible Notes acquired, plus any accrued and unpaid interest through, but not including, the effective date of the Pre-Packaged Chapter 11 Plan, and (ii) 50% of the new equity issued on account of outstanding DIP Facility indebtedness on and as of the effective date of the Pre-Packaged Chapter 11 Plan, in each case, less the amount of the new equity issued on account of the Convertible Notes and outstanding indebtedness under the DIP Facility actually paid for and acquired by other investors on or prior to the effective date of the Pre-Packaged Chapter 11 Plan, if any, upon the terms set forth or referenced in the debt commitment letter. For the avoidance of doubt, to the extent that the principal amount of the DIP Facility exceeds $20 million and Ascend did not consent to such amount above $20 million, Ascend shall be obligated to purchase 50% of the new equity issued on account of (i) the outstanding DIP Facility indebtedness up to the principal amount as consented to by Ascend consistent with and as set forth in the RSA and DIP Facility term sheet and (ii) the outstanding Convertible Notes. Further, for the avoidance of doubt, Ascend shall be responsible and liable for the preceding debt purchase obligations regardless whether any other person is nominated to the NEG. (2) BEP shall own 50% (i) of the new equity issued on account of the Convertible Notes and the new equity issued on account of outstanding DIP Facility indebtedness on and as of the effective date of the Pre-Packaged Chapter 11 Plan and/or (ii) cash or other assets, in each case, resulting from the resolution of the Chapter 11 Cases.
Management Incentive Plan:	The existing "MIP" shall receive the treatment under the Pre Packaged Chapter 11 Plan, with the terms of the new "MIP" (to be implemented after the Restructuring) to be finalised and agreed to by FEAM, BEP and NEG.
Treatment of All Other Claims:	It is anticipated that all other claims, excluding those arising out of the Secured Debt Facility and the DIP Facility, shall be unimpaired and "ride through" the Chapter 11 Cases, subject to further diligence.
Petition Date:	The Chapter 11 Cases shall be filed in in the Bankruptcy Court within 4 business days of a negative shareholder vote on the Out-of-Court Restructuring
Releases:	Pursuant to Pre-Packaged Chapter 11 Plan, all Parties to provide mutual releases upon the effective date of the Pre-Packaged Chapter 11 Plan.

EXHIBIT C

Commitment Letters

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this "Agreement") dated as of December 5, 2023, is made by and among Ascend Global Investment Fund SPC, a segregated portfolio company incorporated under the laws of the Cayman Islands, for and on behalf of Strategic SP ("Ascend"), BEP Special Situations IV LLC, a Delaware limited liability company ("BEP") and 5E Advanced Materials, Inc., a company incorporated under the laws of the State of Delaware (the "Company").

WHEREAS, this Agreement is being entered into in connection with the Restructuring Support Agreement to be entered into as of the date hereof (as amended, modified, supplemented or waived from time to time in accordance with its terms, the "Restructuring Support Agreement") among the Company Parties (as defined in the Restructuring Support Agreement) and the Consenting Parties (as defined in the Restructuring Support Agreement) and the transactions contemplated by the Out-of-Court Restructuring (as defined in the Restructuring Support Agreement) ("Transactions");

WHEREAS, Ascend is entering into the Debt Commitment Letter (as defined herein) in connection with the Restructuring Support Agreement, pursuant to which Ascend will purchase the Ascend Notes (as defined herein) on the terms and conditions set forth therein;

WHEREAS, in connection with the Committed Placement (as defined in the Restructuring Support Agreement), Ascend shall subscribe for and purchase the Ascend Subscription Shares (as defined herein) for the Ascend Purchase Price, and the Company shall issue and sell the Ascend Subscription Shares to Ascend in consideration of the payment of the Ascend Purchase Price therefor by or on behalf of Ascend to the Company, all on the terms and conditions set forth herein;

WHEREAS, the issue and sale of the Ascend Subscription Shares hereunder shall be made in reliance upon Section 4(a)(2) under the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder; and

WHEREAS, substantially concurrently with the execution of this Agreement and/or prior to the Closing, Ascend and BEP acknowledge that the Company may enter into separate subscription agreements ("Other Subscription Agreements") with certain other investors, including 5ECAP, LLC (collectively, the "Other Subscribers"), pursuant to which the Other Subscribers, severally and not jointly, have agreed or will agree to subscribe for certain shares of common stock of the Company ("Common Stock") upon Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms in this Agreement shall have the meanings given below:

"Affiliates" shall mean any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to Ascend, any investment fund or managed account that is managed and/or advised on a discretionary basis by the same investment manager or beneficial owner as Ascend will be deemed to be an Affiliate of Ascend. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"Amended and Restated Note Purchase Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Amended and Restated Investor Rights and Registration Rights Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Anti-Corruption Laws" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"Anti-Terrorism Laws" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"Ascend Purchase Price" shall mean $10,000,000 less the aggregate purchase price (if any) actually paid at or prior to the Closing by any Affiliates of Ascend pursuant to Section 2 of this Agreement and/or by 5ECAP, LLC to the Company pursuant to the Other Subscription Agreements, provided always that if the aggregate purchase price actually paid by 5ECAP, LLC pursuant to the Other Subscription Agreements is equal to or more than $5,000,000, the Ascend Purchase Price shall only be $5,000,000.

"Ascend Equity Placement Fee Shares" shall mean a number of shares of Common Stock equal to (a) 10% of the shares of Common Stock subscribed for by Ascend pursuant to this Agreement and (b) 10% of the shares of Common Stock subscribed for by any Affiliates of Ascend pursuant to Section 2 of this Agreement, rounded to the nearest whole number.

"Ascend Notes" means the aggregate principal amount of BEP Notes actually purchased from BEP by Ascend (together with any additional interest accrued and paid-in-kind between the date of this Agreement and the Closing Date) in connection with the Amended and Restated Note Purchase Agreement and the Restructuring Support Agreement.

"Ascend Shares" shall mean the Ascend Subscription Shares and the Ascend Equity Placement Fee Shares.

"Ascend Subscription Shares" shall mean the number of shares of Common Stock equal to the Ascend Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Ascend Purchase Price" shall have the meaning given to it in Section 2.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"BEP Notes" means the convertible notes of the Company issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

"Blocked Person" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"Closing Date" the date on which Closing occurs.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Debt Commitment Letter" shall have the meaning given to it in the Restructuring Support Agreement.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fort Cady Borate Project" means the Company's mining project in San Bernardino County, California, as described in the Company SEC Documents.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"Intellectual Property" means all the right, title and interest of the Company or any of its Subsidiaries in and to the following: (a) its Copyrights, Trademarks and Patents; (b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information; (c) any and all Technology, including Software; (d) any and all design rights which may be available to the Company or any of its Subsidiaries; (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and (f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's

custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Knowledge" means to the "best of" the Company's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"Law" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the United States Bankruptcy Court).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Material Adverse Effect" shall mean, with respect to any event, occurrence or condition, (a) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (b) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (c) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement (other than as arising from, or relating to, the failure by Ascend or its Affiliates to perform their obligations under this Agreement); provided, however, that the determination of whether, there has been or will be a Material Adverse Effect shall not include any event, circumstance, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any change, or proposed change in, or change in the interpretation of, any Law or accounting rules, including GAAP; (ii) events or conditions generally affecting the industries or geographic areas in which the Company operates; (iii) general economic, financial, credit, or political conditions, including changes in the credit, debt, securities, financial markets in general; (iv) any geopolitical conditions, outbreak of hostilities, civil unrest or similar disorder, acts of war (whether or not declared), sabotage, cyberterrorism, terrorism, military actions, earthquakes, volcanic activity, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires, any other natural or man-made disaster or acts of God, weather conditions, epidemics, pandemics and other force majeure events (including any escalation or general worsening thereof); (v) general changes in the price of the Company's Common Stock or other securities; (vi) any actions required or permitted by the Note Purchase Agreement, the Restructuring Support Agreement and transactions contemplated thereby, or any action taken, any failure to take action or such other changes or events, in each case, which the Company has consented to in writing, and any effect resulting therefrom; (vii) delay or failure in obtaining, or revocation of, franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority (including without limitation any delay or failure with respect to any authorization or modification to any permit with the US Environmental Protection Agency); (viii) any failure by the Company to meet any internal or published projections, forecasts, guidance, estimates, milestones, budgets or financial or operating predictions of revenue, earnings, cash flow or cash position; (ix) any effect attributable to the announcement or execution, pendency, negotiation or consummation of the Restructuring Support Agreement and the transactions contemplated thereby; or (x) any matters, facts, or disclosures set forth in the Company SEC Documents.

"Material Agreement" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; provided, however, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"Note Purchase Agreement" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP as purchaser, and Alter Domus (US) LLC as Agent, as may be amended, restated, supplemented, or otherwise modified from time to time, including pursuant to the Standstill Agreement.

"OFAC" is the U.S. Department of Treasury Office of Foreign Assets Control.

"OFAC Lists" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Per Share Purchase Price" shall mean $1.025 per share of Common Stock.

"Principal Market" shall mean the Nasdaq Stock Market (including the Capital Market, Global Market and/or the Global Select Market).

"Regulation D" shall mean the provisions of Regulation D promulgated under the Securities Act.

"Requirement of Law" shall mean as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" shall mean any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of the Company acting alone.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"Solvent" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the Transactions, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto).

"Standstill Agreement" means the standstill agreement dated November 9, 2023 by and among the Company, BEP, Alter Domus (US) LLC, Ascend and Mayfair Ventures Pte Ltd in connection with the Note Purchase Agreement.

"Stockholder Approvals" shall have the meaning given to it in the Restructuring Support Agreement.

"Subsidiary" is, with respect to any Person, any Person of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

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

"Technology" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Trademarks" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Company and each of its Subsidiaries connected with and symbolized by such trademarks.

"VAT" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

2. Subscription; Placement Fee. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to Ascend, and Ascend shall purchase the Ascend Subscription Shares from the Company, for the Ascend Purchase Price. If Ascend allocates all or a portion of its commitment to subscribe for the Ascend Subscription Shares to any of its Affiliates pursuant to any subscription agreement entered into between the Company and such Affiliate prior to the Closing: (i) the number of Ascend Subscription Shares to be subscribed for by Ascend hereunder shall be reduced by such number of shares of Common Stock subscribed for by such Affiliates of Ascend; and (ii) the Ascend Purchase Price hereunder shall be reduced by the cash purchase price paid to the Company by such Affiliates of Ascend under such subscription agreement(s) at or prior to the Closing. For the avoidance of doubt, (A) the number of Ascend Subscription Shares to be subscribed for by Ascend, and the corresponding Ascend Purchase Price, shall also be accordingly reduced if Other Subscribers subscribe and pay the cash purchase price for shares of Common Stock pursuant to the Other Subscription Agreements at or prior to the Closing and (B) notwithstanding any subscription agreement entered into by any Affiliates of Ascend or any Other Subscription Agreements, Ascend

shall remain obligated to pay the entire Ascend Purchase Price at or prior to the Closing as set forth in Section 3(a).

In consideration for and subject to Ascend's purchase of the Ascend Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to Ascend by way of the issuance of the Ascend Equity Placement Fee Shares to Ascend upon Closing.

3. Closing; Delivery of Shares. The closing of the sale and purchase of the Ascend Subscription Shares and the issuance of the Ascend Equity Placement Fee Shares (the "Closing") is contingent upon the substantially concurrent consummation of the Transactions. The Closing shall occur on the third Business Day after the Stockholder Approvals have been obtained.

(a) No later than 5.00 p.m. (Eastern time) on the Closing Date, Ascend shall pay to the Company the Ascend Purchase Price in cash in immediately available funds to the bank account notified by the Company to Ascend in writing at least three (3) Business Days prior to the Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Closing, the Company will, or will cause its transfer agent to, electronically deliver the Ascend Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of Ascend (or its nominee in accordance with its delivery instructions) or to a custodian designated by Ascend, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to Ascend of the Ascend Shares (in book entry form) on and as of the Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Closing Date).

(b) Each of the Company and Ascend shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated by this Agreement.

4. Conditions to Closing of the Company. The Company's obligations to sell and issue the Ascend Subscription Shares and the Ascend Equity Placement Fee Shares at the Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Company and BEP, on or prior to the Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Notes Purchase. Ascend's purchase of the Ascend Notes in accordance with the terms of the Restructuring Support Agreement, the Debt Commitment Letter and the Amended and Restated Note Purchase Agreement.

(c) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(d) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

5. Conditions to Closing of Ascend. Ascend's obligations to subscribe for and purchase the Ascend Subscription Shares at the Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by Ascend, on or prior to the Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Notes Purchase. Ascend's purchase of the Ascend Notes in accordance with the terms of the Restructuring Support Agreement, the Debt Commitment Letter and the Amended and Restated Note Purchase Agreement.

(c) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(d) Investor Rights and Registration Rights Agreement. The Company shall have executed and delivered counterpart signature pages to the Amended and Restated Investor Rights and Registration Rights Agreement in substantially the form set forth in the Restructuring Support Agreement.

(e) Listing of Common Stock. The shares of Common Stock to be sold by the Company pursuant to this Agreement shall have been approved for listing on the Principal Market, subject to official notice of issuance. There shall be no suspension of the qualification of the Common Stock for offering or sale or trading on the Principal Market and no initiation or threatening of any proceedings for any of such purposes or delisting, shall have occurred.

(f) Accuracy of Fundamental Representations/Warranties. The representations and warranties in Sections 6(a), 6(b)(i) and 6(d) shall be true, accurate and complete in all respects on the Closing Date. The representations and warranties in Sections 6(b)(ii) and 6(b)(iii) shall be true, accurate and complete in all respects on the Closing Date except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(g) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

6. Company Representations and Warranties. The Company represents and warrants to Ascend, as of the date hereof and as of the Closing Date, that:

(a) Due Organization. The Company and each of its Subsidiaries is duly existing and in good standing in its jurisdictions of organization or formation. The Company and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; Power and Authority. The execution, delivery and performance by the Company of this Agreement has been duly authorized, and does not (i) conflict with the organizational documents of the Company or its Subsidiaries, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which the Company and its Subsidiaries, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default or material breach under any Material Agreement to which the Company or any of its Subsidiaries, or any of their respective properties, is bound.

(c) No Default. Neither the Company nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Effect.

(d) Authorization of the Ascend Shares. The Ascend Shares under this Agreement will be, when issued and delivered against payment therefor as provided herein, duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or

other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(e) Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of the Company are duly authorized and validly issued, fully paid, nonassessable, and directly owned by the Company or its applicable Subsidiary and are free and clear of all Liens (other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

(f) No Australia Operations. Each of the Company and its Subsidiaries are not an Australian land corporation and does not carry on a national security business, as defined in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisition and Takeovers Regulation 2015 (Cth), and does not hold any mining tenements (including exploration tenements) or mining project in Australia.

(g) Litigation. Except as otherwise set forth in the Company SEC Documents, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against the Company or any of its Subsidiaries involving more than $1,000,000.

(h) No Broker's Fees. None of the Company nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or Ascend for a brokerage commission, finder's fee or like payment in connection with this Agreement and the transactions contemplated by this Agreement (other than as disclosed in this Agreement and the Other Subscription Agreements).

(i) Financial Statements; No Material Adverse Effect. All consolidated financial statements for the Company and its consolidated Subsidiaries, filed by it with the SEC fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of the Company and its consolidated Subsidiaries, and the consolidated results of operations of the Company and its consolidated Subsidiaries as of and for the dates presented. Except as otherwise set forth in the Company SEC Documents, since June 30, 2023, there has not been any Material Adverse Effect.

(j) No General Solicitation. Neither the Company nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Ascend Shares in a manner that would require registration of the Ascend Shares under the Securities Act.

(k) Accredited Investors. Neither the Company nor any of its Subsidiaries has offered or sold any of the Ascend Shares or the shares of Common Stock to be issued under the Other Subscription Agreements to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

(l) Solvency. The Company and each of its Subsidiaries, when taken as a whole, upon consummation of the transactions contemplated by this Agreement will be Solvent.

(m) No Registration Required. Assuming the accuracy of the representations and warranties of Ascend contained in Section 7(b), the issuance and sale of the Ascend Shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(n) SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by the Company under the Exchange Act or the Securities Act (all such documents, including

the exhibits thereto, collectively the "Company SEC Documents") have been filed with the SEC on a timely basis. The Company SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "Company Financial Statements"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Company Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Company Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. PWC LLP is an independent registered public accounting firm with respect to the Company and has not resigned or been dismissed as independent registered public accountants of the Company as a result of or in connection with any disagreement with the Company on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

(o) Internal Controls. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Board of Directors (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(p) Disclosure Controls and Procedures. The Company has established and maintains, and at all times since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (A) transactions are executed in accordance with the Company management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (C) access to assets is permitted only in accordance with the Company management's general or specific authorization and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, there has not been any fraud, whether or not material, that involves management or other employees of the Company or any of its Subsidiaries who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations

required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

(q) Regulatory Compliance. Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither the Company nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). The Company and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither the Company nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither the Company nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Effect. Neither the Company's nor any of its Subsidiaries' properties or assets has been used by the Company or such Subsidiary or, to the Company's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. The Company and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of the Company, any of its Subsidiaries, or any of the Company's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of the Company, any of its Subsidiaries, or to the Knowledge of the Company and any of their Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. The Company, its Subsidiaries and Affiliates, and to the Knowledge of the Company each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

(r) Investments. Neither the Company nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments (as defined in the Amended and Restated Note Purchase Agreement).

(s) Tax Returns and Payments. The Company and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and the Company and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by the Company and such Subsidiaries in an amount greater than $200,000, in all jurisdictions in which the Company or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. The Company and each of its Subsidiaries, may defer payment of any contested Taxes, provided that the Company or such Subsidiary (i) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (ii) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP. Neither the Company nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of the Company's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than $200,000 becoming due and payable by the Company or its Subsidiaries.

(t) Pension Contributions. The Company and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither the Company nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of the Company or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(u) Full Disclosure. No written representation, warranty or other statement of the Company or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Ascend, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Ascend, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by the Company in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

(v) Title Ownership. Each of the Company and its Subsidiaries has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement. All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(w) Intellectual Property. The Company and its Subsidiaries are the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and non-exclusive licenses for off-the-shelf software that are commercially available to the public. Each employee and contractor of the Company and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to the Company or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Effect, in each case individually or in the aggregate. No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by the Company or any of its Subsidiaries or exist to which the Company or any of its Subsidiaries is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(x) Enforceability. This Agreement has been duly authorized by the Company and, upon the consummation of the transactions contemplated by this Agreement, shall constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(y) Environmental Matters. The Company and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("Environmental Laws") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("Environmental Permits"), unless the failure to do so has not resulted or would not result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Company's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under,

Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Effect. There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Company or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Effect.

(z) No Suspension of Trading in or Delisting of Common Stock. The Common Stock is quoted for trading on the Principal Market. The Company is not aware of any circumstances affecting the continued quotation of the Common Stock on the Principal Market and has not received any written notice threatening the continued quotation of the Common Stock on the Principal Market.

7. Ascend Representations and Warranties. Ascend represents and warrants to the Company, as of the date hereof and as of the Closing Date, that:

(a) Status. Ascend is an entity duly organized, validly existing and in good standing under the laws of the Cayman Islands and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement, the performance by Ascend of its obligations hereunder and the consummation by Ascend of the transactions contemplated by this Agreement and thereby have been duly authorized and require no other proceedings on the part of Ascend. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of Ascend or its shareholders. This Agreement has been duly executed and delivered by Ascend and, assuming the execution and delivery hereof and acceptance thereof by other parties, will constitute the legal, valid and binding obligations of Ascend, enforceable against Ascend in accordance with its terms.

(b) Nature of Investor.

(i) Ascend is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D. Ascend is subscribing for the Ascend Shares for its own account and not with a view to any resale or distribution thereof. Ascend agrees to furnish any additional information requested by the Company or any of its Affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Ascend Shares.

(ii) Ascend (A) is a sophisticated investor with the knowledge and experience in business and financial matters to enable Ascend to independently evaluate the merits and risks, both in general and with regard to all transactions and investment strategies involving a security or securities and (B) has exercised independent judgment in evaluating its participation in the purchase of the Ascend Shares. Further, Ascend is able to bear the economic risk and lack of liquidity of an investment in the Company and the risk of loss of its entire investment in the Company.

(iii) Ascend or its representatives have been furnished with materials relating to the business, finances and operations of the Company and relating to the offer and sale of the Ascend Shares that have been requested by Ascend. Ascend or its representatives has been afforded the opportunity to ask questions of the Company or its representatives. Neither such inquiries nor any other due diligence investigations conducted at any time by Ascend or its representatives shall modify, amend or affect Ascend's right (A) to rely on the Company's representations and warranties contained in Section 6 above or (B) to indemnification or any other remedy based on, or with respect to the accuracy or inaccuracy of, or compliance with, the representations, warranties, covenants and agreements in this Agreement. Ascend understands and acknowledges that its purchase of the Ascend Shares involves a high degree of risk and

uncertainty. Ascend has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its investment in the Ascend Shares. Ascend acknowledges that this Agreement is the result of arm's-length negotiations between the Company and Ascend.

(c) No Public Offering. Ascend understands that the Ascend Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the offer and sale of the Ascend Shares have not been registered under the Securities Act. Ascend understands that the Ascend Shares may not be resold, transferred, pledged or otherwise disposed of by Ascend absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur solely outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any book entries representing the Ascend Shares shall contain a legend to such effect. Ascend understands and agrees that the Ascend Shares will be subject to the foregoing transfer restrictions and, as a result, Ascend may not be able to readily resell the Ascend Shares and may be required to bear the financial risk of an investment in the Ascend Shares for an indefinite period of time. Ascend understands that it has been advised to consult legal counsel prior to making any offer, resale, pledge or transfer of any of the Ascend Shares.

(d) Reliance Upon such Purchaser's Representations and Warranties. Ascend understands and acknowledges that the Ascend Shares are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of Ascend set forth in this Agreement in (i) concluding that the issuance and sale of the Ascend Shares is a "private offering" and, as such, is exempt from the registration requirements of the Securities Act, and (ii) determining the applicability of such exemptions and the suitability of Ascend to purchase the Ascend Subscription Shares.

(e) Sanctions. Ascend is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, each of which is administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "OFAC Lists"), (ii) owned, directly or indirectly, or controlled by, or acting on behalf of, one or more persons that are named on the OFAC Lists; (iii) organized, incorporated, established, located, resident or born in, or a citizen, national or the government, including any political subdivision, agency or instrumentality thereof, of, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine or any other country or territory embargoed or subject to substantial trade restrictions by the United States, (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (each, a "Prohibited Investor"). Ascend agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Ascend is permitted to do so under applicable law. Ascend represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), Ascend maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. Ascend also represents that, to the extent required, it maintains policies and procedures reasonably designed to ensure compliance with OFAC-administered sanctions programs, including for the screening of its investors against the OFAC sanctions programs, including the OFAC Lists. Ascend further represents and warrants that, to the extent required by applicable law, Ascend maintains policies and procedures reasonably designed to ensure that the funds held by Ascend and used to purchase the Ascend Subscription Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor.

8. Termination. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (i) such date and time as the Restructuring Support Agreement is validly terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties hereto to terminate this Agreement, or (iii) April 30, 2024 or such later date as may be agreed between Ascend and the Company, provided that nothing herein shall be deemed to release any party from any liability for any breach under this Agreement. For the avoidance of doubt, if any valid termination of this Agreement occurs or if the Company fails to perform its obligations in Section 3(a), in each case, after the payment by Ascend of the Ascend Purchase Price for the Ascend Subscription Shares, the Company shall promptly (but not later than one Business Day thereafter) return the Ascend Purchase Price to Ascend without any deduction for or on account of any tax, withholding, charges or set-off.

9. Transferability. Neither this Agreement nor any rights that may accrue to any party hereunder (other than the Ascend Shares acquired after the Closing, subject to applicable securities laws) may be transferred or assigned by any party without the prior written consent of the other parties, and any purported transfer or assignment without such consent shall be null and void ab initio.

10. Further Assurance. Subject to the other terms of this Agreement, the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, in order to consummate the transactions contemplated by this Agreement, as applicable.

11. Complete Agreement. Except as otherwise explicitly provided herein and without limiting the Restructuring Support Agreement and the transactions contemplated thereby, this Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto.

12. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. The parties agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

13. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

15. Rules of Construction. This Agreement is the product of negotiations among the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. Each party was represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel. Furthermore, this Agreement supersedes all prior

understandings, whether written or oral, among the parties hereto with respect to the Transactions and sets forth the entire understanding of the parties hereto with respect thereto; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any party under this Agreement may not be assigned, delegated, or transferred to any other person or entity. For the avoidance of doubt, except as expressly provided herein, BEP shall not be liable or obligated under this Agreement.

17. Notices. All notices, consents, waivers and other communications hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice). Any notice given by delivery, mail, or courier shall be effective when received.

If to the Company, to:	5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, California 92344 Attention: Paul Weibel E-mail: pweibel@5eadvancedmaterials.com
With a copy (which shall not constitute notice or delivery of process) to:	Winston & Strawn LLP 800 Capitol Street, Suite 2400 Houston, Texas 77002 Attention: J. Eric Johnson E-mail: jejohnson@winston.com
If to Ascend:	Ascend Global Investment Fund SPC for and on behalf of Strategic SP 1 Kim Seng Promenade #10-01 East Tower Great World City Singapore 237994 Attention: Mulyadi Tjandra and Michelle Tanuwidjaja E-mail: muljadi.tjandra@ascendcapitals.com, michelle.tanuwidjaja@ascendcapitals.com
With a copy (which shall not constitute notice or delivery of process) to:	Latham & Watkins LLP 9 Raffles Place #42-02 Republic Plaza Singapore 048619 Attention: Marcus Lee E-mail: marcus.lee@lw.com and Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attention: Adam Goldberg and George Klidonas E-mail: adam.goldberg@lw.com; george.klidonas@lw.com
If to BEP:	BEP Special Situations IV LLC

300 Crescent Court, Suite 1860
Dallas, Texas 75201
Attention: Jonathan Siegler
E-mail: jasiegler@bluescapegroup.com

With a copy (which shall not constitute notice or delivery of process) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian E. Schartz, P.C. and Allyson B. Smith
E-mail: brian.schartz@kirkland.com;
allyson.smith@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Claire E. Stephens
E-mail: claire.stephens@kirkland.com

18. Fees and Expenses. The Company shall, and shall procure that the Company Parties shall, pay and reimburse all reasonable and documented fees and expenses when due incident to the performance of its obligations hereunder, including, but not limited to (i) the issuance and delivery of the Ascend Shares, (ii) all fees and disbursements of the Company's counsel, (iii) all fees and disbursements of Ascend's counsel, (iv) any opinions from the Company's counsel required to effect the resale of the Ascend Shares by Ascend under applicable securities laws and (v) the fees and expenses incurred in connection with the listing or qualification of the Ascend Shares for trading on the Principal Market.

19. Amendments and Waivers. This Agreement may not be amended, modified or waived except by an instrument in writing, signed by each of the parties hereto.

20. Specific Performance; Ascend and BEP Consent. () It is understood and agreed by the parties that money damages would be an insufficient remedy for any breach of this Agreement by any party, and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach. BEP is entitled to enforce the rights granted to the Company to cause Ascend to pay the Ascend Purchase Price for the Ascend Subscription Shares in accordance with Section 2 of this Agreement. BEP hereby agrees that its right to specific performance as set forth in Section 20 of this Agreement shall be its sole and exclusive remedy with respect to any breach by any other party of this Agreement and that it may not seek or accept any other form of relief that may be available for any such breach of this Agreement (including monetary, punitive, indirect, special, consequential and/or any other damages or remedies).

() Each of Ascend and BEP hereby expressly consents to each of the Company, Ascend and the Other Subscribers entering into Other Subscription Agreements for the purposes of such Other Subscribers' purchase of shares of Common Stock of the Company in connection with the Out-of-Court Restructuring and as contemplated in the Restructuring Support Agreement and the Restructuring Term Sheet (as defined in the Restructuring Support Agreement), subject to any requirements set forth therein or in this Agreement.

21. Indemnification. The Company shall defend, protect, indemnify and hold harmless each of Ascend and its directors, officers, employees, consultants, agents, attorneys, or any other person affiliated with or representing Ascend and such person (each, an "Indemnified Person") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and

damages, and reasonable and documented expenses in connection therewith (irrespective of whether any such Indemnified Person is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnified Person as a result of, or arising out of, or relating to any material misrepresentation or breach of any representation or warranty made by the Company in this Agreement, except for actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment.

22. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the parties under this Agreement are, in all respects, several and not joint.

23. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

24. Remedies Cumulative. Subject to Section 20, all rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such party.

25. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions that are required to be performed following the Closing shall survive in accordance with their respective terms, and if no term is specified, then for sixty (60) days following the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof).

26. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

5E ADVANCED MATERIALS, INC.

By: */s/ Paul Weibel*
Name: Paul Weibel
Title: Chief Financial Officer

BEP SPECIAL SITUATIONS IV LLC

By: */s/ Jonathan Siegler*
Name: Jonathan Siegler
Title: Managing Director and Chief Financial Officer

ASCEND GLOBAL INVESTMENT FUND SPC FOR AND ON BEHALF OF STRATEGIC SP

By: */s/ Mulyadi Tjandra*
Name: Mulyadi Tjandra
Title: Director

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this "Agreement") dated as of December 5, 2023, is made by and among Ascend Global Investment Fund SPC, a segregated portfolio company incorporated under the laws of the Cayman Islands, for and on behalf of Strategic SP ("Ascend"), 5ECAP, LLC, a company incorporated under the laws of the State of Ohio (the "Investor") and 5E Advanced Materials, Inc., a company incorporated under the laws of the State of Delaware (the "Company").

WHEREAS, this Agreement is being entered into in connection with the Restructuring Support Agreement to be entered into as of the date hereof (as amended, modified, supplemented or waived from time to time in accordance with its terms, the "Restructuring Support Agreement") among the Company Parties (as defined in the Restructuring Support Agreement) and the Consenting Parties (as defined in the Restructuring Support Agreement) and the transactions contemplated by the Out-of-Court Restructuring (as defined in the Restructuring Support Agreement) ("Transactions");

WHEREAS, in connection with the Placement (as defined in the Restructuring Support Agreement), the Investor shall subscribe for and purchase the Investor Subscription Shares (as defined herein) for the Investor Purchase Price (as defined herein), and the Company shall issue and sell the Investor Subscription Shares to the Investor in consideration of the payment of the Investor Purchase Price therefor by or on behalf of the Investor to the Company, all on the terms and conditions set forth herein;

WHEREAS, the issue and sale of the Investor Shares hereunder shall be made in reliance upon Section 4(a)(2) under the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder; and

WHEREAS, substantially concurrently with the execution of this Agreement and/or prior to the Additional Closing, the Investor acknowledges that the Company may enter into separate subscription agreements ("Other Subscription Agreements") with certain other investors, including Ascend (collectively, the "Other Subscribers"), pursuant to which the Other Subscribers, severally and not jointly, have agreed or will agree to subscribe for certain shares of common stock of the Company ("Common Stock") upon the Initial Closing and/or the Additional Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms in this Agreement shall have the meanings given below:

"Additional Closing" has the meaning given to it in Section 3(b).

"Additional Closing Date" the date on which the Additional Closing occurs.

"Additional Investor Equity Placement Fee Shares" shall mean such number of shares of Common Stock, being equal to 10% of the Additional Investor Subscription Shares, rounded to the nearest whole number.

"Additional Investor Purchase Price" shall mean the aggregate purchase price (if any) actually paid at or prior to the Additional Closing by the Investor pursuant to Section 3(b) of this Agreement, provided always that Additional Investor Purchase Price shall be no higher than $14,000,000.

"Additional Investor Shares" shall mean the Additional Investor Subscription Shares and the Additional Investor Equity Placement Fee Shares.

"Additional Investor Subscription Shares" shall mean such number of shares of Common Stock equal to the Additional Investor Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Affiliates" shall mean any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"Amended and Restated Note Purchase Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Amended and Restated Investor Rights and Registration Rights Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Anti-Corruption Laws" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"Anti-Terrorism Laws" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"BEP" means BEP Special Situations IV LLC, a Delaware limited liability company.

"BEP Notes" means the convertible notes of the Company issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

"Blocked Person" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern.

"Confidentiality Agreement" means the mutual confidentiality and non-disclosure agreement between the Company and Empire Capital Management, LLC dated November 9, 2023.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fort Cady Borate Project" means the Company's mining project in San Bernardino County, California, as described in the Company SEC Documents.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"Intellectual Property" means all the right, title and interest of the Company or any of its Subsidiaries in and to the following: (a) its Copyrights, Trademarks and Patents; (b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information; (c) any and all Technology, including Software; (d) any and all design rights which may be available to the Company or any of its Subsidiaries; (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and (f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Initial Closing" has the meaning given to it in Section 3(a).

"Initial Closing Date" the date on which the Initial Closing occurs.

"Initial Investor Equity Placement Fee Shares" shall such number of shares of Common Stock being equal to 10% of the Initial Investor Subscription Shares, rounded to the nearest whole number.

"Initial Investor Purchase Price" shall mean an amount of $6,000,000.

"Initial Investor Shares" shall mean the Initial Investor Subscription Shares and the Initial Investor Equity Placement Fee Shares.

"Initial Investor Subscription Shares" shall mean such number of shares of Common Stock equal to the Initial Investor Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Investor Purchase Price" shall mean the Initial Investor Purchase Price and the Additional Investor Purchase Price.

"Investor Shares" shall mean the Initial Investor Shares and the Additional Investor Shares.

"Knowledge" means to the "best of" the Company's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"Law" means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the United States Bankruptcy Court).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Material Adverse Effect" shall mean, with respect to any event, occurrence or condition, (a) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (b) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (c) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement (other than as arising from, or relating to, the failure by the Investor or its Affiliates to perform their obligations under this Agreement); provided, however, that the determination of whether, there has been or will be a Material Adverse Effect shall not include any event, circumstance, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any change, or proposed change in, or change in the interpretation of, any Law or accounting rules, including GAAP; (ii) events or conditions generally affecting the industries or geographic areas in which the Company operates; (iii) general economic, financial, credit, or political conditions, including changes in the credit, debt, securities, financial markets in general; (iv) any geopolitical conditions, outbreak of hostilities, civil unrest or similar disorder, acts of war (whether or not declared), sabotage, cyberterrorism, terrorism, military actions, earthquakes, volcanic activity, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires, any other natural or man-made disaster or acts of God, weather conditions, epidemics, pandemics and other force majeure events (including any escalation or general worsening thereof); (v) general changes in the price of the Company's Common Stock or other securities; (vi) any actions required or permitted by the Note Purchase Agreement, the Restructuring Support Agreement and transactions contemplated thereby, or any action taken, any failure to take action or such other changes or events, in each case, which the Company has consented to in writing, and any effect resulting therefrom; (vii) delay or failure in obtaining, or revocation of, franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority (including without limitation any delay or failure with respect to any authorization or modification to any permit with the US Environmental Protection Agency); (viii) any failure by the Company to meet any internal or published projections, forecasts, guidance, estimates, milestones, budgets or financial or operating predictions of revenue, earnings, cash flow or cash position; (ix) any effect attributable to the announcement or execution, pendency, negotiation or consummation of the Restructuring Support

Agreement and the transactions contemplated thereby; or (x) any matters, facts, or disclosures set forth in the Company SEC Documents.

"Material Agreement" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; provided, however, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"Note Purchase Agreement" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP as purchaser, and Alter Domus (US) LLC as Agent, as may be amended, restated, supplemented, or otherwise modified from time to time, including pursuant to the Standstill Agreement.

"OFAC" is the U.S. Department of Treasury Office of Foreign Assets Control.

"OFAC Lists" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Per Share Purchase Price" shall mean $1.025 per share of Common Stock.

"Principal Market" shall mean the Nasdaq Stock Market (including the Capital Market, Global Market and/or the Global Select Market).

"Regulation D" shall mean the provisions of Regulation D promulgated under the Securities Act.

"Requirement of Law" shall mean as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" shall mean any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of the Company acting alone.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions,

updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"Solvent" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the Transactions, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto).

"Standstill Agreement" means the standstill agreement dated November 9, 2023 by and among the Company, BEP, Alter Domus (US) LLC, Ascend and Mayfair Ventures Pte Ltd in connection with the Note Purchase Agreement.

"Stockholder Approvals" shall have the meaning given to it in the Restructuring Support Agreement.

"Subsidiary" is, with respect to any Person, any Person of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

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

"Technology" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Trademarks" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Company and each of its Subsidiaries connected with and symbolized by such trademarks.

"VAT" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

2. Subscription; Placement Fee.

(a) Initial Closing. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to the Investor, and the Investor shall purchase the Initial Investor Subscription Shares from the Company, for the Initial Investor Purchase Price. In consideration for and subject to the Investor's purchase of the Initial Investor Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to the Investor by way of the issuance of the Initial Investor Equity Placement Fee Shares to the Investor upon Initial Closing.

(b) Additional Closing. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to the Investor, and the Investor shall purchase the Additional Investor Subscription Shares from the Company, for the Additional Investor Purchase Price. In consideration for and subject to the Investor's purchase of the Additional Investor Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to the Investor by way of the issuance of the Additional Investor Equity Placement Fee Shares to the Investor upon Additional Closing.

3. Closing; Delivery of Shares.

(a) Initial Closing. The closing of the sale and purchase of the Initial Investor Subscription Shares and the issuance of the Initial Investor Equity Placement Fee Shares (the "Initial Closing") shall occur on the third Business Day after the Stockholder Approvals have been obtained. No later than 5.00 p.m. (Eastern time) on the Initial Closing Date, the Investor shall pay (or cause the payment) to the Company the Initial Investor Purchase Price in cash in immediately available funds to the bank account notified by the Company to the Investor in writing at least three (3) Business Days prior to the Initial Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Initial Closing, the Company will, or will cause its transfer agent to, electronically deliver the Initial Investor Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of the Investor (or its nominee in accordance with its delivery instructions) or to a custodian designated by the Investor, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to the Investor of the Initial Investor Shares (in book entry form) on and as of the Initial Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Initial Closing Date).

(b) Additional Closing. The closing of the sale and purchase of the Additional Investor Subscription Shares and the issuance of the Additional Investor Equity Placement Fee Shares (the "Additional Closing") shall occur on the tenth Business Day after the Stockholder Approvals have been obtained. The Investor shall deliver written notice of the Additional Investor Purchase Price to the Company and Ascend on or prior to January 10, 2024. No later than 5.00 p.m. (Eastern time) on the Additional Closing Date, the Investor shall pay to the Company the Additional Investor Purchase Price in cash in immediately available funds to the bank account notified by the Company to the Investor in writing at least three (3) Business Days prior to the Additional Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Additional Closing, the Company will, or will cause its transfer agent to, electronically deliver the Additional Investor Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of the Investor (or its nominee in accordance with its delivery instructions) or to a custodian designated by the Investor, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to the Investor of the Additional Investor Shares (in book entry form) on and as of the Additional Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Additional Closing Date).

(c) Each of the Company and the Investor shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated by this Agreement.

4. Conditions to Initial Closing of the Company. The Company's obligations to sell and issue the Initial Investor Subscription Shares and the Initial Investor Equity Placement Fee Shares at the Initial Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written

waiver by the Company and Ascend, on or prior to the Initial Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(c) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

5. Conditions to Initial Closing of the Investor. The Investor's obligations to subscribe for and purchase the Initial Investor Subscription Shares at the Initial Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Investor, on or prior to the Initial Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(c) Investor Rights and Registration Rights Agreement. The Company shall have executed and delivered counterpart signature pages to the Amended and Restated Investor Rights and Registration Rights Agreement in substantially the form set forth in the Restructuring Support Agreement.

(d) Listing of Common Stock. The shares of Common Stock to be sold by the Company pursuant to this Agreement shall have been approved for listing on the Principal Market, subject to official notice of issuance. There shall be no suspension of the qualification of the Common Stock for offering or sale or trading on the Principal Market and no initiation or threatening of any proceedings for any of such purposes or delisting, shall have occurred.

(e) Accuracy of Fundamental Representations/Warranties. The representations and warranties in Sections 8(a), 8(b)(i) and 8(d) shall be true, accurate and complete in all respects on the Initial Closing Date. The representations and warranties in Sections 8(b)(ii) and 8(b)(iii) shall be true, accurate and complete in all respects on the Initial Closing Date except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

6. Conditions to Additional Closing of the Company. The Company's obligations to sell and issue the Additional Investor Subscription Shares and the Additional Investor Equity Placement Fee Shares at the Additional Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Company and Ascend, on or prior to the Additional Closing Date, of the condition in Section 4(c).

7. Conditions to Additional Closing of the Investor. The Investor's obligations to subscribe for and purchase the Additional Investor Subscription Shares at the Additional Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Investor, on or prior to the Additional Closing Date, of each of the conditions in Sections 5(d), 5(e) (except that

the reference to the Initial Closing Date in Section 5(e) shall instead refer to the Additional Closing Date) and 5(f).

8. Company Representations and Warranties. The Company represents and warrants to the Investor, as of the date hereof, as of the Initial Closing Date and as of the Additional Closing Date, that:

(a) Due Organization. The Company and each of its Subsidiaries is duly existing and in good standing in its jurisdictions of organization or formation. The Company and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; Power and Authority. The execution, delivery and performance by the Company of this Agreement has been duly authorized, and does not (i) conflict with the organizational documents of the Company or its Subsidiaries, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which the Company and its Subsidiaries, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default or material breach under any Material Agreement to which the Company or any of its Subsidiaries, or any of their respective properties, is bound.

(c) No Default. Neither the Company nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Effect.

(d) Authorization of the Investor Shares. The Investor Shares under this Agreement will be, when issued and delivered against payment therefor as provided herein, duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(e) Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of the Company are duly authorized and validly issued, fully paid, nonassessable, and directly owned by the Company or its applicable Subsidiary and are free and clear of all Liens (other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

(f) No Australia Operations. Each of the Company and its Subsidiaries are not an Australian land corporation and does not carry on a national security business, as defined in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisition and Takeovers Regulation 2015 (Cth), and does not hold any mining tenements (including exploration tenements) or mining project in Australia.

(g) Litigation. Except as otherwise set forth in the Company SEC Documents, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against the Company or any of its Subsidiaries involving more than $1,000,000.

(h) No Broker's Fees. None of the Company nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or the Investor for a brokerage commission, finder's fee or like payment in connection with this Agreement

and the transactions contemplated by this Agreement (other than as disclosed in this Agreement and the Other Subscription Agreements).

(i) Financial Statements; No Material Adverse Effect. All consolidated financial statements for the Company and its consolidated Subsidiaries, filed by it with the SEC fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of the Company and its consolidated Subsidiaries, and the consolidated results of operations of the Company and its consolidated Subsidiaries as of and for the dates presented. Except as otherwise set forth in the Company SEC Documents, since June 30, 2023, there has not been any Material Adverse Effect.

(j) No General Solicitation. Neither the Company nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Investor Shares in a manner that would require registration of the Investor Shares under the Securities Act.

(k) Accredited Investors. Neither the Company nor any of its Subsidiaries has offered or sold any of the Investor Shares or the shares of Common Stock to be issued under the Other Subscription Agreements to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

(l) Solvency. The Company and each of its Subsidiaries, when taken as a whole, upon consummation of the transactions contemplated by this Agreement will be Solvent.

(m) No Registration Required. Assuming the accuracy of the representations and warranties of the Investor contained in Section 9(b), the issuance and sale of the Investor Shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(n) SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by the Company under the Exchange Act or the Securities Act (all such documents, including the exhibits thereto, collectively the "Company SEC Documents") have been filed with the SEC on a timely basis. The Company SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "Company Financial Statements"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Company Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Company Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. PWC LLP is an independent registered public accounting firm with respect to the Company and has not resigned or been dismissed as independent registered public accountants of the Company as a result of or in connection with any disagreement with the Company on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

(o) Internal Controls. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Board of Directors

(i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(p) Disclosure Controls and Procedures. The Company has established and maintains, and at all times since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (A) transactions are executed in accordance with the Company management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (C) access to assets is permitted only in accordance with the Company management's general or specific authorization and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, there has not been any fraud, whether or not material, that involves management or other employees of the Company or any of its Subsidiaries who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

(q) Regulatory Compliance. Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither the Company nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). The Company and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither the Company nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither the Company nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Effect. Neither the Company's nor any of its Subsidiaries' properties or assets has been used by the Company or such Subsidiary or, to the Company's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. The Company and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of the Company, any of its Subsidiaries, or any of the Company's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction

that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of the Company, any of its Subsidiaries, or to the Knowledge of the Company and any of their Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. The Company, its Subsidiaries and Affiliates, and to the Knowledge of the Company each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

(r) Investments. Neither the Company nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments (as defined in the Amended and Restated Note Purchase Agreement).

(s) Tax Returns and Payments. The Company and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and the Company and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by the Company and such Subsidiaries in an amount greater than $200,000, in all jurisdictions in which the Company or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. The Company and each of its Subsidiaries, may defer payment of any contested Taxes, provided that the Company or such Subsidiary (i) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (ii) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP. Neither the Company nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of the Company's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than $200,000 becoming due and payable by the Company or its Subsidiaries.

(t) Pension Contributions. The Company and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither the Company nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of the Company or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(u) Full Disclosure. No written representation, warranty or other statement of the Company or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to the Investor, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to the Investor, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by the Company in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

(v) Title Ownership. Each of the Company and its Subsidiaries has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement. All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(w) Intellectual Property. The Company and its Subsidiaries are the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and non-exclusive licenses for off-the-shelf software that are commercially available to the public. Each employee and contractor of the Company and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to the Company or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Effect, in each case individually or in the aggregate. No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by the Company or any of its Subsidiaries or exist to which the Company or any of its Subsidiaries is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(x) Enforceability. This Agreement has been duly authorized by the Company and, upon the consummation of the transactions contemplated by this Agreement, shall constitute the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(y) Environmental Matters. The Company and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("Environmental Laws") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("Environmental Permits"), unless the failure to do so has not resulted or would not result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Company's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under, Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Effect. There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Company or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Effect.

(z) No Suspension of Trading in or Delisting of Common Stock. The Common Stock is quoted for trading on the Principal Market. The Company is not aware of any circumstances affecting the continued quotation of the Common Stock on the Principal Market and has not received any written notice threatening the continued quotation of the Common Stock on the Principal Market.

9. Investor Representations and Warranties. The Investor represents and warrants to the Company, as of the date hereof, as of the Initial Closing Date and as of the Additional Closing Date, that:

(a) Status. The Investor is an entity duly organized, validly existing and in good standing under the laws of Ohio and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement, the performance by the Investor of its obligations hereunder and the consummation by the Investor of the transactions contemplated by this Agreement and thereby have been duly authorized and require no other proceedings on the part of the Investor. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of the Investor or its shareholders. This Agreement has been duly executed and delivered by the Investor and, assuming the execution and delivery hereof and acceptance

thereof by other parties, will constitute the legal, valid and binding obligations of the Investor, enforceable against the Investor in accordance with its terms.

(b) Nature of Investor.

(i) The Investor is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D. The Investor is subscribing for the Investor Shares for its own account and not with a view to any resale or distribution thereof. The Investor agrees to furnish any additional information requested by the Company or any of its Affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Investor Shares.

(ii) The Investor (A) is a sophisticated investor with the knowledge and experience in business and financial matters to enable the Investor to independently evaluate the merits and risks, both in general and with regard to all transactions and investment strategies involving a security or securities and (B) has exercised independent judgment in evaluating its participation in the purchase of the Investor Shares. Further, the Investor is able to bear the economic risk and lack of liquidity of an investment in the Company and the risk of loss of its entire investment in the Company.

(iii) The Investor or its representatives have been furnished with materials relating to the business, finances and operations of the Company and relating to the offer and sale of the Investor Shares that have been requested by the Investor. The Investor or its representatives has been afforded the opportunity to ask questions of the Company or its representatives. Neither such inquiries nor any other due diligence investigations conducted at any time by the Investor or its representatives shall modify, amend or affect the Investor's right (A) to rely on the Company's representations and warranties contained in Section 8 above or (B) to indemnification or any other remedy based on, or with respect to the accuracy or inaccuracy of, or compliance with, the representations, warranties, covenants and agreements in this Agreement. The Investor understands and acknowledges that its purchase of the Investor Shares involves a high degree of risk and uncertainty. The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its investment in the Investor Shares. The Investor acknowledges that this Agreement is the result of arm's-length negotiations between the Company and the Investor.

(c) No Public Offering. The Investor understands that the Investor Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the offer and sale of the Investor Shares have not been registered under the Securities Act. The Investor understands that the Investor Shares may not be resold, transferred, pledged or otherwise disposed of by the Investor absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur solely outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any book entries representing the Investor Shares shall contain a legend to such effect. The Investor understands and agrees that the Investor Shares will be subject to the foregoing transfer restrictions and, as a result, the Investor may not be able to readily resell the Investor Shares and may be required to bear the financial risk of an investment in the Investor Shares for an indefinite period of time. The Investor understands that it has been advised to consult legal counsel prior to making any offer, resale, pledge or transfer of any of the Investor Shares.

(d) Reliance Upon such Purchaser's Representations and Warranties. The Investor understands and acknowledges that the Investor Shares are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth in this Agreement in (i) concluding that the issuance and sale of the Investor Shares is a "private offering" and, as such, is exempt from the registration requirements of the Securities Act, and (ii) determining the applicability of such exemptions and the suitability of the Investor to purchase the Investor Shares.

(e) Sanctions. The Investor is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, each of which is administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "OFAC Lists"), (ii) owned, directly or indirectly, or controlled by, or acting on behalf of, one or more persons that are named on the OFAC Lists; (iii) organized, incorporated, established, located, resident or born in, or a citizen, national or the government, including any political subdivision, agency or instrumentality thereof, of, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine or any other country or territory embargoed or subject to substantial trade restrictions by the United States, (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (each, a "Prohibited Investor"). The Investor agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Investor is permitted to do so under applicable law. The Investor represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), the Investor maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. The Investor also represents that, to the extent required, it maintains policies and procedures reasonably designed to ensure compliance with OFAC-administered sanctions programs, including for the screening of its investors against the OFAC sanctions programs, including the OFAC Lists. The Investor further represents and warrants that, to the extent required by applicable law, the Investor maintains policies and procedures reasonably designed to ensure that the funds held by the Investor and used to purchase the Investor Subscription Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor.

10. Termination. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (i) such date and time as the Restructuring Support Agreement is validly terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties hereto to terminate this Agreement, or (iii) April 30, 2024 or such later date as may be agreed between the Investor, Ascend and the Company, provided that nothing herein shall be deemed to release any party from any liability for any breach under this Agreement. The Company shall promptly notify the Investor of the termination of the Restructuring Support Agreement after the termination of such agreement. For the avoidance of doubt, if any valid termination of this Agreement occurs or if the Company fails to perform its obligations in Section 3(a), in each case, after the payment by the Investor of the Investor Purchase Price for the Investor Subscription Shares, the Company shall promptly (but not later than one Business Day thereafter) return the Investor Purchase Price to the Investor without any deduction for or on account of any tax, withholding, charges or set-off.

11. Transferability. Neither this Agreement nor any rights that may accrue to any party hereunder (other than the Investor Shares acquired after the Additional Closing, subject to applicable securities laws) may be transferred or assigned by any party without the prior written consent of the

other parties, and any purported transfer or assignment without such consent shall be null and void *ab initio*.

12. Further Assurance. Subject to the other terms of this Agreement, the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, in order to consummate the transactions contemplated by this Agreement, as applicable.

13. Complete Agreement. Except as otherwise explicitly provided herein and without limiting the Restructuring Support Agreement and the transactions contemplated thereby, this Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than the Confidentiality Agreement and any commitment letters signed between Ascend and the Investor.

14. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. The parties agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

15. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

17. Rules of Construction. This Agreement is the product of negotiations among the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. Each party was represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel. Furthermore, this Agreement supersedes all prior understandings, whether written or oral, among the parties hereto with respect to the Transactions and sets forth the entire understanding of the parties hereto with respect thereto; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

18. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any party under this Agreement may not be assigned, delegated, or transferred to any other person or entity. For the avoidance of doubt, except as expressly provided herein, Ascend shall not be liable or obligated under this Agreement.

19. Notices. All notices, consents, waivers and other communications hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail

(return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice). Any notice given by delivery, mail, or courier shall be effective when received.

If to the Company, to:	5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, California 92344 Attention: Paul Weibel E-mail: pweibel@5eadvancedmaterials.com
With a copy (which shall not constitute notice or delivery of process) to:	Winston & Strawn LLP 800 Capitol Street, Suite 2400 Houston, Texas 77002 Attention: J. Eric Johnson E-mail: jejohnson@winston.com
If to Ascend:	Ascend Global Investment Fund SPC for and on behalf of Strategic SP 1 Kim Seng Promenade #10-01 East Tower Great World City Singapore 237994 Attention: Mulyadi Tjandra and Michelle Tanuwidjaja E-mail: muljadi.tjandra@ascendcapitals.com, michelle.tanuwidjaja@ascendcapitals.com
With a copy (which shall not constitute notice or delivery of process) to:	Latham & Watkins LLP 9 Raffles Place #42-02 Republic Plaza Singapore 048619 Attention: Marcus Lee E-mail: marcus.lee@lw.com and Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attention: Adam Goldberg and George Klidonas E-mail: adam.goldberg@lw.com; george.klidonas@lw.com
If to the Investor:	5ECAP, LLC c/o Empire Capital Management, LLC 6724 Perimeter Loop Road, S 145 Dublin, Ohio, 43017 Attention: David J. Richards and Ken Leachman E-mail: djr@empirecapmgt.com, kleachman@empirecapmgt.com
With a copy (which shall not constitute notice or delivery of process) to:	Adam P. Richards, Esq. Cooper & Elliott, LLC 305 W Nationwide Blvd Columbus, OH 43215 E-mail: adamr@cooperelliott.com

20. Fees and Expenses. The Company shall, and shall procure that the Company Parties shall, pay and reimburse all reasonable and documented fees and expenses when due incident to the performance of its obligations hereunder, including, but not limited to (i) the issuance and delivery of the Investor Shares, (ii) all fees and disbursements of the Company's counsel, (iii) all fees and disbursements of the Investor's counsel, subject to a cap of $75,000; (iv) any opinions from the Company's counsel required to effect the resale of the Investor Shares by the Investor under applicable securities laws and (v) the fees and expenses incurred in connection with the listing or qualification of the Investor Shares for trading on the Principal Market.

21. Amendments and Waivers. This Agreement may not be amended, modified or waived except by an instrument in writing, signed by each of the parties hereto.

22. Specific Performance. It is understood and agreed by the parties that money damages would be an insufficient remedy for any breach of this Agreement by any party, and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach. Ascend is entitled to enforce the rights granted to the Company to cause the Investor to pay the Investor Purchase Price for the Investor Subscription Shares in accordance with Section 2 of this Agreement.

23. Indemnification. The Company shall defend, protect, indemnify and hold harmless each of the Investor and its directors, officers, employees, consultants, agents, attorneys, or any other person affiliated with or representing the Investor and such person (each, an "Indemnified Person") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable and documented expenses in connection therewith (irrespective of whether any such Indemnified Person is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnified Person as a result of, or arising out of, or relating to any material misrepresentation or breach of any representation or warranty made by the Company in this Agreement, except for actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment.

24. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the parties under this Agreement are, in all respects, several and not joint.

25. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

26. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such party.

27. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions that are required to be performed following the Additional Closing shall survive in accordance with their respective terms, and if no term is specified, then for sixty (60) days following the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof).

28. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic

mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

5E ADVANCED MATERIALS, INC.

By: */s/ Paul Weibel*
Name: Paul Weibel
Title: Chief Financial Officer

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SP

By: */s/ Mulyadi Tjandra*
Name: Mulyadi Tjandra
Title: Director

5ECAP, LLC
BY: EMPIRE CAPITAL MANAGEMENT, LLC
ITS: MANAGER

By: */s/ David J. Richard*
Name: David J. Richard
Title: Manager

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SP

December 5, 2023

BEP Special Situations IV LLC
300 Crescent Court, Suite 1860
Dallas, TX 75201

Amended and Restated Note Purchase Agreement
DIP Facility

Debt Commitment Letter

Ladies and Gentlemen:

You have advised Ascend Global Investment Fund SPC, a segregated portfolio company incorporated under the laws of the Cayman Islands, for and on behalf of Strategic SP ("**Ascend**" and together with each other person, if any, nominated by Ascend as a "Commitment Party" after the date of this Debt Commitment Letter (subject to BEP's consent), "**we**" or "**us**" and each, a "**Commitment Party**" and, collectively, the "**Commitment Parties**"), that:

(a) BEP Special Situations IV LLC ("**BEP**" or "**you**") is the holder of approximately $63,561,300 in aggregate principal amount of convertible notes currently outstanding as of the date hereof (and together with any additional interest accrued and paid-in-kind between the date of this letter agreement and the Closing Date (as defined below) or the Plan Effective Date (as defined below), as applicable, the "**BEP Notes**") maturing August 15, 2027 issued by 5E Advanced Materials, Inc. ("**FEAM**"), a Delaware corporation, on August 26, 2022 pursuant to the note purchase agreement dated as of August 11, 2022 among (i) FEAM, as issuer, (ii) certain subsidiaries of FEAM, as guarantors, (iii) BEP, as purchaser and (iv) Alter Domus (US) LLC, as collateral agent, to be amended and restated on the Closing Date, and as may be further amended, restated, supplemented or otherwise modified from time to time (the "**Note Purchase Agreement**"), which shall be amended and restated in connection with the Out-of-Court Restructuring (such amended and restated Note Purchase Agreement, the "**Amended and Restated Note Purchase Agreement**") in the form attached to that certain restructuring support agreement, dated as of the date hereof (as may be amended, supplemented or modified pursuant to its terms, the "**Restructuring Support Agreement**");

(b) The outstanding indebtedness of, and equity interests in, FEAM will be restructured through the transactions contemplated by the Restructuring Support Agreement;

(c) In connection with the Out-of-Court Restructuring:

(i) Ascend shall by itself or with certain other investors (which may include 5ECAP, LLC) enter into one or more subscription agreement(s) with FEAM to subscribe for and purchase up to $25 million of FEAM's common stock (the "**Placement**"), and Ascend has executed a subscription agreement with BEP and FEAM to subscribe for and purchase $10 million of FEAM's common stock in accordance with the terms therein (the "**Subscription Agreement**");

(ii) Ascend shall by itself or with certain other investors ("**Other Investors**" and, together with Ascend, the "**New Debt Group**") acquire 50% of the outstanding principal amount of the BEP Notes held by BEP as of the Closing Date plus any accrued and unpaid interest through and including the Closing Date;

(d) If the filing of the Chapter 11 Cases becomes necessary or FEAM determines to pursue the Chapter 11 Cases in lieu of the Out-of-Court Restructuring, FEAM and certain of its subsidiaries and affiliates shall file the Chapter 11 Cases in the Bankruptcy Court to implement the In-Court Restructuring. The Plan and the Disclosure Statement describing the Plan shall be filed on the same day as the filing of the Chapter 11 Cases or as soon thereafter as is reasonably practicable, but in no event later than the Milestone date set forth in the Restructuring Support Agreement;

(e) A potential debtor-in-possession financing facility shall be provided by BEP and any person mutually agreed between BEP and Ascend (collectively, the "**DIP Lenders**") in connection with the Chapter 11 Cases and pursuant to a certain debtor-in-possession credit agreement and other definitive documents, as necessary (collectively, the "**DIP Facility**"), subject to negotiation and agreement by FEAM and the DIP Lenders and consistent with the terms and conditions described in that certain DIP Term Sheet attached to the Restructuring Support Agreement; and

(f) In connection with the In-Court Restructuring, the New Debt Group shall acquire 50% of the (i) outstanding principal amount of the BEP Notes held by BEP as of the Plan Effective Date plus any accrued and unpaid interest through and including the Plan Effective Date; and (ii) outstanding principal amount and accrued interest under the DIP Facility.

Capitalized terms used but not defined herein have the respective meanings assigned to them in the Restructuring Support Agreement (together with this letter agreement, the "**Debt Commitment Letter**"). In the case of any such capitalized term that is subject to multiple and differing definitions, the appropriate meaning thereof in this letter agreement shall be determined by reference to the context in which it is used.

1. Commitments.

Subject only to the satisfaction or waiver of the terms and conditions expressly set forth herein, (i) Ascend hereby commits to purchase 50% of the BEP Notes outstanding on the Closing Date or the Plan Effective Date, as applicable, plus any accrued and unpaid interest through and including such date and (ii) in the case of an In-Court Restructuring, Ascend hereby also commits to purchase on the Plan Effective Date the New Debt Group's 50% portion of the DIP Facility as stipulated above (in an amount up to $10 million), for an aggregate commitment by Ascend of approximately $43.6 million (the "**Commitment**") (based on the amount of BEP Notes outstanding as of the date of this Debt Commitment Letter), in each case, as further set forth in the following manner:

(a) In connection with the Out-of-Court Restructuring, at or substantially concurrent with the closing of the Placement but in any event, no later than the third business day following the receipt of FEAM stockholder approval of the Out-of-Court Restructuring (the "**Closing Date**"), Ascend shall purchase from BEP, and BEP shall sell to Ascend, 50% of the BEP Notes at a purchase price equal to 100% of the aggregate principal amount of the BEP Notes acquired, plus any accrued and unpaid interest through and including the Closing Date, *less* the amount of the BEP Notes actually paid for and acquired by the Other Investors on or prior to the Closing Date on the same terms applied to Ascend, upon the terms set forth or referenced in this Debt Commitment Letter, and subject only to the satisfaction or waiver of the applicable conditions expressly set forth in Section 2(a) of this Debt Commitment Letter; and

(b)In the event that it becomes necessary to implement the In-Court Restructuring, upon the effective date of the Plan (the "**Plan Effective Date**"), Ascend shall purchase from BEP, and BEP shall sell to Ascend, (i) 50% of the new equity issued on account of the BEP Notes at a purchase price equal to 100% of the aggregate principal amount of the BEP Notes acquired, plus any accrued and unpaid interest through and including the Plan Effective Date and (ii) 50% of the new equity issued on account of outstanding DIP Facility indebtedness on and as of the Plan Effective Date, in each case, less the amount of the new equity issued on account of the BEP Notes and outstanding indebtedness under the DIP Facility actually paid for and acquired by the Other Investors on or prior to the Plan Effective Date, if any, upon the terms set forth or referenced in this Debt Commitment Letter (collectively, the "**In-Court Restructuring Ascend Purchases**"). For the avoidance of doubt, to the extent that the principal amount of the DIP Facility exceeds $20 million and Ascend did not consent to such amount above $20 million, Ascend shall be obligated to purchase 50% of the new equity issued on account of (i) the outstanding DIP Facility indebtedness up to the principal amount as consented to by Ascend consistent with and as set forth in the RSA and DIP Facility Term Sheet and (ii) the outstanding BEP Notes. Further, for the avoidance of doubt, Ascend shall be responsible and liable for the preceding debt purchase obligations regardless of whether any other person is nominated to the New Debt Group. This Section 1(b) shall be subject only to:

(1) the satisfaction or waiver of the applicable conditions expressly set forth in Section 2(b) of this Debt Commitment Letter; and

(2) the total amount to be extended under the DIP Facility not exceeding $10 million, unless:

(x) Ascend's written consent (such consent not to be unreasonably withheld) has been obtained to increase the total amount to be extended under the DIP Facility up to $20 million; and

(y) Ascend's written consent has been obtained to increase the total amount to be extended under the DIP Facility to more than $20 million.

(c)BEP agrees that:

(i) Ascend may allocate all or a portion of its obligations hereunder to a party or parties nominated by Ascend as a "Commitment Party" after the date of this Debt Commitment Letter, in any such case, subject to BEP's express written consent to be provided in its sole discretion, and Ascend's obligations hereunder will be reduced by the outstanding amounts of BEP Notes and/or DIP Facility actually paid for and acquired by such additional Commitment Party at the Closing Date or the Plan Effective Date (as the case may be); and

(ii) Ascend may allocate to Element Global, Inc and 5ECAP Debt, LLC (collectively, the "**Debt Investors**") up to 50% of Ascend's obligations hereunder to purchase the BEP Notes and/or DIP Facility pursuant to Section 1(a) or Section 1(b) of this Debt Commitment Letter, and Ascend's obligations hereunder will be reduced by the outstanding amounts of BEP Notes and/or DIP Facility actually paid for and acquired by the Debt Investors at the Closing Date or the Plan Effective Date (as the case may be).

For the avoidance of doubt, in the event any such other person does not pay BEP for or acquire any amount of BEP Notes or DIP Facility such person has agreed to purchase as permitted by this paragraph, Ascend shall remain fully obligated to purchase all such BEP Notes and/or DIP Facility at Closing in accordance with the terms herein.

(d) The parties hereto agree that the BEP Notes to be purchased by Ascend from BEP will be *pari passu* in all respects with the remaining BEP Notes that BEP will continue to hold immediately following such sale and purchase, including as to right of payment, security of payment and performance of obligations, and the sharing of any security interest, and the parties shall enter into such documents as may be reasonably necessary to effect the purpose of this Section 1(d).

2. Conditions Precedent to Ascend's Obligations.

(a) Ascend's obligations set forth in Section 1(a) of this Debt Commitment Letter shall be subject only to:

(i) the receipt of Company shareholder approval of the Out-of-Court Restructuring and related transactions;

(ii) the execution and delivery of the Restructuring Support Agreement by all parties thereto;

(iii) the execution and delivery of the Subscription Agreement by all parties thereto;

(iv) the execution and delivery of the Amended and Restated Note Purchase Agreement by all parties thereto; and

(v) the Amended and Restated Note Purchase Agreement having become effective and binding upon each of the parties thereto.

(b) Ascend's obligations set forth in Section 1(b) of this Debt Commitment Letter shall be subject only to:

(i) the execution and delivery of the Restructuring Support Agreement by all parties thereto;

(ii) the execution and delivery of the Amended and Restated Note Purchase Agreement by all parties thereto;

(iii) the Amended and Restated Note Purchase Agreement having become effective and binding upon each of the parties thereto;

(iv) the execution and delivery of the DIP Facility on terms reasonably satisfactory to BEP and, solely with respect to the amount being funded by Ascend, to Ascend, by all parties thereto and it not having been terminated in accordance with its terms;

(v) the approval of the DIP Facility and related order approving such DIP Facility by the Bankruptcy Court in which the Chapter 11 Cases are commenced; and

(vi) the approval of the In-Court Restructuring Ascend Purchases by the Bankruptcy Court.

3. Conditions Precedent to BEP's Obligations.

(a) BEP's obligations set forth in Section 1(a) of this Debt Commitment Letter shall be subject only to:

(i) the receipt of Company shareholder approval of the Out-of-Court Restructuring and related transactions;

(ii) the execution and delivery of the Restructuring Support Agreement by all parties thereto;

(iii) the execution and delivery of the Subscription Agreement by all parties thereto;

(iv) the execution and delivery of the Amended and Restated Note Purchase Agreement by all parties thereto;

(v) the Amended and Restated Note Purchase Agreement having become effective and binding upon each of the parties thereto; and

(vi) the Amended and Restated Note Purchase Agreement not having been terminated in accordance with its terms.

(b) BEP's obligations set forth in Section 1(b) of this Debt Commitment Letter shall be subject only to:

(i) the execution and delivery of the Restructuring Support Agreement by all parties thereto;

(ii) the execution and delivery of the Amended and Restated Note Purchase Agreement by all parties thereto;

(iii) the Amended and Restated Note Purchase Agreement having become effective and binding upon each of the parties thereto;

(iv) the Amended and Restated Note Purchase Agreement not having been terminated in accordance with its terms;

(v) the execution and delivery of the DIP Facility on terms reasonably satisfactory to BEP and, solely with respect to the amount being funded by Ascend, to Ascend, by all parties thereto and it not having been terminated in accordance with its terms;

(vi) the approval of the DIP Facility and related order approving such DIP Facility by the Bankruptcy Court in which the Chapter 11 Cases are commenced; and

(vii) the approval of the In-Court Restructuring Ascend Purchases by the Bankruptcy Court.

Further, in the event of (i) a negative Company shareholder vote on the Out-of-Court Restructuring and (ii) to the extent that the filing and pursuit of the Chapter 11 Cases and/or the In-Court Restructuring is not permitted under applicable Law, BEP shall not be required to sell any BEP Notes to Ascend or any designated Commitment Party, Ascend and any designated Commitment Party shall not be required to purchase any BEP Notes from BEP, and each of BEP, Ascend and any designated Commitment Party shall not be required to fund any portion of the DIP Facility.

4. Ascend Cash Condition.

Ascend shall at all times prior to the Closing Date (or, in the event of the filing of the Chapter 11 Cases, prior to emergence from the Chapter 11 Cases) maintain funds in cash in an amount of at least $39 million ("**Ascend Cash Condition**"). In the event of a negative Company shareholder vote on the Out-of-Court Restructuring, Ascend shall immediately increase the Ascend Cash Condition to an amount sufficient to fund its obligation set forth in Section 1(b) of this Debt Commitment Letter, provided always that if Ascend's written consent has not been obtained in accordance with Section 1(b)(2) of this Debt Commitment Letter to increase the total amounts extended under the DIP Facility, Ascend shall not be required to increase the Ascend Cash Condition. Ascend shall promptly notify BEP if at any time the Ascend Cash Condition is not met. BEP shall have a unilateral termination right (but not obligation) upon a failure of the Ascend Cash Condition.

5. Representations and Warranties. Each of BEP and Ascend hereby represents and warrants to the other party (solely with respect to itself) that:

(a) it is validly existing and in good standing under the laws of the state of its organization, and this Debt Commitment Letter is a legal, valid, and binding obligation of it, enforceable against it in accordance

with its terms, except as enforcement may be limited by applicable laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Debt Commitment Letter, the Plan or the Bankruptcy Code, no consent or approval is required by any other person or entity (including for the avoidance of doubt, any governmental entity) in order for BEP or Ascend (as the case may be) to effectuate the sale and purchase of the BEP Notes and the DIP Facility contemplated by, and perform its obligations under, this Debt Commitment Letter;

(c) the entry into and performance by it of, and the transactions contemplated by, this Debt Commitment Letter do not, and will not, conflict in any material respect with any law or regulation applicable to it or with any of its memorandum or articles of association, or other constitutional documents; and

(d) it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Debt Commitment Letter and to effectuate the sale and purchase of the BEP Notes and the DIP Facility loans contemplated hereby, and perform its obligations under this Debt Commitment Letter.

6. Limitation of Liability and Recourse.

(a) The Commitment of Ascend Global Investment Fund SPC is limited to the amount specified in Section 1 above, unless otherwise agreed in writing by the parties hereto.

(b) Ascend shall in no event whatsoever be required to fund any amounts under this Debt Commitment Letter in excess of the Commitment, and neither Ascend nor any of its affiliates shall have any obligation or liability to any person relating to, arising out of or in connection with, this Debt Commitment Letter, other than as expressly set forth herein.

(c) The parties acknowledge that Ascend, being an exempted segregated portfolio company incorporated under the laws of the Cayman Islands, is a company which segregates its assets and liabilities amongst its segregated portfolios in the following manner which, as a matter of Cayman Islands law, binds third parties:

(i) assets and liabilities held within or on behalf of a particular segregated portfolio of Ascend Global Investment Fund SPC; or

(ii) general assets and general liabilities of Ascend Global Investment Fund SPC, being the assets and liabilities of Ascend Global Investment Fund SPC which are not held within or on behalf of any segregated portfolio of Ascend Global Investment Fund SPC.

(d) The parties agree that this Debt Commitment Letter including, without limitation, all rights and obligations hereunder, shall be limited to the assets and liabilities of Strategic SP. For the avoidance of doubt, if there are insufficient assets in Strategic SP to enable payments to the parties of any amounts due to them under this Debt Commitment Letter, they shall have no recourse to the general assets of Ascend Global Investment Fund SPC. The terms and limitations set forth in this Section 6(d) shall not apply in the case of fraud or intentional breach of the Ascend Cash Condition.

7. Assignments; Amendments; Governing Law, Etc.

(a) This Debt Commitment Letter and the commitments hereunder are not assignable without the prior written consent of each other party hereto, and any attempted assignment without such consent will be null and void.

(b) The parties hereby agree that the representations, warranties and covenants set forth herein are solely for the benefit of the other party hereto and its successors and permitted assigns, in accordance with and subject to the terms of this Debt Commitment Letter, and nothing in this Debt Commitment Letter, express or implied, is intended to, and does not, confer upon any person other than the parties hereto and their respective successors and permitted assigns any rights or remedies hereunder or any rights under this Debt Commitment Letter. Except as otherwise set forth herein, this Debt Commitment Letter may not be amended, or any provision hereof waived or modified, except in a writing signed by the parties hereto. This Debt Commitment Letter may be executed in any number of counterparts, each of which will be an original and all of which, when taken together, will constitute one agreement. Delivery of an executed counterpart of a signature page of this Debt Commitment Letter by facsimile or other electronic transmission (including in ".pdf" format) will be effective as delivery of a manually executed counterpart hereof. Section headings used herein are for convenience of reference only, are not part of this Debt Commitment Letter and will not affect the construction of, or to be taken into consideration in interpreting, this Debt Commitment Letter.

(c) This Debt Commitment Letter supersedes all prior understandings, whether written or oral, among you and us with respect to the Commitment and sets forth the entire understanding of the parties hereto with respect thereto; *provided, however,* that the Debt Commitment Letter shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

(d) THIS DEBT COMMITMENT LETTER, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATING TO THIS DEBT COMMITMENT LETTER, WILL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

8. WAIVER OF JURY TRIAL.

EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BROUGHT BY OR ON BEHALF OF ANY PARTY RELATED TO OR ARISING OUT OF THIS DEBT COMMITMENT LETTER OR THE PERFORMANCE BY ANY OF THE COMMITMENT PARTIES OR THEIR RESPECTIVE AFFILIATES OF THE TRANSACTIONS CONTEMPLATED HEREUNDER.

9. Jurisdiction.

Each party hereto hereby irrevocably and unconditionally (a) submits, for itself and its property, to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in the City of New York, and any appellate court from any such court, in any suit, action, proceeding, claim or counterclaim arising out of or relating to this Debt Commitment Letter, or for recognition or enforcement of any judgment, and agrees that all claims in respect of any such suit, action, proceeding, claim or counterclaim will be heard and determined in such New York State or, to the extent permitted by law, in such Federal court, (b) waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action, proceeding, claim or counterclaim arising out of or relating to this Debt Commitment Letter in any court in

which such venue may be laid in accordance with the preceding clause of this sentence, (c) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such suit, action, proceeding, claim or counterclaim in any such court, and (d) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Service of any process, summons, notice or document by registered mail or overnight courier addressed to any of the parties hereto at the addresses above will be effective service of process against such party for any suit, action, proceeding, claim or counterclaim brought in any such court.

10. Confidentiality.

This Debt Commitment Letter, and its terms or substance, shall not be disclosed by you to any other person or entity, except (a) to your affiliates and co-managed funds, and their respective officers, directors, employees, affiliates, controlling persons, members, partners, equity holders, current and prospective investors, attorneys, accountants, representatives, agents and advisors, and other experts or agents who need to know such information, on a confidential basis; (b) if Ascend consents in writing to such proposed disclosure; (c) pursuant to the order of any court or administrative agency or otherwise as required by applicable law or regulation or as requested by a governmental authority or regulatory authority (including any self-regulatory authority) (in which case you shall inform us promptly thereof to the extent lawfully permitted to do so); (e) in connection with the enforcement of your rights or remedies hereunder; (g) to the extent that such information becomes publicly available other than by reason of improper disclosure by you or any of your affiliates in violation of any confidentiality obligations hereunder; (h) to the extent that such information is received by you from a third party that is not to your knowledge subject to confidentiality obligations to Ascend; (i) to the extent that such information is independently developed by you without reliance on any other confidential information received from Ascend or on Ascend's behalf ; and (j) in connection with the Chapter 11 Cases or any proceeding for the In-Court Restructuring brought before the Bankruptcy Court.

This Debt Commitment Letter, and its terms or substance, shall not be disclosed by a Commitment Party or Ascend to any other person or entity, except (a) to the Commitment Party's or Ascend's affiliates and co-managed funds, and their respective officers, directors, employees, affiliates, controlling persons, members, partners, equity holders, current and prospective investors, attorneys, accountants, representatives, agents and advisors, and other experts or agents who need to know such information, on a confidential basis; (b) if BEP consents in writing to such proposed disclosure; (c) pursuant to the order of any court or administrative agency or otherwise as required by applicable law or regulation or as requested by a governmental authority or regulatory authority (including any self-regulatory authority) (in which case the Commitment Party or Ascend shall inform BEP promptly thereof to the extent lawfully permitted to do so); (e) in connection with the enforcement of Ascend's rights or remedies hereunder; (g) to the extent that such information becomes publicly available other than by reason of improper disclosure by Ascend or any of its affiliates in violation of any confidentiality obligations hereunder; (h) to the extent that such information is received by Ascend from a third party that is not to Ascend's knowledge subject to confidentiality obligations to BEP; (i) to the extent that such information is independently developed by Ascend without reliance on any other confidential information received from BEP or on BEP's behalf ; and (j) in connection with the Chapter 11 Cases or any proceeding for the In-Court Restructuring brought before the Bankruptcy Court.

11. Termination

The Commitment will terminate upon the earliest to occur of:

(a) June 30, 2024;

(b) an election by BEP, in its sole discretion, upon or after any failure of the Ascend Cash Condition; and

(c) upon the mutual written agreement of each of the parties hereto to terminate this Debt Commitment Letter.

12. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice):

(a) if to BEP, to:

300 Crescent Court, Suite 1860
Dallas, Texas 75201
Attn: Jonathan Siegler
Email: jasiegler@bluescapegroup.com

with a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian E. Schartz, P.C. and Allyson B. Smith
E-mail address: brian.schartz@kirkland.com, allyson.smith@kirkland.com

and

Kirkland & Ellis LLP
609 Main Street
Houston, TX 77002
Attention: Bryan D. Flannery and Billy Vranish
E-mail address: bryan.flannery@kirkland.com, billy.vranish@kirkland.com

(b) if to Ascend, to:

1 Kim Seng Promenade
#10-01 East Tower
Great World City
Singapore 237994
Attention: Mulyadi Tjandra and Michelle Tanuwidjaja
E-mail: muljadi.tjandra@ascendcapitals.com
michelle.tanuwidjaja@ascendcapitals.com
with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
9 Raffles Place
#42-02 Republic Plaza
Singapore 048619

Attention: Marcus Lee
E-mail address: Marcus.Lee@lw.com

and

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Adam Goldberg and George Klidonas
E-mail address: adam.goldberg@lw.com, george.klidonas@lw.com

Any notice given by delivery, mail, or courier shall be effective when received.

13. Surviving Provisions.

Section 6 through Section 12 (inclusive) shall survive the termination hereof.

[*Remainder of Page Intentionally Left Blank; Signature Pages Follow*]

Sincerely,

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SP

By: _____
Name:
Title:

Accepted and agreed to as of
the date first set forth above:

BEP SPECIAL SITUATIONS IV LLC

By:_____
Name:
Title:

EXHIBIT D

Preliminary Proxy Statement

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☒ Preliminary Proxy Statement

☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

☐ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-12

5E ADVANCED MATERIALS, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

☐ Fee paid previously with preliminary materials:

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

1) Amount previously paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Filing Party:

LETTER FROM THE CHAIRMAN OF THE BOARD TO OUR STOCKHOLDERS

Dear Fellow Stockholders:

On behalf of our Board of Directors (the "Board of Directors") and management, I am pleased to invite you to the Special Meeting of Stockholders (the "Special Meeting") of 5E Advanced Materials, Inc. ("5E," "we," or the "Company"), which will be held at Central Time (being AEDT) on , as a virtual meeting, conducted via live webcast. You can attend the Special Meeting online and submit your questions during the meeting by visiting .

We are holding the Special Meeting in connection with a proposed restructuring of our outstanding senior secured convertible notes. This restructuring is a crucial step to strengthening the Company's balance sheet, funding the Company's next phase of growth, and commencing operations. We intend to implement the restructuring through an Out of Court Restructuring. If the conditions precedent to the Out of Court Restructuring cannot be timely satisfied, including approval by our stockholders of certain proposals at the Special Meeting as described below, we will implement the restructuring through bankruptcy in a Pre-Packaged Chapter 11 Plan. Each of the Out of Court Restructuring and the Pre-Packaged Chapter 11 Plan are defined and described in more detail in the enclosed Proxy Statement. We believe that completing the Out of Court Restructuring will allow us to advance the stated objectives of the Company and avoid possible disruptions of our business, additional expenses, and other uncertainties that would result from commencing the bankruptcy cases under the Pre-Packaged Chapter 11 Plan. Furthermore, under the Pre-Packaged Chapter 11 Plan, the equity interests of our stockholders will be extinguished in their entirety. **Therefore, your vote on the proposals at the Special Meeting is very important.**

The Special Meeting is being called to obtain approval from our stockholders for:

1. A proposal to approve an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock, par value $0.01 per share (the "Common Stock"), from 180,000,000 to 360,000,000 (the "Charter Amendment Proposal");
2. A proposal, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, to approve the issuance of up to $35 million of shares of our Common Stock at a price per share of $1.025 (the "Securities Offering") to the New Investors (as defined in the enclosed Proxy Statement) and Bluescape (as defined in the enclosed Proxy Statement) if it exercises its option to participate in the Securities Offering (the "Securities Offering Proposal");
3. A proposal, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, to approve the issuance of additional shares of our Common Stock upon conversion of our outstanding senior secured convertible notes in connection with an amendment to such convertible notes (the "Convertible Notes Proposal");
4. A proposal to authorize the Board of Directors to adjourn and postpone the Special Meeting (the "Adjournment Proposal," and together with the Charter Amendment Proposal, the Securities Offering Proposal, and the Convertible Notes Proposal, each a "Proposal," and, collectively, the "Proposals"); and

5. To transact such other business as may properly come before the Special Meeting and any adjournment or postponement thereof.

Each of the Securities Offering Proposal and the Convertible Notes Proposal, (collectively, the "Condition Precedent Proposals") is conditioned on the approval and adoption of each of the other Condition Precedent Proposals, and the Out of Court Restructuring will be consummated only if each of the Condition Precedent Proposals is approved by our stockholders. The Charter Amendment Proposal and the Adjournment Proposal are not conditioned upon the approval of any other Proposal. Each of these Proposals is more fully described in the Proxy Statement, which each stockholder is encouraged to read carefully and in its entirety.

Our Board of Directors believes that each Proposal is in the best interests of the Company and its stockholders, and, therefore, recommends that you vote "**FOR**" all of the Proposals.

Additional details of the business to be conducted at the Special Meeting are provided in the attached Notice of Special Meeting of Stockholders and Proxy Statement. You received these materials with a proxy card that indicates the number of votes that you will be entitled to cast at the Special Meeting according to our records or the records of your broker or other nominee. Our Board of Directors has determined that owners of record of the Company's Common Stock at the close of business on , 2023, are entitled to notice of, and have the right to vote at the Special Meeting and any reconvened meeting following any adjournment or postponement of the meeting. Holders of CHESS Depositary Interests ("CDIs") of the Company at that time will be entitled to receive notice of, and to attend as guests (but not vote at) the Special Meeting. Holders of CDIs can direct the Depositary Nominee to vote the common stock underlying their CDIs as detailed in the enclosed Proxy Statement.

Whether or not you attend the Special Meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to promptly vote using the Internet or telephone voting procedures described on the proxy card or vote and submit your proxy by signing, dating, and returning the enclosed proxy card in the enclosed envelope. If you decide to attend the Special Meeting, you will be able to vote virtually, even if you have previously submitted your proxy. The Out of Court Restructuring will be consummated only if the Condition Precedent Proposals are approved at the Special Meeting. Each of the Condition Precedent Proposals is conditioned on the approval and adoption of each of the other Condition Precedent Proposals. The Charter Amendment Proposal and the Adjournment Proposal are not conditioned on the approval of any other Proposal set forth in the Proxy Statement.

On behalf of the Board of Directors and our employees, I would like to express my appreciation for your continued support of 5E.

Sincerely,

David J. Salisbury
Chairman of the Board

, 2023

PRELIMINARY COPY
SUBJECT TO COMPLETION, DATED DECEMBER 5, 2023

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON , 2024

Notice is hereby given that the Special Meeting of Stockholders (the "Special Meeting") of 5E Advanced Materials, Inc., a Delaware corporation ("5E," "we," or the "Company"), will be held as a virtual meeting, conducted via live webcast at , on , at Central Time (being AEDT), for the following purposes:

1. to approve an amendment to our certificate of incorporation to increase the number of authorized shares of our common stock, par value $0.01 per share (the "Common Stock"), from 180,000,000 to 360,000,000 (the "Charter Amendment Proposal");
2. to approve, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and for all other purposes, the issuance of up to $35 million of shares of our common stock at a price per share of $1.025 (the "Securities Offering") to the New Investors (as defined in the enclosed Proxy Statement) and Bluescape (as defined in the enclosed Proxy Statement) if it exercises its option to participate in the Securities Offering (the "Securities Offering Proposal");
3. to approve, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and for all other purposes, the issuance of additional shares of our Common Stock upon conversion of our outstanding senior secured convertible notes in connection with an amendment to such convertible notes (the "Convertible Notes Proposal");
4. to authorize the Board of Directors to adjourn and postpone the Special Meeting (the "Adjournment Proposal," and together with the Charter Amendment Proposal, the Securities Offering Proposal, and the Convertible Notes Proposal, each a "Proposal," and, collectively, the "Proposals"); and
5. to transact such other business as may properly come before the Special Meeting and any adjournment or postponement thereof.

Each of the Securities Offering Proposal and the Convertible Notes Proposal, (collectively, the "Condition Precedent Proposals") is conditioned on the approval and adoption of each of the other Condition Precedent Proposals, and the Out of Court Restructuring will be consummated only if each of the Condition Precedent Proposals is approved by our stockholders. The Charter Amendment Proposal and the Adjournment Proposal are not conditioned upon the approval of any other Proposal. Each of these Proposals is more fully described in the Proxy Statement, which each stockholder is encouraged to read carefully and in its entirety.

The Company's Board of Directors recommends that the stockholders vote "FOR" the Proposals.

We are holding the Special Meeting in connection with a proposed restructuring of our outstanding senior secured convertible notes. This restructuring is a crucial step to strengthening the Company's balance sheet, funding the Company's next phase of growth, and commencing operations. We intend to implement the restructuring through an Out of Court Restructuring. If the conditions precedent to the Out of Court Restructuring cannot be timely satisfied, including

approval by our stockholders of certain proposals at the Special Meeting, we will implement the restructuring through bankruptcy in a Pre-Packaged Chapter 11 Plan. Each of the Out of Court Restructuring and the Pre-Packaged Chapter 11 Plan are defined and described in more detail in the enclosed Proxy Statement. We believe that completing the Out of Court Restructuring will allow us to advance the stated objectives of the Company and avoid possible disruptions of our business, additional expenses, and other uncertainties that would result from commencing the bankruptcy cases under the Pre-Packaged Chapter 11 Plan. Furthermore, under the Pre-Packaged Chapter 11 Plan, the equity interests of our stockholders will be extinguished in their entirety. **Therefore, your vote on the above proposals is very important.**

Only stockholders of record at the close of business on , 2023, will be entitled to notice of, and to vote at, the Special Meeting, or any adjournment or postponement thereof, notwithstanding the transfer of any shares after such date. To be admitted to the Special Meeting at , you must enter the 15-digit control number found on your proxy card. For specific voting information, see "General Information" beginning on page 1 of the enclosed Proxy Statement.

Holders of CHESS Depositary Interests ("CDIs") of the Company at that time will be entitled to receive notice of, and to attend as guests (but not vote at) the Special Meeting. Holders of CDIs can direct the Depositary Nominee to vote the Common Stock underlying their CDIs as detailed in the enclosed Proxy Statement.

Whether or not you attend the Special Meeting, it is important that your shares be represented and voted at the meeting. Therefore, I urge you to promptly vote and submit your proxy. You may vote by telephone, Internet, mail, or virtually. **Your vote is important**. We urge you to review the accompanying Proxy Statement carefully and to submit your proxy as soon as possible so that your shares will be represented at the meeting. The Out of Court Restructuring will be consummated only if the Condition Precedent Proposals are approved at the Special Meeting. Each of the Condition Precedent Proposals is conditioned on the approval and adoption of each of the other Condition Precedent Proposals. The Charter Amendment Proposal and the Adjournment Proposal are not conditioned on the approval of any other Proposal set forth in the Proxy Statement.

By Order of the Board of Directors,

Paul Weibel
Chief Financial Officer and Corporate Secretary

Hesperia, California
,
2023

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5E ADVANCED MATERIALS, INC.
9329 Mariposa Road, Suite 210
Hesperia, CA 92344

PROXY STATEMENT
SPECIAL MEETING OF STOCKHOLDERS

THE SPECIAL MEETING

This proxy statement (the "Proxy Statement") is solicited by and on behalf of the Board of Directors (the "Board of Directors" or "Board") of 5E Advanced Materials, Inc. for use at the Special Meeting of Stockholders (the "Special Meeting") to be held on , as a virtual meeting, conducted via live webcast, at Central Time (being AEDT), or at any adjournments or postponements thereof. The live webcast can be accessed on the Internet at . You will be able to vote and submit questions online through the virtual-meeting platform during the Special Meeting. Holders of CHESS Depositary Interests ("CDIs") of the Company will be entitled to receive notice of, and to attend as guests (but not vote at) the Special Meeting. Holders of CDIs can direct the Depositary Nominee (as defined below) to vote the common stock underlying their CDIs as detailed below.

Unless the context requires otherwise, references in this Proxy Statement to "we," "us," "our," and the "Company" refer to 5E Advanced Materials, Inc. The solicitation of proxies by the Board will be conducted primarily electronically and telephonically or by mail for those stockholders who sign, date, and return the enclosed proxy card in the enclosed envelope. Officers, directors, and employees of the Company may also solicit proxies personally or by telephone, e-mail, or other forms of wire or facsimile communication. These officers, directors, and employees will not receive any extra compensation for these services. The Company will reimburse brokers, custodians, nominees, and fiduciaries for reasonable expenses incurred by them in forwarding proxy materials to beneficial owners of the Company's common stock, par value $0.01 per share (the "Common Stock"). The costs of solicitation will be borne by the Company.

Definitive copies of this Proxy Statement and related proxy card are first being sent on or about , 2023, to all stockholders of record at the close of business on , 2023 (the "record date"). On the record date, there were shares of our Common Stock outstanding and entitled to vote at the Special Meeting, which were held by approximately holders of record.

General Information

Why am I receiving these materials?

You are receiving this Proxy Statement and a proxy card from the Company, because on , 2023, the record date for the Special Meeting, you owned shares of the Company's Common Stock or the Company's CDIs. This Proxy Statement describes the matters that will be presented for consideration by the Company's stockholders at the Special Meeting. It also gives you information concerning the matters to assist you in making an informed decision.

As discussed in greater detail below, we are calling a Special Meeting of our stockholders to approve the Charter Amendment Proposal, the Securities Offering Proposal, and the Convertible Notes Proposal. The Out of Court Restructuring cannot be consummated unless our stockholders approve the Condition Precedent Proposals set forth in this Proxy Statement.

How can I attend the Special Meeting?

Stockholders as of the record date (or their duly appointed proxy holders) may attend, vote, and submit questions virtually during the Special Meeting by logging in at . To log in, stockholders (or their authorized representatives) will need the control number provided on their proxy card. If you are not a stockholder or do not have a control number (including Holders of CDIs), you may still access the meeting as a guest, but you will not be able to submit questions or vote at the meeting. The meeting will begin promptly at Central Time on , (being AEDT on ,). We encourage you to access the meeting prior to the start time. Online access will open at Central Time, (being AEDT) and you should allow ample time to log in to the meeting webcast and test your computer audio system. We recommend that you carefully review the procedures needed to gain admission in advance. A recording of the meeting will be available at for 90 days after the meeting.

Holders of CDIs will be entitled to receive notice of, and to attend as guests (but not vote at) the Special Meeting.

Can I ask questions at the virtual Special Meeting?

Only registered stockholders as of the record date who attend and participate in our virtual Special Meeting will have an opportunity to submit questions live via the Internet during a designated portion of the meeting. We also encourage you to submit questions in advance of the meeting until 11:59 p.m. Eastern Time the day before the Special Meeting by going to and logging in with your control number. During the meeting, we will spend up to 15 minutes answering stockholder questions that comply with the meeting rules of procedure. The rules of procedure, including the types of questions that will be accepted, will be posted on the Special Meeting website. To ensure the orderly conduct of the Special Meeting, we encourage you to submit questions in advance. If we receive substantially similar questions, we will group such questions together and provide a single response to avoid repetition. Stockholders must have available their control number provided on their proxy card to ask questions during the meeting.

What if I have technical difficulties accessing the virtual Special Meeting?

We will have technicians ready to assist you with any technical difficulties you may have accessing the virtual meeting. If you encounter any difficulties accessing the virtual meeting during check-in or during the meeting, please call the technical support number that will be posted on the virtual stockholder meeting login page: .

What proposals will be voted on at the Special Meeting?

Stockholders will vote on up to four proposals at the Special Meeting:

1. A proposal to approve an amendment to our certificate of incorporation to increase the number of authorized shares of our Common Stock from 180,000,000 to 360,000,000 (the "Charter Amendment Proposal");

2. A proposal, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and all other purposes, to approve the issuance of additional shares of our Common Stock at a price per share of $1.025 (the "Securities Offering") in a placement to the New Investors (defined below) and Bluescape (defined below) if it exercises its option to participate in the Securities Offering (the "Securities Offering Proposal");

3. A proposal, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and all other purposes, to approve the issuance of additional shares of our Common Stock upon conversion of our outstanding senior secured convertible notes in connection with an amendment to such convertible notes (the "Convertible Notes Proposal" and, together with the Charter Amendment Proposal and the Securities Offering Proposal, the "Condition Precedent Proposals"); and

4. A proposal to authorize the Board of Directors to adjourn and postpone the Special Meeting (the "Adjournment Proposal," and together with the Charter Amendment Proposal, the Securities Offering Proposal, and the Convertible Notes Proposal, each a "Proposal," and, collectively, the "Proposals").

We will also consider other business, if any, that properly comes before the Special Meeting, or at any adjournments or postponements thereof.

Are the Proposals conditioned on one another?

Each Condition Precedent Proposal is conditioned on the approval and adoption of each of the other Condition Precedent Proposals, and the Out of Court Restructuring will be consummated only if each of the Condition Precedent Proposals is approved by our stockholders. The Charter Amendment Proposal and the Adjournment Proposal are not conditioned upon the approval of any other Proposal.

It is important for you to note that in the event that any of the Condition Precedent Proposals do not receive the requisite vote for approval, then the Company will not consummate the Out of Court Restructuring.

What happens if other business not discussed in the Proxy Statement comes before the meeting?

The Company does not know of any business to be presented at the Special Meeting other than the proposals discussed in this Proxy Statement. If any other matter is properly presented at the Special Meeting, the signed proxy gives the individuals named as proxies authority to vote the shares on such matters at their discretion.

How does the Board recommend the stockholders vote on the Proposals?

Our Board recommends that stockholders vote "**FOR**" the Charter Amendment Proposal, "**FOR**" the Securities Offering Proposal, and "**FOR**" the Convertible Notes Proposal, and, if presented to the Special Meeting, "**FOR**" the Adjournment Proposal.

Who is entitled to vote?

As of the record date, shares of Common Stock were outstanding. Only holders of record of our Common Stock as of the record date will be entitled to notice of, and to vote at, the Special Meeting or any adjournment or postponement thereof. Each stockholder is entitled to one vote for each share of our Common Stock held by such stockholder on the record date. No cumulative voting rights are authorized. Each CDI holder is entitled to direct CHESS Depositary Nominees Pty Ltd, as depositary nominee (the "Depositary Nominee"), to vote one vote for every 10 CDIs held by such holder on the record date.

What does it mean to be a holder of CDIs?

CDIs are issued by the Company through the Depositary Nominee and traded on the Australian Securities Exchange. If you own CDIs, then you are the beneficial owner of one share of Common Stock for every 10 CDIs that you own. The Depositary Nominee, or its custodian, is considered the stockholder of record for the purposes of voting at the Special Meeting. As the beneficial owner, you have the right to direct the Depositary Nominee, or its custodian, as to how to vote the shares of Common Stock underlying your CDIs. As a beneficial owner, you are invited to attend the Special Meeting. However, because you are not a stockholder, if you personally want to vote the shares of Common Stock underlying your CDIs at the Special Meeting, you must inform the Depositary Nominee via the CDI Voting Instruction Form that you wish to nominate yourself (or another person) to be appointed as the Depositary Nominee's proxy for the purposes of virtually attending and voting at the Special Meeting.

Under the rules governing CDIs, the Depositary Nominee is not permitted to vote on your behalf on any matter to be considered at the Special Meeting unless you specifically instruct the Depositary Nominee how to vote. We encourage you to communicate your voting instructions to the Depositary Nominee in advance of the Special Meeting to ensure that your vote will be counted by completing the CDI Voting Instruction Form and returning it in accordance with the instructions specified on that form.

How do I vote in advance of the Special Meeting?

If you are a holder of record of shares of Common Stock of the Company, you may direct your vote without attending the Special Meeting by following the instructions on the proxy card to vote by Internet or by telephone, or by signing, dating, and mailing a proxy card.

If you hold your shares in street name via a broker, bank, or other nominee, you may direct your vote without attending the Special Meeting by signing, dating, and mailing your voting instruction card. Internet or telephonic voting may also be available. Please see your voting instruction card provided by your broker, bank, or other nominee for further details.

How do I vote during the Special Meeting?

Shares held directly in your name as the stockholder of record may be voted if you are attending the Special Meeting by entering the 15-digit control number found on your proxy card when you log in to the meeting at .

Shares held in "street name" through a brokerage account or by a broker, bank, or other nominee may only be voted at the Special Meeting by submitting voting instructions to your bank, broker or other nominee or by presenting a legal proxy, issued in your name from the record holder (your bank, broker or other nominee).

Even if you plan to attend the Special Meeting, we recommend that you vote in advance, as described above under "How do I vote in advance of the Special Meeting?" so that your vote will be counted if you are unable to attend the Special Meeting.

How do I vote if I hold CDIs?

Each CDI holder is entitled to direct the Depositary Nominee to vote one vote for every 10 CDIs held by such holder on the record date. Persons holding CDIs are entitled to receive notice of and to attend the Special Meeting as guests. Holders of CDIs may direct the Depositary Nominee to vote their underlying shares of Common Stock at the Special Meeting by completing and returning the CDI Voting Instruction Form to Computershare Australia, the agent the Company has designated for the collection and processing of voting instructions from the Company's CDI holders. Votes must be received by Computershare Australia by no later than Central Time on , (being AEDT on ,) (two business days prior to the date of the Special Meeting) in accordance with the instructions on the CDI Voting Instruction Form.

Alternatively, CDI holders can inform the Depositary Nominee via the CDI Voting Instruction Form that they wish to nominate themselves (or another person) to be appointed as the Depositary Nominee's proxy for the purposes of virtually attending and voting at the Special Meeting.

Can I change my vote or revoke my proxy or CDI Voting Instruction Form?

You may change your vote or revoke your proxy at any time before it is voted at the Special Meeting. If you are a stockholder of record, you may change your vote or revoke your proxy by:

- delivering to the attention of the Secretary at the address on the first page of this Proxy Statement a written notice of revocation of your proxy;
- delivering to us an authorized proxy bearing a later date (including a proxy over the Internet or by telephone); or
- attending the Special Meeting and voting electronically, as indicated above under "How do I vote during the Special Meeting?", but note that attendance at the Special Meeting will not, by itself, revoke a proxy.

If your shares are held in the name of a bank, broker, or other nominee, you may change your vote by submitting new voting instructions to your bank, broker, or other nominee. Please note that if your shares are held of record by a bank, broker, or other nominee and you decide to attend and vote at the Special Meeting, your vote at the Special Meeting will not be effective unless you present a legal proxy, issued in your name from the record holder (your bank, broker, or other nominee).

If you are a holder of CDIs and you direct the Depositary Nominee to vote by completing the CDI Voting Instruction Form, you may revoke those instructions by delivering to Computershare Australia a written notice of revocation bearing a later date than the CDI Voting Instruction Form previously sent, which notice must be received by no later than Central Time on , (being AEDT on ,).

What is a broker nonvote?

Brokers, banks, or other nominees holding shares on behalf of a beneficial owner (other than the Depositary Nominee) may vote those shares in their discretion on certain "routine" matters even if they do not receive timely voting instructions from the beneficial owner. With respect to "nonroutine" matters, the broker, bank, or other nominee is not permitted to vote shares for a beneficial owner without timely received voting instructions. Each Proposal to be voted on at the Special Meeting is a nonroutine matter. Therefore, if you hold your shares in "street name," you must instruct your broker how to vote for the Proposals in order for your shares to be voted at the Special Meeting.

What constitutes a quorum?

The presence at the Special Meeting, either in person or by proxy, of holders of a majority in voting power of the shares of the Company entitled to vote at the Special Meeting shall constitute a quorum for the transaction of business. Abstentions and broker nonvotes will be counted as present for the purpose of determining whether there is a quorum at the Special Meeting. Your shares are counted as being present if you participate virtually at the Special Meeting and cast your vote online during the meeting prior to the closing of the polls by visiting , or if you vote by proxy via the Internet, by telephone, or by returning a properly executed and dated proxy card or voting instruction form by mail.

What vote is required to approve each matter to be considered at the Special Meeting?

Proposal	Matter	Vote Required	Broker Discretionary Voting Allowed	Effect of Abstentions
1	Approval of an amendment to our certificate of incorporation to increase the number of authorized shares of our Common Stock from 180,000,000 to 360,000,000	Affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote	No	Same effect as a vote against
2	Approval of the issuance of additional shares of our Common Stock in a placement to the New Investors and Bluescape if it exercises its option to participate in the Securities Offering	Affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote	No	Same effect as a vote against
3	Approval of the issuance of additional shares of our Common Stock upon conversion of our outstanding senior secured convertible notes in connection with an amendment to such convertible notes	Affirmative vote of a majority of shares present in person or represented by proxy at the meting and entitled to vote	No	Same effect as a vote against
4	To authorize the Board of Directors to adjourn and postpone the Special Meeting	Affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote	No	Same effect as a vote against

Broker nonvotes are not considered shares entitled to vote on the Proposals, and thus will have no effect on any of the Proposals. Each Condition Precedent Proposal is conditioned on the approval of each of the other Condition Precedent Proposals at the Special Meeting.

Note that our stockholders do not have appraisal or dissenters' rights under the Delaware General Corporation Law or under our Certificate of Incorporation in connection with the Proposals.

Are there any voting exclusions for any of the Proposals?

The Company will disregard any votes cast in favor of:

- the Securities Offering Proposal by or on behalf of the New Investors and Bluescape, and any other person who is expected to participate in, or who will obtain a material benefit as a result of, the Securities Offering (except a benefit solely by reason of being a stockholder) or any of their associates; and

- the Convertible Notes Proposal by or on behalf of Ascend and 5ECAP Debt, LLC, Bluescape, and any other person who is expected to participate in, or who will obtain a material benefit as a result of the transactions related to the Convertible Notes (except a benefit solely by reason of being a stockholder) or any of their associates.

Certain existing equity investors in the Company may participate in the Securities Offering as part of 5ECAP, LLC. If such investors elect to participate, any votes in favor of the Securities Offering Proposal or the Convertible Notes Proposal by such investors will be disregarded.

However, the Company need not disregard a vote cast in favor of any of the above Proposals by:

- a person as proxy or attorney for a person who is entitled to vote on the relevant Proposal, in accordance with directions given to the proxy or attorney to vote on the relevant Proposal in that way;

- the chair of the Special Meeting as proxy or attorney for a person who is entitled to vote on the relevant Proposal, in accordance with a direction given to the chair to vote on the relevant Proposal as the chair decides; or

- a holder acting solely in a nominee, trustee or custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:

    - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the relevant Proposal; and

    - the holder votes on the relevant Proposal in accordance with directions given by the beneficiary to the holder to vote in that way.

What happens if the Proposals are not approved?

Each of the Securities Offering Proposal and the Convertible Notes Proposal is conditioned on the approval and adoption of each of the other Condition Precedent Proposals, and the Out of Court Restructuring will be consummated only if each of the Condition Precedent Proposals is approved by our stockholders. If any of the Condition Precedent Proposals is not approved, the Company will commence proceedings under chapter 11 of title 11 of the United States Code and seek confirmation of the prepackaged plan as described in more detail below. In such event, the Out of Court Restructuring would not be completed, and the equity interests of our stockholders will be extinguished.

What is the deadline for submitting a proxy or CDI Voting Instruction Form?

To ensure that proxies are received in time to be counted prior to the Special Meeting, proxies submitted by Internet or by telephone should be received by 11:59 p.m. Eastern Time on , , and proxies submitted by mail should be received by the close of business on , (the day prior to the date of the Special Meeting).

CDI Voting Instruction Forms must be received by Computershare Australia by no later than Central Time on , (being AEDT on ,) (two business days prior to the date of the Special Meeting) in accordance with the instructions on the CDI Voting Instruction Form.

What does it mean if I receive more than one proxy card or CDI Voting Instruction Form?

If you hold your shares or CDIs in more than one account, you will receive one proxy card or CDI Voting Instruction Form for each account (as applicable). To ensure that all of your shares or CDIs are voted, please complete, sign, date, and return one proxy card or CDI Voting Instruction Form for each account or use the proxy card for each account to vote by Internet or by telephone.

How will my shares be voted if I return a blank proxy card or a blank CDI Voting Instruction Form?

If you are a holder of record of our Common Stock and you sign and return a proxy card or CDI Voting Instruction Form or otherwise submit a proxy without giving specific voting instructions, your shares will be voted:

- "**FOR**" the approval of the Charter Amendment Proposal;
- "**FOR**" the approval, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and for all other purposes, of the Securities Offering Proposal;
- "**FOR**" the approval, for purposes of complying with the Nasdaq Listing Rules and the ASX Listing Rules, and for all other purposes, of the Convertible Notes Proposal; and
- "**FOR**" the ratification and approval of the Adjournment Proposal, if presented.

If you hold your shares in street name via a broker, bank, or other nominee and do not provide the broker, bank, or other nominee with voting instructions (including by signing and returning a blank voting instruction card), your shares:

- will be counted as present for purposes of establishing a quorum; and
- will not be counted in connection with the Proposals or any other nonroutine matters that are properly presented at the Special Meeting. For each of these proposals, your shares will be treated as "broker nonvotes." Broker nonvotes are not considered shares entitled to vote on the Proposals, and thus will have no effect on any of the Proposals.

Our Board knows of no matter to be presented at the Special Meeting other than Proposals identified in this Proxy Statement. If any other matters properly come before the Special Meeting upon which a vote properly may be taken, shares represented by all proxies received by us will be voted with respect thereto as permitted and in accordance with the judgment of the proxy holders.

What happens if the Special Meeting is adjourned or postponed?

Although it is not expected, the Special Meeting may be adjourned or postponed for the purpose of soliciting additional proxies. Any adjournment or postponement may be made without notice, other than by an announcement made at the Special Meeting, by approval of the holders of

a majority of the outstanding shares of our Common Stock present virtually, or represented by proxy at the Special Meeting, whether or not a quorum exists. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date is fixed for stockholders entitled to vote at the adjourned meeting, our Board of Directors shall fix a new record date for notice of the adjourned meeting and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at the adjourned meeting as of the record date fixed for notice of the adjourned meeting. Any signed proxies received by the Company will be voted in favor of an adjournment or postponement in these circumstances. Any adjournment or postponement of the Special Meeting for the purpose of soliciting additional proxies will allow Company stockholders who have already sent in their proxies to revoke them at any time prior to their use.

Who is making this solicitation and who will pay the expenses?

This proxy solicitation is being made on behalf of our Board. The Company will pay the cost of soliciting proxies for the Special Meeting. In addition to solicitation by mail, our employees may solicit proxies personally or by telephone or facsimile, but they will not receive additional compensation for these services. Arrangements may be made with brokerage houses, custodians, nominees, and fiduciaries to send proxy materials to their principals, and we may reimburse them for their expenses.

Will a stockholder list be available for inspection?

A list of stockholders entitled to vote at the Special Meeting will be available for inspection by stockholders for any purpose germane to the meeting for 10 business days prior to the Special Meeting, at 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344 between the hours of 9:00 a.m. and 5:00 p.m. Pacific Time. The stockholder list will also be available to stockholders of record for examination during the Special Meeting at . You will need the control number included on your proxy card, or voting instruction form, or otherwise provided by your bank, broker, or other nominee.

What is "householding" and how does it affect me?

We have adopted a procedure approved by the SEC called "householding." Under this procedure, we send only one Proxy Statement to eligible stockholders who share a single address, unless we have received instructions to the contrary from any stockholder at that address. This practice is designed to eliminate duplicate mailings, conserve natural resources, and reduce our printing and mailing costs. Stockholders who participate in householding will continue to receive separate proxy cards.

If you share an address with another stockholder and receive only one set of proxy materials but would like to request a separate copy of these materials, please contact our mailing agent, Broadridge, by calling (866) 540-7095 or writing to Broadridge Householding Department, 51 Mercedes Way, Edgewood, New York 11717, and an additional copy of proxy materials will be promptly delivered to you. Similarly, if you receive multiple copies of the proxy materials and would prefer to receive a single copy in the future, you may also contact Broadridge at the above

telephone number or address. If you own shares through a bank, broker, or other nominee, you should contact the nominee concerning householding procedures.

How can I find out the results of the voting at the Special Meeting?

We will announce preliminary voting results at the Special Meeting. We will also disclose voting results on a Current Report on Form 8-K that we will file with the SEC within four business days after the Special Meeting.

When are stockholder proposals due for the next annual meeting of the stockholders?

We intend to hold our next annual meeting in 2024. Our stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of our Certificate of Incorporation, our Bylaws, and the rules established by the SEC.

As we expect to hold our next annual meeting on a date more than 30 days from the anniversary date of our prior annual meeting, under Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"), if you want us to include a proposal in the proxy materials for our next annual meeting of stockholders, we must receive the proposal at our executive offices at 9329 Mariposa Road, Suite 210, Hesperia, CA 92344, no later than a reasonable time before we begin to print and send our proxy materials. Furthermore, pursuant to our Bylaws, a stockholder proposal of business submitted outside of the process established in Rule 14a-8 and nominations of directors must be received no earlier than the close of business on the 120th day prior to the next annual meeting, and not later than the later of close of business on the 90th day prior to the next annual meeting and the close of business on the tenth day following the first date of public disclosure of the date of the next annual meeting. All proposals submitted outside of the process established in Rule 14a-8 and nominations of directors must comply with the requirements set forth in our Bylaws. Any proposal or nomination should be addressed to the attention of our Secretary, and we suggest that it be sent by certified mail, return receipt requested. Finally, to comply with the universal proxy rules, stockholders who intend to solicit proxies in support of director nominees other than our nominees must provide notice that sets forth the information required by Rule 14a-19 under the Exchange Act no later than the later of 60 days prior to the date of the next annual meeting or the tenth day following the date of public announcement of the date of the next annual meeting.

Whom can I contact for further information?

You may request additional copies, without charge, of this Proxy Statement and other proxy materials or ask questions about the Special Meeting, the Proposals, or the procedures for voting your shares by writing to Investor Relations at 9329 Mariposa Road, Suite 210, Hesperia, CA 92344.

BACKGROUND FOR OUR PROPOSALS

We are sending this Proxy Statement to you in connection with a proposed restructuring of our outstanding senior secured convertible notes (the "Convertible Notes") issued pursuant to the Note Purchase Agreement, dated as of August 11, 2022 (the "Note Purchase Agreement"), by and among the Company, as issuer, certain subsidiaries of the Company, as guarantors, BEP Special Situations IV LLC ("Bluescape"), as purchaser, and Alter Domus (US) LLC ("Alter Domus"), as collateral agent. This restructuring is a crucial step to strengthening the Company's balance sheet, funding the Company's next phase of growth, and commencing the Company's operations.

In connection with the proposed restructuring, we have entered into a Restructuring Support Agreement, dated as of December 5, 2023 (the "Restructuring Support Agreement"), with Bluescape, Alter Domus, and Ascend Global Investment Fund SPC for and on behalf of Strategic SP ("Ascend"). The Restructuring Support Agreement is attached hereto as Annex A. Pursuant to the terms of the Restructuring Support Agreement, we will implement the restructuring through either:

(i) an out of court restructuring transaction (the "Out of Court Restructuring"); or

(ii) to the extent the conditions precedent to consummating the Out of Court Restructuring cannot be timely satisfied, then as voluntary pre-packaged cases (the "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") to be filed in a United States Bankruptcy Court of competent jurisdiction (the "Bankruptcy Court") pursuant to a pre-packaged plan of reorganization (the "Pre-Packaged Chapter 11 Plan").

The proposed Out of Court Restructuring is comprised of, but not limited to, the following:

- the issuance of up to $35 million of shares of our Common Stock at a price per share of $1.025, which is equal to 50% of the 5-day VWAP preceding December 5, 2023, the date of the public announcement of the proposed Out of Court Restructuring, in a placement to Ascend and 5ECAP, LLC (the "New Investors") and Bluescape if it exercises its option to participate in the Securities Offering;

- an amendment and assignment of our Convertible Notes, consisting of, among other things: (a) an amendment to the conversion rate from 56.8182 shares to shares of Common Stock per $1,000 principal amount of Convertible Notes; (b) a waiver of the minimum cash covenant through June 28, 2024 and a reduction in such covenant thereafter from $10 million to $7.5 million; (c) deletion of the issuer conversion feature; (d) an extension of the maturity date by one year to August 15, 2028; (e) an increase in the paid-in-kind interest rate from six percent (6%) to ten percent (10%); and (f) the acquisition by the New Investors of fifty percent (50%) of the then-outstanding principal amount of the Convertible Notes from Bluescape; and

- subject to certain equity and Convertible Notes ownership requirements, Ascend (and any other person nominated by Ascend) and Bluescape shall each have the right to designate a director to serve on our Board of Directors.

If implemented, the Out of Court Restructuring will significantly dilute the percentage of outstanding stock owned by our current stockholders not part of the New Investors from % (before the restructuring) to %. Additionally, the maximum number of shares issuable upon conversion of our Convertible Notes (without regard to any beneficial ownership blocker provision, and assuming that we elect to pay interest accrued and due thereon in kind until the maturity date for such Convertible Notes) will increase from shares to shares.

However, if our stockholders do not approve any of the Condition Precedent Proposals at the Special Meeting, then the Company shall commence the Chapter 11 Cases and seek approval to implement the Pre-Packaged Chapter 11 Plan. Under the Pre-Packaged Chapter 11 Plan, the equity interests of our stockholders will be extinguished in their entirety.

OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE "FOR" EACH OF THE FOUR PROPOSALS. IF ANY OF THE CONDITION PRECEDENT PROPOSALS IS NOT APPROVED BY OUR STOCKHOLDERS, WE WILL IMPLEMENT THE PRE-PACKAGED CHAPTER 11 PLAN. **YOUR VOTE IS IMPORTANT.**

We believe that completing the Out of Court Restructuring will allow us to advance the stated objectives of the Company and avoid possible disruptions of our business, additional expenses, and other uncertainties that would result from commencing the Chapter 11 Cases.

The Chapter 11 Cases, even if completed in a timely manner, could have a material adverse effect on our business. Among other things, it is possible that the Chapter 11 Cases could adversely affect our relationships with our key vendors and other third parties. If we cannot maintain such relationships, our viability as a going concern will be threatened. In addition, a bankruptcy proceeding will (i) involve additional expenses, (ii) divert the attention of our management team from the operation of our business, and (iii) likely delay completion of the restructuring transactions contemplated herein.

The foregoing description of the Restructuring Support Agreement, the Out of Court Restructuring, the Pre-Packaged Chapter 11 Plan, and the other transactions contemplated thereby is not complete and is subject to, and qualified in its entirety by reference to, the text of the Restructuring Support Agreement and its exhibits attached hereto as Annex A.

PROPOSAL NO. 1 – THE CHARTER AMENDMENT PROPOSAL

Approval of an amendment to our certificate of incorporation to increase the number of authorized shares of our Common Stock from 180,000,000 to 360,000,000

The Proposal

We are proposing to amend our certificate of incorporation to increase the number of authorized shares of our Common Stock from 180,000,000 to 360,000,000.

On December 5, 2023, our Board unanimously adopted a resolution declaring it advisable to amend our certificate of incorporation to increase the number of authorized shares that we have the authority to issue. Our Board directed that this amendment to our certificate of incorporation be submitted to consideration by our stockholders. In the event that our stockholders approve this Proposal, we will file an amendment to our certificate of incorporation with the Secretary of State of the State of Delaware. This amendment will become effective at the close of business on the date the amendment to the certificate of incorporation is accepted for filing by the Secretary of State of the State of Delaware. The amendments are redlined in the proposed Amended and Restated Certificate of Incorporation attached hereto as Annex B.

Our Board believes that it is in our best interest to increase the number of authorized but unissued shares of Common Stock in order to allow the Company to effect the Out of Court Restructuring and still have additional unissued or unreserved shares available for additional capital raising transactions. At , 2023, there were shares of our Common Stock issued and outstanding, and shares of our Common Stock reserved for issuance in connection with options, restricted stock units and other equity-based awards, and the Convertible Notes. The Out of Court Restructuring, if implemented, will require the Company to issue an additional shares of Common Stock to the New Investors and reserve an additional shares of Common Stock for any conversion of the amended Convertible Notes (for an aggregate of shares reserved for conversion).

Required Vote

Approval of this Proposal requires the affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Abstentions will have the same effect as a vote against the Charter Amendment Proposal. Brokers are not permitted to vote your shares on this Proposal without your specific instructions. Please provide your broker with voting instructions so that your vote can be counted.

Anti-Takeover Effects

Although the Charter Amendment Proposal is not motivated by anti-takeover concerns and is not considered by the Board to be an anti-takeover measure, the availability of additional authorized shares of Common Stock could enable our Board to issue shares defensively in response to a takeover attempt or to make an attempt to gain control of the Company more difficult or time-consuming. For example, shares of Common Stock could be issued to purchasers who might side with management in opposing a takeover bid which our Board determines is not in the best interests

of the Company and its stockholders, thus diluting the ownership and voting rights of the person seeking to obtain control of the Company. In certain circumstances, issuance of shares of our Common Stock without further action by the stockholders may have the effect of delaying or preventing a change of control of the Company, may discourage bids for the Company's Common Stock at a premium over the market price of the Common Stock, and may adversely affect the market price of the Common Stock. Thus, increasing the authorized number of shares of our Common Stock could render more difficult and less likely a hostile merger, tender offer or proxy contest, assumption of control by a holder of a large block of our stock, and the possible removal of our incumbent management. We are not aware of any proposed attempt to take over the Company or of any attempt to acquire a large block of our Common Stock.

Note that the Charter Amendment Proposal, if approved, will only increase the number of authorized shares and will not alter or modify the rights, privileges or powers of our Common Stock.

Recommendation of our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF PROPOSAL NO. 1 – THE CHARTER AMENDMENT PROPOSAL.

PROPOSAL NO. 2 – THE SECURITIES OFFERING PROPOSAL

Approval of the issuance of additional shares of our Common Stock in a placement to the New Investors

The Proposal

In connection with the closing of the Out of Court Restructuring, the Company will issue up to $35 million of Common Stock at a price per share of $1.025 (the "Securities Offering") to the New Investors and Bluescape if it exercises its option to participate in the Securities Offering. If each of the Proposals is approved by stockholders and each of the other conditions precedent to such closing as set forth in the Restructuring Support Agreement is either satisfied or waived as provided for therein, the initial closing of the Securities Offering is expected to occur within three (3) business days of the Special Meeting.

Our Common Stock is listed on the Nasdaq Global Select Market and our CDIs are listed on the ASX, and, as such, we are subject to Nasdaq Listing Rules, including Nasdaq Listing Rule 5635, and the ASX Listing Rules.

The issuance of shares of our Common Stock in connection with the Securities Offering implicates certain of the Nasdaq listing standards requiring prior stockholder approval in order to maintain our listing on Nasdaq, as follows:

(i) Nasdaq Listing Rule 5635(b) requires stockholder approval when any issuance or potential issuance will result in a "change of control" of the issuer. Nasdaq may deem a change of control to occur when, as a result of an issuance, an investor or a group would own, or have the right to acquire, 20% or more of the outstanding shares of common stock or voting power and such ownership or voting power of an issuer would be the largest ownership position of the issuer.

For the purposes of this rule, New Investors may be deemed to be the controlling stockholder following the conversion of the Convertible Notes and closing of the Securities Offering. Stockholders should note that a "change of control" as described under Rule 5635(b) applies only with respect to the application of such rule, and does not necessarily constitute a "change of control" for purposes of Delaware law, our organizational documents, or any other purpose.

(ii) Nasdaq Listing Rule 5635(d) requires stockholder approval prior to the issuance of securities in connection with a transaction, other than in a public offering, involving the sale, issuance or potential issuance by us of more than 19.99% (the "Nasdaq 19.99% Cap") of our outstanding shares of common stock (or securities convertible into common stock) for a price less than the "Minimum Price" (as defined in the Nasdaq Listing Rules) (the "Nasdaq 20% Rule").

Under the Nasdaq 20% Rule, in no event may we issue shares of our Common Stock in the Securities Offering more than the Nasdaq 19.99% Cap unless (i) we obtain stockholder approval to issue shares of Common Stock in excess of the Nasdaq 19.99% Cap or (ii) the average price of all applicable issuances or sales of Common Stock in

the Securities Offering equals or exceeds the lesser of (i) the closing price of our Common Stock immediately prior to the date that the Securities Offering is consummated or (ii) the average closing price of our Common Stock for the five (5) trading days immediately prior to the date on which the Securities Offering is consummated, such that issuances and sales of our Common Stock in the Securities Offering would be exempt from the Nasdaq 19.99% Cap limitation under applicable Nasdaq rules.

The issuance of shares of our Common Stock in connection with the Securities Offering also implicates certain of the ASX Listing Rules. Broadly speaking, and subject to a number of exceptions, ASX Listing Rule 7.1 limits the number of equity securities that a listed entity can issue without the approval of its shareholders over any 12-month period to 15% of the number of fully paid ordinary shares it had on issue at the start of that period. The Securities Offering does not fall within any exceptions and exceeds the 15% limit in ASX Listing Rule 7.1. Approval under ASX Listing Rule 7.1 is therefore required.

If this Proposal is approved, and the Common Stock is issued pursuant to the Securities Offering, such shares of Common Stock will not count towards the Company's placement capacity for the purposes of ASX Listing Rule 7.1, thereby increasing the Company's ability to issue additional equity securities without shareholder approval.

We seek your approval of this Proposal in order to satisfy the requirements of the Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1, with respect to the issuance of up to $35 million of shares of our Common Stock in the Securities Offering, in connection with the closing of the Out of Court Restructuring, as described above.

For a further discussion of the reasons for the Out of Court Restructuring, including the Securities Offering that is the subject of this Proposal, see "Background for Our Proposals" above. **Note that if the Out of Court Restructuring is not completed and the Pre-Packaged Chapter 11 Plan is implemented, the equity interests of our stockholders will be extinguished.**

Additional information required by ASX Listing Rule 7.3

Pursuant to and in accordance with ASX Listing Rule 7.3, the following information is provided in relation to this Proposal:

(i) Up to $35,000,000 of shares of Common Stock will be issued to the New Investors and Bluescape if it exercises its option to participate in the Securities Offering. The New Investors comprises Ascend and 5ECAP, LLC.

Each of the New Investor is not a related party of the Company, any member of the Company's key management personnel, a substantial holder in the Company or any advisor to the Company (or any of their associates).

The Out of Court Restructuring will significantly dilute the percentage of outstanding stock owned by our current stockholders not part of the New Investors from % (before the restructuring) to %.

(ii) The Common Stock is expected to be issued within three (3) business days of the Special Meeting.

(iii) The Common Stock will be issued at a price per share of $1.025, which is equal to 50% of the 5-day VWAP preceding December 5, 2023, the date of the public announcement of the proposed Out of Court Restructuring.

(iv) Funds raised from the issue of the Common Stock will be used to strengthen the Company's balance sheet, fund the Company's next phase of growth, and commence operations.

(v) The Common Stock will be issued as part of the Out of Court Restructuring. For a further discussion of the reasons for the Out of Court Restructuring, including the Securities Offering that is the subject of this Proposal No. 2, see "Background for Our Proposals" above and the Restructuring Support Agreement, a copy of which is attached hereto as Annex A.

(vi) A voting exclusion applies to this Proposal as set out in the "General Information" section above.

No Preemptive Rights

Our stockholders do not have a preemptive right to purchase or subscribe for any part of any new or additional issuance of our securities.

Consequences of Not Approving this Proposal

If this Proposal is not approved, the Out of Court Restructuring will not proceed, the Common Stock the subject of the Securities Offering will not be issued and the Pre-Packaged Chapter 11 Plan (as summarized in the "Background for Our Proposals" section above) will be implemented and the equity interests of our stockholders will be extinguished.

Required Vote

The Securities Offering Proposal is conditioned on the approval of each of the Condition Precedent Proposals at the Special Meeting.

Approval of this Proposal requires the affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Abstentions will have the same effect as a vote against the Securities Offering Proposal. Brokers are not permitted to vote your shares on this Proposal without your specific instructions. Please provide your broker with voting instructions so that your vote can be counted.

Recommendation of our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF PROPOSAL NO. 2 – THE SECURITIES OFFERING PROPOSAL.

PROPOSAL NO. 3 – THE CONVERTIBLE NOTES PROPOSAL

Approval of the issuance of additional shares of our Common Stock upon conversion of the Convertible Notes in connection with an amendment to such Convertible Notes

The Proposal

In connection with the closing of the Out of Court Restructuring, the Company will amend and restate the Note Purchase Agreement (the "Amended and Restated Note Purchase Agreement"), which, among other things, amends the conversion rate and thereby increases the number of shares of our Common Stock into which the Convertible Notes are convertible.

Our Common Stock is listed on the Nasdaq Global Select Market and our CDIs are listed on the ASX, and, as such, we are subject to Nasdaq Listing Rules, including Nasdaq Listing Rule 5635, and the ASX Listing Rules.

The issuance of shares of our Common Stock in connection with the Amended and Restated Note Purchase Agreement and the Convertible Notes implicates certain of the Nasdaq listing standards requiring prior stockholder approval in order to maintain our listing on Nasdaq, as follows:

(i) Nasdaq Listing Rule 5635(b) requires stockholder approval when any issuance or potential issuance will result in a "change of control" of the issuer. Nasdaq may deem a change of control to occur when, as a result of an issuance, an investor or a group would own, or have the right to acquire, 20% or more of the outstanding shares of common stock or voting power and such ownership or voting power of an issuer would be the largest ownership position of the issuer.

For the purposes of this rule, Bluescape may be deemed to be the controlling stockholder following the conversion of the Convertible Notes and/or New Investors may be deemed to be the controlling stockholder following the conversion of the Convertible Notes and closing of the Securities Offering. Stockholders should note that a "change of control" as described under Rule 5635(b) applies only with respect to the application of such rule, and does not necessarily constitute a "change of control" for purposes of Delaware law, our organizational documents, or any other purpose.

(ii) Nasdaq Listing Rule 5635(d) requires stockholder approval prior to the issuance of securities in connection with a transaction, other than in a public offering, involving the sale, issuance or potential issuance by us of more than 19.99% of our outstanding shares of common stock (or securities convertible into common stock) for a price less than the "Minimum Price" in accordance with the Nasdaq 20% Rule.

Under the Nasdaq 20% Rule, in no event may we issue shares of our Common Stock in the Securities Offering or upon conversion of the Convertible Notes under the Amended and Restated Note Purchase Agreement more than the Nasdaq 19.99% Cap unless (i) we obtain stockholder approval to issue shares of Common Stock in excess of the

Nasdaq 19.99% Cap or (ii) the average price of all applicable issuances or sales of Common Stock in the Securities Offering or upon conversion of the Convertible Notes under the Amended and Restated Note Purchase Agreement equals or exceeds the lesser of (i) the closing price of our Common Stock immediately prior to the date that the Amended and Restated Note Purchase Agreement is executed or (ii) the average closing price of our Common Stock for the five (5) trading days immediately prior to the date on which the Amended and Restated Note Purchase Agreement is executed, such that issuances and sales of our Common Stock upon conversion of the Convertible Notes under the Amended and Restated Note Purchase Agreement would be exempt from the Nasdaq 19.99% Cap limitation under applicable Nasdaq rules. In any event, the Amended and Restated Note Purchase Agreement specifically provides that we may not issue or sell any shares of our Common Stock under the Amended and Restated Note Purchase Agreement if such issuance or sale would breach any applicable Nasdaq rules.

The issuance of shares of our Common Stock in connection with the Amended and Restated Note Purchase Agreement and the Convertible Notes also implicates certain of the ASX Listing Rules. Broadly speaking, and subject to a number of exceptions, ASX Listing Rule 7.1 limits the number of equity securities that a listed entity can issue without the approval of its stockholders over any 12-month period to 15% of the number of fully paid ordinary shares it had on issue at the start of that period. The issue of shares of Common Stock on conversion of the Convertible Notes does not fall within any exceptions and will exceed the 15% limit in ASX Listing Rule 7.1. Approval under ASX Listing Rule 7.1. is therefore required.

If this Proposal is approved, the Convertible Notes (and the additional shares of our Common Stock issued upon conversion of the Convertible Notes in connection with the amendment to such Convertible Notes) will not count towards the Company's placement capacity for the purposes of ASX Listing Rule 7.1, thereby increasing the Company's ability to issue additional equity securities without stockholder approval.

Approval was obtained at the Company's Annual General Meeting held on April 27, 2023, for the purposes of ASX Listing Rule 7.4, for the issuance of up to a maximum of 4,581,534 shares of Common Stock on conversion of the Convertible Notes (including Common Stock that may be issued on conversion if the Company elects to pay interest in kind). Given the nature of the amendments proposed to be made to the Convertible Notes, we seek your approval of this Proposal in order to satisfy the requirements of the Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1, with respect to the issuance of additional shares of Common Stock upon conversion of the Convertible Notes issued pursuant to the Amended and Restated Note Purchase Agreement, in connection with the closing of the Out of Court Restructuring, as described above.

For a further discussion of the reasons for the Out of Court Restructuring, including the Amended and Restated Note Purchase Agreement that is the subject of this Proposal, see "Background for Our Proposals" above. Note that if the Out of Court Restructuring is not completed and the Pre-Packaged Chapter 11 Plan is implemented, the equity interests of our stockholders will be extinguished.

Additional information required by ASX Listing Rule 7.3

Pursuant to and in accordance with ASX Listing Rule 7.3, the following information is provided in relation to this Proposal:

(i) The Convertible Notes are currently held by Bluescape. However, upon implementation of the Out of Court Restructuring, fifty percent (50%) of the outstanding notional amount of the Convertible Notes will be acquired by Ascend and 5ECAP Debt, LLC from Bluescape.

Ascend and 5ECAP Debt, LLC is not a related party of the Company, a member of the Company's key management personnel, a substantial holder in the Company or an advisor to the Company (or any of their associates).

(ii) shares of Common Stock will be issued on the conversion of the Convertible Notes. Additional Common Stock, up to a maximum of shares of Common Stock (representing approximately % of our current outstanding stock and a % increase as compared to the previous maximum of 4,581,534 shares of Common Stock) may be issued on conversion of the Convertible Notes if the Company elects to pay interest in kind.

There are 63,561 Convertible Notes currently on issue (each with a face value of $1,000). No additional Convertible Notes will be issued as a result of this Proposal.

The issue of Common Stock on conversion of the Convertible Notes will significantly dilute the percentage of outstanding stock owned by our stockholders who do not hold Convertible Notes.

(iii) The closing of the amendment and assignment of the Convertible Notes, including the conversion rate adjustment, is expected to occur within three (3) business days of the Special Meeting.

(iv) If the Out of Court Restructuring becomes effective, it will not result in the issuance of any additional Convertible Notes, and no additional funds will be raised. Rather, the terms of the existing Convertible Notes will be amended as outlined above.

(v) All of the proposed amendments to the Convertible Notes are summarized above, and a copy of the Restructuring Support Agreement is attached hereto as Annex A.

The amendment and assignment of the Convertible Notes will be made as part of the Out of Court Restructuring. For a further discussion of the reasons for the Out of Court Restructuring, including the amendments to the Convertible Notes that is the subject of this Proposal No. 3, see "Background for Our Proposals" above.

(vi) A voting exclusion applies to this Proposal as set out in the "General Information" section above.

Consequences of Not Approving this Proposal

If this Proposal is not approved, the Out of Court Restructuring will not proceed, the Convertible Notes will not be amended, and the Pre-Packaged Chapter 11 Plan (as summarized in the "Background for Our Proposals" section above) will be implemented.

Required Vote

The Convertible Notes Proposal is conditioned on the approval of each of the Condition Precedent Proposals at the Special Meeting.

Approval of this Proposal requires the affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Abstentions will have the same effect as a vote against the Convertible Notes Proposal. Brokers are not permitted to vote your shares on this Proposal without your specific instructions. Please provide your broker with voting instructions so that your vote can be counted.

Recommendation of our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF PROPOSAL NO. 3 - THE CONVERTIBLE NOTES PROPOSAL.

PROPOSAL NO. 4 – THE ADJOURNMENT PROPOSAL

Approval to authorize our Board of Directors to adjourn and postpone the Special Meeting

The Proposal

If holders of a majority in voting power of the shares of the Company entitled to vote at the Special Meeting are not present at the Special Meeting, in person or represented by proxy, or if one or more of the Proposals fails to receive the requisite votes in favor of such Proposal, then our Board intends to move to adjourn and postpone the Special Meeting to a later date or dates, if necessary, to enable our Board to solicit additional proxies. In that event, we will ask the Company's stockholders to vote only upon the adjournment and postponement of the Special Meeting, as described in this Proposal, and not any of the other Proposals.

We seek your approval of this Proposal to grant discretionary authority to the holder of any proxy solicited by our Board so that such holder can vote in favor of this Proposal to adjourn and postpone the Special Meeting to a later date or dates, if necessary, so that our Board can solicit additional proxies. If you approve this Proposal, then we could adjourn the Special Meeting, and any adjourned session of the Special Meeting, and use the additional time to solicit additional proxies, including the solicitation of proxies from stockholders who have previously voted. Among other things, approval of this Proposal could mean that, even if we had received proxies representing a sufficient number of votes against any of the Proposals to defeat the proposal, we could adjourn the Special Meeting without a vote and seek to convince the holders of those shares to change their votes in favor of such Proposals.

Generally, if the Special Meeting is adjourned, no notice of the adjourned meeting is required to be given to stockholders, other than the announcement at the Special Meeting of the place, date and time to which the meeting is adjourned. However, the Company's Bylaws provide that if the adjournment or adjournments are for more than 30 days, or if after adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting will be given to each stockholder of record entitled to vote at the adjourned meeting.

Consequences of Not Approving this Proposal

If this Proposal is presented to the Special Meeting and is not approved by our stockholders, our Board may not be able to adjourn the Special Meeting to a later date or dates, if necessary or appropriate, to permit further solicitation of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of any of the Condition Precedent Proposals. In such event, the Out of Court Restructuring would not be completed, and the Pre-Packaged Chapter 11 Plan will be implemented and the equity interests of our stockholders will be extinguished.

Required Vote

Approval of this Proposal requires the affirmative vote of a majority of shares present in person or represented by proxy at the meeting and entitled to vote on the matter. Abstentions will have the same effect as a vote against the Adjournment Proposal. Brokers are not permitted to vote your shares on this Proposal without your specific instructions. Please provide your broker with voting instructions so that your vote can be counted.

Recommendation of our Board of Directors

OUR BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE "FOR" APPROVAL OF PROPOSAL NO. 4 – THE ADJOURNMENT PROPOSAL.

SECURITY OWNERSHIP

The following table sets forth information as of November 29, 2023 with regard to the beneficial ownership of our Common Stock by (1) each of our stockholders who is known to be a beneficial owner of more than 5% of our Common Stock, (2) our directors and (3) all of our current executive officers and directors as a group. Unless otherwise indicated, all of such stock is owned directly, and the indicated person or entity has sole voting and investment power.

Name and Address[1]	Number of Shares Beneficially Owned[2]	Percent of Class[3]
Stockholders owning 5% or more:		
Virtova Capital Management Limited[4] Room 1104, Crawford House, 70 Queen Road Central Central, Hong Kong, SAR	5,128,206	11.59%
Atlas Precious Metals Inc.[5] 100 King Street, W#1600 Toronto, Ontario, M5X1G5, Canada	4,092,000	9.25%
Mayfair Ventures Pte Ltd[6] 62 Ubi Road 1 02-01 Oxley Bizhub 2, Singapore, 408734	3,563,954	8.06%
BEP Special Situations IV LLC[7] 300 Crescent Court, Suite 1860 Dallas, TX 75201	3,674,638	8.31%
Directors:		
David Salisbury	217,387	*
Stephen Hunt[8]	145,131	*
H. Keith Jennings	6,229	*
Sen Ming (Jimmy) Lim[9]	5,135,189	11.61%
Graham van't Hoff	9,591	*
Executive Officers:		
Susan Brennan	—	*
Paul Weibel	168,983	*
All directors and named executive officers as a group (seven persons):	5,682,510	12.85%

*Represents beneficial ownership of less than 1% of the outstanding shares of our Common Stock.

(1) Unless otherwise indicated, the address of each beneficial owner is c/o 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344.

(2) The number of shares beneficially owned by the directors, director nominees, and executive officers listed in the table includes shares that may be acquired within 60 days of November 29, 2023 by exercise of stock options or vesting of restricted stock units is as follows: Mr. Weibel – 166,666; Mr. Salisbury – 200,000.

(3) Percentages based on shares of Common Stock outstanding as of November , 2023 (including shares of Common Stock that may be represented by CDIs). Shares of Common Stock that BEP Special Situations IV LLC may acquire through conversion of the Convertible Notes are not deemed outstanding for the percentage beneficially owned by any other person.

(4) Director Sen Ming (Jimmy) Lim is the sole stockholder of Virtova Capital Management Limited and, as such, may be deemed to be the beneficial owner of the shares held by Virtova Capital Management Limited.
(5) Eileen Shipes is the trustee and The Harold Roy Shipes and Eileen Anne Shipes Revocable Trust is the controlling stockholder of Atlas Precious Metals Inc. and, as such, may be deemed to be the beneficial owner of the shares held by Atlas Precious Metals Inc.
(6) Chow Woei Horng is the sole stockholder of Mayfair Ventures Pte Ltd and, as such, may be deemed to be the beneficial owner of the shares held by Mayfair Ventures Pte Ltd.
(7) BEP Special Situations IV LLC ("BEP SS IV") directly holds the Convertible Notes, which are convertible pursuant to the Note Purchase Agreement into 3,674,638 shares of Common Stock, which takes into account the interest accrued to the date set forth above giving effect to the Company's election to pay such interest in kind. Bluescape Energy Partners IV GP LLC ("Bluescape GP") is the general partner of Bluescape Energy Recapitalization and Restructuring Fund IV LP, which wholly owns BEP SS IV. As such, Bluescape GP may be deemed to have beneficial ownership of the securities held by BEP SS IV. The foregoing ownership description is derived from the Schedule 13G filing of BEP SS IV and Bluescape GP dated August 26, 2022.
(8) Includes 82,797 shares of our Common Stock held by Mr. Hunt individually, 20,834 shares of our Common Stock held in Mr. Hunt's superannuation fund, and 41,500 shares of our Common Stock held by Minerals and Metals Marketing Pty. Ltd., a corporation of which Mr. Hunt is the sole stockholder and director.
(9) These shares are owned by Virtova Capital Management Limited. Director Sen Ming (Jimmy) Lim is the sole stockholder of Virtova Capital Management Limited and may be deemed to be the beneficial owner of the shares held by Virtova Capital Management Limited.

STOCKHOLDER PROPOSALS

We intend to hold our next annual meeting in 2024. Our stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of our Certificate of Incorporation, our Bylaws, and the rules established by the SEC.

As we expect to hold our next annual meeting on a date more than 30 days from the anniversary date of our prior annual meeting, under Rule 14a-8 under the Securities Exchange Act of 1934 (the "Exchange Act"), if you want us to include a proposal in the proxy materials for our next annual meeting of stockholders, we must receive the proposal at our executive offices at 9329 Mariposa Road, Suite 210, Hesperia, CA 92344, no later than a reasonable time before we begin to print and send our proxy materials. Furthermore, pursuant to our Bylaws, a stockholder proposal of business submitted outside of the process established in Rule 14a-8 and nominations of directors must be received no earlier than the close of business on the 120th day prior to the next annual meeting, and not later than the later of close of business on the 90th day prior to the next annual meeting and the close of business on the tenth (10th) day following the first date of public disclosure of the date of the next annual meeting. All proposals submitted outside of the process established in Rule 14a-8 and nominations of directors must comply with the requirements set forth in our Bylaws. Any proposal or nomination should be addressed to the attention of our Secretary, and we suggest that it be sent by certified mail, return receipt requested. Finally, to comply with the universal proxy rules, stockholders who intend to solicit proxies in support of director nominees other than our nominees must provide notice that sets forth the information required by Rule 14a-19 under the Exchange Act no later than the later of 60 days prior to the date of the next annual meeting or the tenth (10th) day following the date of public announcement of the date of the next annual meeting.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

Information included in this Proxy Statement may contain forward-looking statements that involve risks and uncertainties regarding future events and future results that are subject to the safe harbors created under the Securities Act and the Exchange Act. When used in this Proxy Statement, forward-looking statements are generally accompanied by terms or phrases such as "estimate," "project," "predict," "believe," "expect," "continue," "anticipate," "target," "could," "plan," "intend," "seek," "goal," "will," "should," "may," or other words and similar expressions that convey the uncertainty of future events or outcomes. There can be no assurance that all or any portion of the aforementioned transactions will be consummated on the terms summarized herein or at all. The forward-looking statements contained, or incorporated by reference, herein are also subject generally to other risks and uncertainties that are described from time to time in the Company's filings with the SEC and other factors discussed in this Proxy Statement.

HOUSEHOLDING

The SEC permits a single copy of the Proxy Statement to be sent to any household at which two or more stockholders reside if they appear to be members of the same family. This procedure, referred to as householding, reduces the volume of duplicate information stockholders receive and reduces mailing and printing expenses. A number of brokerage firms have instituted householding.

As a result, if you hold your shares through a broker and you reside at an address at which two or more stockholders reside, you will likely be receiving only one copy of this Proxy Statement unless any stockholder at that address has given the broker contrary instructions. Each stockholder participating in the householding continues to receive a separate proxy card. If any such beneficial stockholder residing at such an address, however, wishes to receive a separate copy of the Proxy Statement in the future, or if any such beneficial stockholder that elected to continue to receive separate copies of the Proxy Statement wishes to receive a single copy of the Proxy Statement in the future, that stockholder should contact their broker or send a request to Investor Relations, 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344, telephone number (442) 221-0225. We will promptly deliver, upon written or oral request to the corporate secretary, a separate copy of the Proxy Statement to a beneficial stockholder at a shared address to which a single copy of the Proxy Statement was delivered.

OTHER MATTERS

None of the persons named as proxies know of any matters other than those described above to be voted on at the Special Meeting. However, if any other matters are properly presented at the Special Meeting, it is the intention of the persons named as proxies to vote in accordance with their judgment on these matters, subject to the discretion of the Board.

INCORPORATION BY REFERENCE

We are incorporating by reference specified documents that we file with the SEC, which means that incorporated documents are considered part of this Proxy Statement. We are disclosing important information to you by referring you to those documents. This document incorporates by reference (i) our Annual Report on Form 10-K for the year ended June 30, 2023, filed with the SEC on August 30, 2023, as amended by our filing on Form 10-K/A, filed with the SEC on October 27, 2023, (ii) our Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, filed with the SEC on November 9, 2023, (iii) our Current Reports on Form 8-K filed with the SEC on September 11, 2023, November 9, 2023, November 22, 2023, and December 5, 2023, and (iv) the description of our securities contained in our Registration Statement on Form 10 filed with the SEC on March 7, 2022, as updated by the description of securities contained in Exhibit 4.1 to our Annual Report on Form 10-K for the fiscal year ended June 30, 2022, including any amendment or report filed to update such description.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any request for documents to 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344, or call (442) 221-0225. You may also access these filings on our website at. We do not incorporate the information on our website into this proxy statement and you should not consider any information on, or that can be accessed through, our website as a part of this proxy statement (other than those filings with the SEC that we specifically incorporate by reference into this proxy statement).

You should rely only on the information incorporated by reference or provided in this proxy statement. We have not authorized anyone else to provide you with different information.

Any statement contained in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed modified, superseded, or replaced for purposes of this proxy statement to the extent that a statement contained in this proxy statement modifies, supersedes, or replaces such statement.

By Order of the Board of Directors,

David Salisbury
Chairman of the Board

Annex A

Intentionally Omitted

Annex B

Intentionally Omitted

Proxy Voting Card

Intentionally Omitted

EXHIBIT 1 to EXHIBIT D

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF 5E ADVANCED MATERIALS, INC.

ARTICLE I
NAME OF THE CORPORATION

The name of the corporation is 5E Advanced Materials, Inc. (the "Corporation").

ARTICLE II
REGISTERED AGENT

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of the registered agent of the Corporation at such address is The Corporation Trust Company.

ARTICLE III
BUSINESS PURPOSE

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV
CAPITAL STOCK

Section 4.01 Authorized Classes of Stock. The total number of shares of stock of all classes of capital stock that the Corporation is authorized to issue is ~~200,000,000~~380,000,000, of which ~~180,000,000~~360,000,000 shares shall be shares of common stock, par value of $0.01 per share("Common Stock"), and 20,000,000 shares shall be shares of preferred stock, par value of $0.01 per share ("Preferred Stock").

Section 4.02 Common Stock. Except as otherwise required by law, as provided in this Certificate of Incorporation or as provided in the resolution or resolutions, if any, adopted by the board of directors of the Corporation (the "Board of Directors") with respect to any series of the Preferred Stock, the holders of the Common Stock shall exclusively possess all voting power. Each holder of shares of Common Stock shall be entitled to one vote for each share held by such holder. Subject to the rights of holders of any series of outstanding Preferred Stock, holders of shares of Common Stock shall have equal rights of participation in the dividends and other distributions in cash, stock or property of the Corporation when, as and if declared thereon by the Board of Directors from time to time out of assets or funds of the Corporation legally available therefor and shall have equal rights to receive the assets and funds of the Corporation available for distribution to stockholders in the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary.

Section 4.03 Preferred Stock. The Board of Directors is authorized to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, if any, of the shares of such series, and the preferences and relative, participating, optional, or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors. The authority of the Board with respect to each series of Preferred Stock shall include determination of the following:

a) the designation of the series;

b) the number of shares of the series;

c) the dividend rate or rates on the shares of that series, whether dividends will be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of payment of dividends on shares of that series;

d) whether the series will have voting rights in addition to the voting rights provided by law and, if so, the terms of such voting rights;

e) whether the series will have conversion privileges and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine;

f) whether or not the shares of that series shall be redeemable, in whole or in part, at the option of the Corporation or the holder thereof and, if made subject to such redemption, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemptions, which amount may vary under different conditions and at different redemption rates;

g) the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;

h) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series;

i) the restrictions, if any, on the issue or reissue of any additional Preferred Stock; and

j) any other relative rights, preferences and limitations of that series.

ARTICLE V
BOARD OF DIRECTORS

Section 5.01 General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.02 Number. Subject to any rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the number of directors of the Corporation which shall constitute the entire Board of Directors shall be the number of directors as fixed from time to time in accordance with the bylaws of the Corporation (the "Bylaws").

Section 5.03 Newly Created Directorships and Vacancies. Except as otherwise required by law and subject to any rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, any newly created directorships resulting from an increase in the authorized number of directors, and any vacancies occurring in the Board of Directors, shall be filled solely by the affirmative votes of a majority of the remaining members of the Board of Directors, although less than a quorum, or by the sole remaining director. A director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the director whom he or she has replaced, a successor is duly elected and qualified, or the earlier of such director's death, resignation or removal.

Section 5.04 Written Ballot. Unless and except to the extent that the Bylaws shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE VI
LIMITATION OF LIABILITY; INDEMNIFICATION

Section 6.01 Limitation of Liability. To the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to or modification or repeal of this Section 6.01 shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

Section 6.02 Indemnification. The Corporation shall indemnify and hold harmless to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) actually and reasonably incurred by such person. Notwithstanding the preceding sentence, the Corporation shall be required to indemnify a person in connection with a Proceeding (or part thereof) commenced by such person only if the commencement of such Proceeding (or part thereof) by the person was authorized in the specific case by the Board of Directors. Any amendment to or modification or repeal of this Section 6.02 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE VII
STOCKHOLDER ACTION

Section 7.01 Stockholder Consent Prohibition. Subject to the rights of the holders of any series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of the stockholders of the Corporation and may not be effected by any consent by such stockholders.

Section 7.02 Special Meetings of Stockholders. Except as otherwise required by law and subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation shall be called only by (a) the Board of Directors or (b) the Secretary of the Corporation, following receipt of one or more written demands to call a special meeting of the stockholders from stockholders of record who own, in the aggregate, at least 25% of the voting power of the outstanding shares of the Corporation then entitled to vote on the matter or matters to be brought before the proposed special meeting that complies with the procedures for calling a special meeting of the stockholders as may be set forth in the Bylaws.

ARTICLE VIII
BYLAWS

Section 8.01 Board of Directors. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized and empowered to adopt, amend, alter or repeal the Bylaws without any action on the part of the stockholders.

Section 8.02 Stockholders. The stockholders shall also have the power to adopt, amend, alter or repeal the Bylaws; *provided* that, in addition to any affirmative vote of the holders of any particular class or series of capital stock of the Corporation required by applicable law or this Certificate of Incorporation, such adoption, amendment, alteration or repeal shall be approved by the affirmative vote of the holders of at least 66 2/3% of the voting power of the shares of the then outstanding voting stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE IX
AMENDMENTS

The Corporation reserves the right to amend, alter or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all rights conferred herein are granted subject to this reservation; *provided* that notwithstanding any other provision of this Certificate of Incorporation or applicable law that might permit a lesser vote or no vote and in addition to any affirmative vote of the holders of any particular class or series of capital stock of the Corporation required by applicable law or this Certificate of Incorporation, the affirmative vote of the holders of at least 66 2/3% of the voting power of the shares of the then outstanding voting stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend, alter, repeal or adopt any provisions inconsistent with this Article IX or Articles VI, VII or VIII of this Certificate of Incorporation.

EXHIBIT E

Plan

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
5E ADVANCED MATERIALS, INC., *et al.*,	)	Case No. 24-_____ (___)
Debtors.	)	(Joint Administration Requested)

JOINT CHAPTER 11 PLAN OF REORGANIZATION OF
5E ADVANCED MATERIALS, INC. AND ITS DEBTOR AFFILIATES

THIS CHAPTER 11 PLAN IS BEING SOLICITED FOR ACCEPTANCE OR REJECTION IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 1125 AND WITHIN THE MEANING OF BANKRUPTCY CODE SECTION 1126. THIS CHAPTER 11 PLAN WILL BE SUBMITTED TO THE BANKRUPTCY COURT FOR APPROVAL FOLLOWING SOLICITATION AND THE DEBTORS' FILING FOR CHAPTER 11 BANKRUPTCY.

[□](*pro hac vice* pending)
[□] (*pro hac vice* pending)

WINSTON & STRAWN LLP
[ADDRESS]
[CITY, STATE ZIP]
Telephone: (___) ___-____
Facsimile: (___) ___-____
Email: [□]
[□]

- and -

Proposed Co-Counsel to the Debtors and Debtors in Possession

Laura Davis Jones (DE Bar No. 2436)
Timothy P. Cairns (DE Bar No. 4228)

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tcairns@pszjlaw.com

Proposed Co-Counsel to the Debtors and Debtors in Possession

Dated: [□], 2024

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INTRODUCTION

5E Advanced Materials, Inc., 5E Boron Americas, LLC, American Pacific Borates Pty Ltd., and [ ] propose this joint prepackaged chapter 11 plan of reorganization (the "Plan") for the resolution of the outstanding Claims against, and Interests in, the Debtors. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor. Holders of Claims or Interests may refer to the Disclosure Statement for a discussion of the Debtors' history, businesses, assets, results of operations, and historical financial information, risk factors, a summary and analysis of this Plan, the Restructuring Transactions, and certain related matters. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I.
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings set forth below.

1. "*Administrative Claim*" means a Claim for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 327, 328, 330, 365, 503(b), 507(a), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses of preserving the Estates and operating the businesses of the Debtors incurred on or after the Petition Date and through the Effective Date; (b) Allowed Professional Claims; and (c) all fees and charges assessed against the Estates under chapter 123 of the Judicial Code.

2. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such entity was a debtor in a case under the Bankruptcy Code.

3. "*Allowed*" means, with respect to a Claim, any Claim (or portion thereof) that (a) is not Disputed within the applicable period of time, if any, fixed by the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, (b) is allowed, compromised, settled, or otherwise resolved pursuant to the terms of the Plan, in any stipulation that is approved by a Final Order of the Bankruptcy Court, or pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (c) has been allowed by a Final Order of the Bankruptcy Court. For the avoidance of doubt, (x) there is no requirement to file a Proof of Claim (or move the Bankruptcy Court for allowance) to have a Claim Allowed for the purposes of the Plan except as provided in Article V.B of this Plan, (y) the Debtors, in consultation with the Required Consenting Parties, may deem any Unimpaired Claim to be Allowed in an asserted amount for the purposes of the Plan, and (z) any Claim (or portion thereof) that has been disallowed pursuant to a Final Order shall not be an "Allowed" Claim.

4. "*Ascend*" means Ascend Global Investment Fund SPC for and on behalf of Strategic SPC.

5. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended from time to time.

6. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware.

7. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of the Judicial Code and the general, local, and chambers rules of the Bankruptcy Court, each as amended from time to time.

8. "*BEP*" means BEP Special Situations IV LLC.

9. "*Business Day*" means any day other than a Saturday, Sunday, or other day on which the New York Stock Exchange or the Nasdaq Stock Market is closed for trading.

10. "*Cash*" means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

11. "*Cause of Action*" or "*Causes of Action*" means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Effective Date, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

12. "*Chapter 11 Cases*" means (a) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code in the Bankruptcy Court and (b) when used with reference to all the Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

13. "*Claim*" means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

14. "*Claims and Balloting Agent*" means [□], the notice, claims, and solicitation agent proposed to be retained by the Debtors in the Chapter 11 Cases.

15. "*Claims Register*" means the official register of Claims maintained by the Claims and Balloting Agent.

16. "*Class*" means a class of Claims or Interests as set forth in Article III hereof pursuant to section 1122(a) of the Bankruptcy Code.

17. "*CM/ECF*" means the Bankruptcy Court's Case Management and Electronic Case Filing system.

18. "*Commitment Letters*" means those certain commitment letters setting forth the commitments and obligations of the parties thereto in connection with the New Equity Group's committed placement, including the subscription agreement setting forth the commitments and obligations of the parties thereto in connection with the Committed Placement, and the debt commitment letter setting forth the obligations of the parties thereto in connection with the Amended and Restated Note Purchase Agreement, attached as Exhibit C to the Restructuring Support Agreement.

19. "*Committee*" means the official committee of unsecured creditors, if any, appointed in the Chapter 11 Cases pursuant to section 1102(a) of the Bankruptcy Code.

20. "*Compensation and Benefits Programs*" means all employment and severance agreements and policies, and all employment, compensation, and benefit plans, policies, workers' compensation programs, savings plans, retirement plans, deferred compensation plans, supplemental executive retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, life and accidental death and dismemberment insurance plans, and programs of the Debtors, and all amendments and modifications thereto, applicable to the Debtors' employees, former employees, retirees, and non-employee directors and the employees, former employees and retirees of their subsidiaries, including all savings plans, retirement plans, health care plans, disability plans, severance benefit agreements, and plans, incentive plans, deferred compensation plans and life, accidental death, and dismemberment insurance plans.

21. "*Confirmation*" means the Bankruptcy Court's entry of the Confirmation Order on the docket of the Chapter 11 Cases, subject to all conditions specified in Article IX.A hereof having been (a) satisfied or (b) waived pursuant to Article IX.B hereof.

22. "*Confirmation Date*" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

23. "*Confirmation Hearing*" means the hearing to be held by the Bankruptcy Court on confirmation of the Plan and approval of the Disclosure Statement, pursuant to Bankruptcy Rule 3020(b)(2) and sections 1128 and 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

24. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 of the Bankruptcy Code and approving the Disclosure Statement, which order shall be in form and substance acceptable to the Debtors and the Noteholders and reasonably acceptable to Ascend, and consistent in all material respects with the Restructuring Support Agreement.

25. "*Consenting Parties*" means, collectively, the Noteholders and the New Equity Group that are signatories to the Restructuring Support Agreement.

26. "*Consummation*" means the occurrence of the Effective Date.

27. "*Cure*" means all amounts, including an amount of $0.00, required to cure any monetary defaults under any Executory Contract or Unexpired Lease (or such lesser amount as may be agreed upon by the parties under an Executory Contract or Unexpired Lease) that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

28. "*D&O Liability Insurance Policies*" means all insurance policies of any of the Debtors for directors', managers', and officers' liability existing as of the Petition Date (including any "tail policy") and all agreements, documents, or instruments relating thereto.

29. "*Debtor*" means collectively, each of the following: (a) 5E Advanced Materials, Inc.; (b) 5E Boron Americas, LLC; (c) American Pacific Borates Pty Ltd.; (d) [□]; and (e) [□].

30. "*Debtor Release*" means the release set forth in Article VIII.C of this Plan.

31. "*Definitive Documents*" means the definitive documents and agreements governing the Restructuring Transactions (including any related orders, agreements, instruments, schedules, or exhibits) that are contemplated by and referenced in the Plan (as amended, modified, or supplemented from time to time), and which documents and agreements shall be consistent in all material respects with the Restructuring Support Agreement and the definition of "Definitive Documents" set forth therein. For the avoidance of doubt, the New Organizational Documents are Definitive Documents.

32. "*DIP Agent*" means, to the extent applicable, an Entity in its capacity as administrative agent under the DIP Credit Agreement, its successors, assigns, or any replacement agent appointed pursuant to the terms of the DIP Credit Agreement.

33. "*DIP Claim*" means any Claim, including any New Money DIP Claim, held by the DIP Lenders or the DIP Agent arising under or relating to the DIP Credit Agreement or the DIP Orders, including any and all Claims for principal amounts outstanding, expenses, costs, interest paid in kind, and accrued but unpaid interest and fees arising under the DIP Credit Agreement.

34. "*DIP Credit Agreement*" means, to the extent applicable, that certain debtor-in-possession credit agreement by and among the Debtors, the guarantors party thereto, the DIP Agent, and the DIP Lenders, as approved by the DIP Orders.

35. "*DIP Facility*" means the debtor-in-possession credit facility entered into on the terms and conditions set forth in the DIP Credit Agreement, the DIP Facility Documents, and the DIP Orders, if the Debtors incur debtor-in-possession financing during the Chapter 11 Cases.

36. "*DIP Facility Documents*" means, to the extent applicable, any notes, certificates, agreements, security agreements, documents, or instruments (including any amendments, restatements, supplements, or modifications of any of the foregoing) related to or executed in connection with the DIP Credit Agreement.

37. "*DIP Lenders*" means, to the extent applicable, the lenders under the DIP Credit Agreement.

38. "*DIP Orders*" means, collectively, to the extent applicable, the Interim DIP Order and the Final DIP Order.

39. "*Disbursing Agent*" means the Reorganized Debtors or the Entity or Entities selected by the Debtors or the Reorganized Debtors, as applicable, to make or facilitate distributions pursuant to the Plan.

40. "*Disclosure Statement*" means the disclosure statement for the Plan, including all exhibits and schedules thereto, to be approved by the Confirmation Order.

41. "*Disputed*" means, as to a Claim, a Claim (or portion thereof) (a) that an objection to such Claim (or portion thereof) has been filed on or before the Effective Date; (b) for which a Proof of Claim is filed; or (c) that is not disallowed under the Plan, the Bankruptcy Code, or a Final Order, as applicable; *provided* that in no event shall a Claim or an Interest (or portion thereof) that is deemed Allowed pursuant to the Plan be a Disputed Claim.

42. "*Distribution Date*" means, except as otherwise set forth herein and except for distributions to holders of public Securities, the date or dates determined by the Debtors or the Reorganized Debtors, on or after the Effective Date, with the first such date occurring on or as soon as is reasonably practicable after the Effective Date, upon which the Disbursing Agent shall make distributions to holders of Allowed Claims entitled to receive distributions under the Plan; *provided*, *however*, that distributions to holders of Allowed Notes Claims shall be made on the Effective Date.

43. "*Distribution Record Date*" means, other than with respect to publicly held Securities, the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the first day of the Confirmation Hearing, or such other date as designated in a Final Order of the Bankruptcy Court.

44. "*DTC*" means the Depository Trust Company.

45. "*Effective Date*" means the date on which all conditions precedent to the effectiveness of the Plan set forth in Article IX.A herein have been satisfied or waived in accordance with Article IX.B of the Plan.

46. "*Entity*" has the meaning set forth in section 101(15) of the Bankruptcy Code.

47. "*Estate*" means, as to each Debtor, the estate created for such Debtor in its Chapter 11 Case pursuant to section 541 of the Bankruptcy Code upon the commencement of such Debtor's Chapter 11 Case.

48. "*Exculpated Party*" means, collectively, and in each case in its capacity as such: (a) the Debtors; (b) any statutory committee appointed in the Chapter 11 Cases and each of its members; (c) each current and former Affiliate of each Entity in clause (a) through (c); and (d) each Related Party of each Entity in clause (a) through (c).

49. "*Executory Contract*" means a contract to which one or more of the Debtors is a party and that is subject to assumption or rejection under section 365 or 1123 of the Bankruptcy Code.

50. "*FEAM*" means 5E Advanced Materials, Inc.

51. "*Federal Judgment Rate*" means the federal judgment rate in effect as of the Petition Date.

52. "*File*," "*Filed*," or "*Filing*" means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

53. "*Final DIP Order*" means, to the extent applicable, the Final Order approving the DIP Facility.

54. "*Final Order*" means, as applicable, an order or judgment of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified, or amended, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be filed has been resolved by the highest court to which the order or judgment could be appealed or from which certiorari could be sought or the new trial, re-argument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice.

55. "*General Unsecured Claim*" means any Claim other than an Administrative Claim, a Professional Claim, a DIP Claim (as applicable), a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, an Intercompany Claim, or a Notes Claim.

56. "*Governmental Unit*" has the meaning set forth in section 101(27) of the Bankruptcy Code.

57. "*Impaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

58. "*Indemnification Provisions*" means each of the Debtors' indemnification provisions currently in place, whether in the respective Debtors' bylaws, certificates of incorporation, other formation documents, board resolutions, or contracts, for the current and former managers, directors, officers, employees, and agents of, or acting on behalf of, the Debtors.

59. "*Intercompany Claim*" means any Claim against a Debtor held by another Debtor or a non-Debtor subsidiary.

60. "*Intercompany Interest*" means any Interest in a Debtor, other than an Interest in FEAM, held by another Debtor or a non-Debtor subsidiary.

61. "*Interest*" means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor, including all issued, unissued, authorized, or outstanding shares of capital stock and any other common stock, preferred stock, limited liability company interests, and any other equity ownership, or profit interest of any Debtors, including all rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable Securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor whether or not arising under or in connection with any employment agreement and whether or not certificated, transferable, preferred, common, voting, or denominated "stock" or a similar security.

62. "*Interim DIP Order*" means, to the extent applicable, the interim order approving the DIP Facility.

63. "*Judicial Code*" means title 28 of the United States Code, 28 U.S.C. §§ 1–4001, as amended from time to time.

64. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

65. "*Management Incentive Plan*" means the management incentive plan that the Reorganized Debtors will implement on or after the Effective Date.

66. "*New Board*" means the initial board of directors or managers of Reorganized FEAM, as determined by the Debtors, BEP, and the New Equity Group, and consistent with the Restructuring Support Agreement.

67. "*New Bylaws*" means, to the extent Reorganized FEAM is a corporation, those certain bylaws for Reorganized FEAM, in substantially the form to be Filed as part of the Plan Supplement, effective as of the Effective Date, to which all parties receiving New Equity (and all persons to whom such parties may sell or transfer their New Equity in the future and all persons who purchase or acquire the New Equity in future transactions) shall be required to become or shall be deemed parties, which shall be subject to the consent requirements set forth in the Restructuring Support Agreement.

68. "*New Equity*" means common equity in Reorganized FEAM (a) to be issued on the Effective Date pursuant to the Plan and (b) as otherwise permitted to be issued pursuant to the New Organizational Documents of Reorganized FEAM.

69. "*New Equity Group*" means, collectively, Ascend and such other person as may be nominated by Ascend with the reasonable consent of the Noteholders.

70. "*New Equity DIP Claim Allocation*" shall mean the New Equity issued on account of the DIP Claims (which shall include the complete principal amount *plus* any payment in kind interest as of the Effective Date), the computation of which shall be subject to the reasonable consent of Ascend.

71. "*New Equity Note Claim Allocation*" shall mean the New Equity issued on account of the outstanding notional amount of the Notes (which shall include the complete principal amount *plus* any payment in kind) as of the Effective Date, the computation of which shall be subject to the reasonable consent of Ascend.

72. "*New Money DIP Claim*" means any Claim held by the DIP Lenders or the DIP Agent on account of new money financing, arising under or relating to the DIP Credit Agreement or the DIP Orders, including any and all Claims for principal amounts outstanding, expenses, costs, interest paid in kind, and accrued but unpaid interest and fees arising under the DIP Credit Agreement.

73. "*New Organizational Documents*" means the documents providing for corporate organization and governance of the Reorganized Debtors, including charters, bylaws, operating agreements, including, if applicable, the New Bylaws, or other organizational documents or shareholders' agreements, as applicable, which shall be consistent with the Restructuring Support Agreement, this Plan, and section 1123(a)(6) of the Bankruptcy Code (as applicable); *provided*, that the applicable New Organizational Documents shall provide for Reorganized FEAM to be either a corporation or, alternatively, a limited liability company taxed as a corporation for federal and state income tax purposes, [shall provide for Reorganized FEAM to directly hold the shares of [_____] and for [Australian intermediary subsidiary] to be dissolved under applicable law,] and shall be subject to the consent requirements set forth in the Restructuring Support Agreement, and the material terms of which shall be included in the Plan Supplement.

74. *"Noteholder"* means a holder of Notes as of the Petition Date.

75. "*Note Purchase Agreement*" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP and other persons party to such agreement as purchasers, and Alter Domus (US) LLC as collateral agent, as may be amended, restated, supplemented, or otherwise modified from time to time.

76. "*Notes*" means the convertible notes of FEAM issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

77. "*Notes Claim*" means any Claim against a Debtor arising under, derived from, secured by, based on, or related to the Notes.

78. "*Other Priority Claim*" means any Claim, other than an Administrative Claim, a Professional Claim, or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

79. "*Other Secured Claim*" means any Secured Claim, other than a DIP Claim (as applicable), the reimbursement obligation for which is either secured by a Lien on collateral or is subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

80. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

81. "*Petition Date*" means the date on which the Debtors commenced the Chapter 11 Cases.

82. "*Plan Distribution*" means a payment or distribution to holders of Allowed Claims or other eligible Entities under this Plan.

83. "*Plan Supplement*" means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan, or the material terms thereof (in each case, as may be altered, amended, modified, or supplemented from time to time in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed by the Debtors no later than seven (7) days before the commencement of the Confirmation Hearing or such later date as may be approved by the Bankruptcy Court on notice to parties in interest, which may include the following: (a) the New Organizational Documents; (b) to the extent known, the identities of the members of the New Board; (c) the Rejected Executory Contracts and Unexpired Leases Schedule; (d) the Schedule of Retained Causes of Action; and (e) the Restructuring Transactions Memorandum. The documents comprising the Plan Supplement shall be consistent with the terms of the Restructuring Support Agreement and the Plan. The Debtors shall have the right to alter, amend, modify, or supplement the documents contained in the Plan Supplement through the Effective Date consistent with the Plan and the Restructuring Support Agreement.

84. "*Priority Tax Claim*" means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

85. "*Pro Rata*" means, except as otherwise set forth herein, the proportion that a particular Allowed Claim or an Allowed Interest bears to the aggregate amount of Allowed Claims or Allowed Interests in the applicable group or Class.

86. "*Professional*" means an Entity: (a) employed pursuant to a Bankruptcy Court order in accordance with sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date, pursuant to sections 327, 328, 329, 330, 331, 363 and 1103 of the Bankruptcy Code; or (b) awarded compensation and reimbursement by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code.

87. "*Professional Amount*" means the aggregate amount of Professional Claims and other unpaid fees and expenses that the Professionals estimate they have incurred or will incur in rendering services to the Debtors or the Committee, if applicable, as set forth in Article II.C hereof.

88. "*Professional Claim*" means a Claim by a professional seeking an award by the Bankruptcy Court of compensation for services rendered or reimbursement of expenses incurred through and including the Confirmation Date under sections 330, 331, 503(b)(2), 503(b)(3), 503(b)(4), or 503(b)(5) of the Bankruptcy Code.

89. "*Professional Escrow Account*" means an escrow account funded by the Debtors with Cash on the Effective Date in an amount equal to the Professional Amount.

90. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

91. "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means, with respect to Claims and Interests, that the Claim or Interest shall not be discharged hereunder and the holder's legal, equitable, and contractual rights on account of such Claim or Interest shall remain unaltered by Consummation in accordance with section 1124(1) of the Bankruptcy Code.

92. "*Rejected Executory Contracts and Unexpired Leases Schedule*" means the schedule of Executory Contracts and Unexpired Leases to be rejected by the Debtors pursuant to the Plan, which schedule shall be included

in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time with the consent of the Noteholders, and which shall be in form and substance reasonably acceptable to Ascend.

93. "*Related Party*" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, and each of their respective current and former equity holders, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, owners, principals, shareholders, members, managers, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

94. "*Released Party*" means, collectively, and in each case in its capacity as such: (a) the Debtors and the Reorganized Debtors; (b) the New Equity Group; (c) the Noteholders; (d) any administrative agent, collateral agent, or similar Entity under the Notes and the DIP Credit Agreement, including any successors thereto; (e) any indenture trustee, collateral trustee, or other trustee or similar entity under the Notes and the DIP Credit Agreement; (f) each current and former Affiliate of each Entity in clause (a) through (e); and (g) each Related Party of each Entity in clause (a) through (e).

95. "*Releasing Party*" means, collectively, and in each case in its capacity as such: (a) the Debtors and the Reorganized Debtors; (b) the New Equity Group; (c) the Noteholders; (d) any administrative agent, collateral agent, or similar Entity under the Notes and the DIP Credit Agreement, including any successors thereto; (e) any indenture trustee, collateral trustee, or other trustee or similar entity under the Notes and the DIP Credit Agreement; (f) each current and former Affiliate of each Entity in clause (a) through (e), to the maximum extent permitted by law; (g) each Related Party of each Entity in clause (a) through (e), to the maximum extent permitted by law.

96. "*Reorganized Debtors*" means collectively, the Debtors, as reorganized pursuant to and under the Plan, or any successor or assign thereto, by merger, amalgamation, consolidation, or otherwise, on or after the Effective Date, including Reorganized FEAM.

97. "*Reorganized FEAM*" means FEAM, as reorganized pursuant to and under the Plan, or one or more new Entities as determined by the Debtors and the Noteholders.

98. "*Required Consenting Parties*" means, collectively, the Noteholders and Ascend that are signatories to the Restructuring Support Agreement.

99. "*Restructuring Support Agreement*" means that certain Restructuring Support Agreement dated as of December 5, 2023, between and among (a) the Debtors, (b) BEP, (c) Ascend, and (d) any signatories thereto.

100. "*Restructuring Transactions*" means any transactions and any actions as may be necessary or appropriate to effect a corporate restructuring of the Debtors' and the Reorganized Debtors' respective businesses or a corporate restructuring of the overall corporate structure of the Debtors on the terms set forth in the Plan, Restructuring Support Agreement, and Restructuring Transactions Memorandum, including the issuance of all Securities, notes, instruments, certificates, and other documents required to be issued pursuant to the Plan, one or more inter-company mergers, consolidations, amalgamations, arrangements, continuances, restructurings, conversions, dissolutions, transfers, liquidations, or other corporate transactions, as described in Article IV.B hereof.

101. "*Restructuring Transactions Memorandum*" means a document to be included in the Plan Supplement that will set forth the material components of the Restructuring Transactions, including the identity of the issuer or issuers of the New Equity and any elections that must be made with respect to the receipt of the New Equity.

102. "*Schedule of Retained Causes of Action*" means the schedule of certain Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

103. "*Secured Claim*" means a Claim (a) secured by a valid, perfected, and enforceable Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code.

104. "*Securities Act*" means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

105. "*Security*" means any security, as defined in section 2(a)(1) of the Securities Act.

106. "*Third-Party Release*" means the release set forth in Article VIII.D of this Plan.

107. "*Unexpired Lease*" means a lease to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

108. "*Unimpaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

B. Rules of Interpretation.

For purposes of this Plan: (1) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, whether or not Filed, having been Filed or to be Filed shall mean that document, schedule, or exhibit, as it may thereafter be amended, modified, or supplemented; (4) any reference to an Entity as a holder of a Claim or Interest includes that Entity's successors and assigns; (5) unless otherwise specified, all references herein to "Articles" are references to Articles hereof or hereto; (6) unless otherwise specified, all references herein to exhibits are references to exhibits in the Plan Supplement; (7) unless otherwise specified, the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion of the Plan; (8) subject to the provisions of any contract, certificate of incorporation, by-law, instrument, release, or other agreement or document entered into in connection with the Plan, the rights and obligations arising pursuant to the Plan shall be governed by, and construed and enforced in accordance with the applicable federal law, including the Bankruptcy Code and Bankruptcy Rules; (9) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (10) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (11) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be; (12) all references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (13) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (14) the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, and shall be deemed to be followed by the words "without limitation"; (15) references to "Proofs of Claim," "holders of Claims," "Disputed Claims," and the like shall include "Proofs of Interest," "holders of Interests," "Disputed Interests," and the like, as applicable; (16) any immaterial effectuating provisions may be interpreted by the Reorganized Debtors in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity; and (17) all references herein to consent, acceptance, or approval may be conveyed by counsel for the respective parties that have such consent, acceptance, or approval rights, including by electronic mail.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law.

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws (other than section 5-1401 and section 5-1402 of the New York General Obligations Law), shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; *provided*, *however*, that corporate governance matters relating to the Debtors or the Reorganized Debtors, as applicable, not incorporated in New York shall be governed by the laws of the state of incorporation or formation of the relevant Debtor or the Reorganized Debtors, as applicable.

E. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided herein.

F. Reference to the Debtors or the Reorganized Debtors.

Except as otherwise specifically provided in the Plan to the contrary, references in the Plan to the Debtors or the Reorganized Debtors shall mean the Debtors and the Reorganized Debtors, as applicable, to the extent the context requires.

G. Controlling Document.

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan and any document or agreement included in the Plan Supplement, the terms of the relevant provision in the Plan Supplement shall control (unless stated otherwise in such Plan Supplement document or in the Confirmation Order). In the event of an inconsistency between the Confirmation Order and any of the Plan, the Disclosure Statement, or the Plan Supplement, the Confirmation Order shall control. For the avoidance of doubt, the Definitive Documents in effect from and after the Effective Date shall control the matters set forth therein in the event of a conflict between any such Definitive Document and any other document.

H. Consent Rights.

Any and all consent rights of the parties to the Restructuring Support Agreement set forth in the Restructuring Support Agreement with respect to the form and substance of this Plan, the Definitive Documents, all exhibits to the Plan, and the Plan Supplement, including any amendments, restatements, supplements, or other modifications to such agreements and documents, and any consents, waivers, or other deviations under or from any such documents, shall be incorporated herein by this reference and be fully enforceable as if stated in full herein.

Failure to reference the rights referred to in the immediately preceding paragraph as such rights relate to any document referenced in the Restructuring Support Agreement, as applicable, shall not impair such rights and obligations.

ARTICLE II.
ADMINISTRATIVE CLAIMS AND PRIORITY CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, DIP Claims (as applicable), Professional Claims, and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims.

Unless otherwise agreed to by the holder of an Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as applicable, in consultation with the Required Consenting Parties, each holder of an Allowed Administrative Claim (other than holders of Professional Claims and Claims for fees and expenses pursuant to section 1930 of chapter 123 of title 28 of the United States Code) will receive in full and final satisfaction of its Administrative Claim an amount of Cash equal to the amount of such Allowed Administrative Claim in accordance with the following: (1) if an Administrative Claim is Allowed on or prior to the Effective Date, on the Effective Date, or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter); (2) if such Administrative Claim is not Allowed as of the Effective Date, no later than thirty (30) days after the date on which an order allowing such Administrative Claim becomes a Final Order, or as soon as reasonably practicable thereafter; (3) if such Allowed Administrative Claim is based on liabilities incurred by the Debtors in the ordinary course of their business after the Petition Date, in accordance with the terms and conditions of the particular transaction giving rise to such Allowed Administrative Claim, without any further action by the holders of such Allowed Administrative Claim; (4) at such time and upon such terms as may be agreed upon by such holder and the Debtors or the Reorganized Debtors, as applicable; or (5) at such time and upon such terms as set forth in an order of the Bankruptcy Court.

B. DIP Claims.

On the Effective Date, if the Debtors incur debtor-in-possession financing during the Chapter 11 Cases, each holder of an Allowed DIP Claim shall receive its Pro Rata share of the New Equity DIP Claim Allocation; *provided*, that, on the Effective Date, the New Equity Group shall purchase 50% of the New Equity DIP Claim Allocation and may be provided the opportunity to purchase additional portions of the total amount of the Allowed DIP Claims and, accordingly, to receive a proportionate share of the New Equity DIP Claim Allocation, consistent with the Restructuring Support Agreement and the Commitment Letters; *provided*, *further*, that if (i) the principal amount of the New Money DIP Claims exceeds $20 million and (ii) Ascend did not consent to such principal amount above $20 million, then each holder of such portion of Allowed New Money DIP Claims attributable to principal amounts exceeding $20 million shall receive, at the option of the DIP Lenders, (z) its Pro Rata share of the New Equity, which shall not be sold to the New Equity Group, or (y) Reinstatement; *provided*, that, to the extent that any DIP Facility is Reinstated, then such Reinstated facility shall be on terms that are customary and reasonable, and subject to the consent of the Debtors and the New Equity Group; *provided*, *further*, that notwithstanding anything in the Plan or the Definitive Documents, the total amount of the New Equity DIP Claim Allocation provided to the New Equity Group shall not be less than 45% of the aggregate New Equity.

As of the Effective Date, the DIP Claims shall be Allowed and deemed to be Allowed Claims in the full amount outstanding under the DIP Documents without the need for the DIP Agent or DIP Lenders to file any Proof of Claim or request for payment.

C. Professional Claims.

1. Final Fee Applications and Payment of Professional Claims.

All requests for payment of Professional Claims for services rendered and reimbursement of expenses incurred prior to the Confirmation Date must be Filed no later than 45 days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Court. The Reorganized Debtors shall pay Professional Claims in Cash in the amount the Bankruptcy Court allows, including from the Professional Escrow Account, which the Reorganized

Debtors will establish in trust for the Professionals and fund with Cash equal to the Professional Amount on the Effective Date.

2. Professional Escrow Account.

On the Effective Date, the Reorganized Debtors shall establish and fund the Professional Escrow Account with Cash equal to the Professional Amount, which shall be funded by the Reorganized Debtors. The Professional Escrow Account shall be maintained in trust solely for the Professionals. Such funds shall not be considered property of the Estates of the Debtors or the Reorganized Debtors. The amount of Allowed Professional Claims shall be paid in Cash to the Professionals by the Reorganized Debtors from the Professional Escrow Account as soon as reasonably practicable after such Professional Claims are Allowed. When such Allowed Professional Claims have been paid in full, any remaining amount in the Professional Escrow Account shall promptly be paid to the Reorganized Debtors without any further action or order of the Bankruptcy Court.

3. Professional Amount.

Professionals shall reasonably estimate their unpaid Professional Claims and other unpaid fees and expenses incurred in rendering services to the Debtors or the Committee, if any, as applicable before and as of the Effective Date, and shall deliver such estimate to the Debtors no later than five days before the Effective Date; *provided*, *however*, that such estimate shall not be deemed to limit the amount of the fees and expenses that are the subject of each Professional's final request for payment in the Chapter 11 Cases. If a Professional does not provide an estimate, the Debtors or Reorganized Debtors may estimate the unpaid and unbilled fees and expenses of such Professional.

4. Post-Confirmation Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors or the Committee, if any, as applicable. The Debtors and Reorganized Debtors, as applicable, shall pay all reasonable and documented fees and expenses of the Noteholders and the New Equity Group, in each case in accordance with the terms and conditions of any applicable agreement with the Debtors (including the Restructuring Support Agreement), and if any such fee and/or expense is unpaid as of the Effective Date, such fee and/or expense shall be paid on the Effective Date. If the Debtors or Reorganized Debtors, as applicable, dispute the reasonableness of any such invoice, the Debtors or Reorganized Debtors, as applicable, or the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved. The undisputed portion of such reasonable fees and expenses shall be paid as provided herein. Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors may employ and pay any Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

D. Priority Tax Claims.

Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each holder of such Allowed Priority Tax Claim shall be treated in accordance with the terms set forth in section 1129(a)(9)(C) of the Bankruptcy Code.

ARTICLE III.
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests.

This Plan constitutes a separate Plan proposed by each Debtor. Except for the Claims addressed in Article II hereof, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest fits within the description of that Class and is classified in other Class(es) to the extent that any portion of the Claim or Interest fits within the description of such other Class(es). A Claim or an Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been paid, released, or otherwise satisfied prior to the Effective Date.

The classification of Claims and Interests against the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	Notes Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 6	Intercompany Interests	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept or Reject)
Class 7	Interests in FEAM	Impaired	Not Entitled to Vote (Deemed to Reject)

B. Treatment of Claims and Interests.

Each holder of an Allowed Claim or Allowed Interest, as applicable, shall receive under the Plan the treatment described below in full and final satisfaction, settlement, release, and discharge of and in exchange for such holder's Allowed Claim or Allowed Interest, except to the extent different treatment is agreed to by the Reorganized Debtors and the holder of such Allowed Claim or Allowed Interest, as applicable. Unless otherwise indicated, the holder of an Allowed Claim or Allowed Interest, as applicable, shall receive such treatment on the Effective Date or as soon as reasonably practicable thereafter.

1. Class 1 – Other Secured Claims

(a) *Classification*: Class 1 consists of all Other Secured Claims.

(b) *Treatment*: Each holder of an Allowed Other Secured Claim shall receive, at the option of the applicable Debtor, in consultation with the Required Consenting Parties, either:

(i) payment in full in Cash of its Allowed Class 1 Claim;

(ii) the collateral securing its Allowed Class 1 Claim;

(iii) Reinstatement of its Allowed Class 1 Claim; or

(iv) such other treatment that renders its Allowed Class 1 Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

(c) *Voting*: Class 1 is Unimpaired under the Plan. Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

(a) *Classification*: Class 2 consists of all Other Priority Claims.

(b) *Treatment*: Each holder of an Allowed Other Priority Claim shall receive payment in full in Cash.

(c) *Voting*: Class 2 is Unimpaired under the Plan. Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

3. Class 3 – Notes Claims

(a) *Classification*: Class 3 consists of all Notes Claims.

(b) *Allowance*: The Notes Claims shall be Allowed in the aggregate principal amount of $63,561,300, plus accrued and unpaid interest on such principal amount through the Petition Date.

(c) *Treatment*: On the Effective Date, each holder of an Allowed Notes Claim shall receive its Pro Rata share of the New Equity Notes Claim Allocation with other holders of Allowed Notes Claims in full satisfaction of its Allowed Notes Claim against all Debtors and their affiliates; *provided*, that, on the Effective Date, the New Equity Group shall purchase fifty percent (50%) of the New Equity Note Claim Allocation at par of dollar value, including principal *plus* interest (inclusive of any accrued payment in kind interest), consistent with the Restructuring Support Agreement and the Commitment Letters.

(d) *Voting*: Class 3 is Impaired under the Plan. Holders of Claims in Class 3 are entitled to vote to accept or reject the Plan.

4. Class 4 – General Unsecured Claims

(a) *Classification:* Class 4 consists of all General Unsecured Claims.

(b) *Treatment:* Each holder of an Allowed General Unsecured Claim shall receive, at the option of the applicable Debtor, in consultation with the Required Consenting Parties, either:

(i) payment in full in Cash; or

(ii) Reinstatement.

(c) *Voting:* Class 4 is Unimpaired under the Plan. Holders of Claims in Class 4 are conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, such holders are not entitled to vote to accept or reject the Plan.

5. Class 5 – Intercompany Claims

(a) *Classification*: Class 5 consists of all Intercompany Claims.

(b) *Treatment*: Subject to the Restructuring Transactions Memorandum, each Allowed Intercompany Claim shall be, at the option of the applicable Debtor, either:

(i) Reinstated;

(ii) settled, distributed and/or contributed among entities, modified, or canceled, released, and extinguished, and will be of no further force or effect; or

(iii) otherwise addressed at the option of each applicable Debtor such that holders of Class 5 Intercompany Claims will not receive any distribution on account of such Class 5 Claims.

(c) *Voting*: Class 5 is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class 5 is not entitled to vote to accept or reject the Plan.

6. Class 6 – Intercompany Interests

(a) *Classification*: Class 6 consists of all Intercompany Interests.

(b) *Treatment*: Subject to the Restructuring Transactions Memorandum, each Intercompany Interest shall be Reinstated as of the Effective Date or, at the Debtors' or the Reorganized Debtors' option, shall be cancelled. No distribution shall be made on account of any Intercompany Interests.

(c) *Voting*: Class 6 is conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code or rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class 6 is not entitled to vote to accept or reject the Plan.

7. Class 7 – Interests in FEAM

(a) *Classification*: Class 7 consists of all Interests in FEAM.

(b) *Treatment*: Holders of Interests in FEAM will not receive any distribution on account of such Interests, which will be canceled, released, and extinguished as of the Effective Date, and will be of no further force or effect.

(c) *Voting*: Class 7 is conclusively deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Class 7 is not entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect the Debtors' or the Reorganized Debtors' rights regarding any Unimpaired Claim, including, all rights regarding legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claim.

D. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be

deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Voting Classes, Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims eligible to vote and no holders of Claims eligible to vote in such Class vote to accept or reject the Plan, the holders of such Claims in such Class shall be deemed to have accepted the Plan.

F. Intercompany Interests.

To the extent Reinstated under the Plan, Intercompany Interests shall be Reinstated for purposes of administrative convenience and for the ultimate benefit of the holders of New Equity, and shall receive no recovery or distribution.

G. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III.B of the Plan. The Debtors reserve the right to modify the Plan in accordance with Article X hereof to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

H. Controversy Concerning Impairment.

If a controversy arises as to whether any Claims or Interests, or any Class of Claims or Interests, are Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

I. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code the Reorganized Debtors reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims and Interests.

As discussed in detail in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan, including (1) any challenge to the amount, validity, perfection, enforceability, priority or extent of the DIP Claims (as applicable) or the Notes Claims and (2) any claim to avoid, subordinate, or disallow any DIP Claim (as applicable) or Notes Claim, whether under any provision of chapter 5 of the Bankruptcy Code, on any equitable theory (including equitable subordination, equitable disallowance, or unjust enrichment), or otherwise. The Plan shall be deemed a motion to approve the good faith compromise and settlement of all such Claims, Interests, and controversies pursuant to Bankruptcy Rule 9019, and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, as well as a

finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable and in the best interests of the Debtors and their Estates. Subject to Article VI hereof, all distributions made to holders of Allowed Claims in any Class are intended to be and shall be final.

B. Restructuring Transactions.

On or before the Effective Date, the applicable Debtors or the Reorganized Debtors shall enter into and shall take any actions as may be necessary or appropriate to effect the Restructuring Transactions, including as set forth in the Restructuring Transactions Memorandum. The actions to implement the Restructuring Transactions may include: (1) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan and the Restructuring Transactions Memorandum, and that satisfy the requirements of applicable law and any other terms to which the applicable Entities and parties may agree; (2) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan and the Restructuring Transactions Memorandum, and having other terms for which the applicable Entities and parties agree; (3) the filing of appropriate certificates or articles of incorporation, formation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution pursuant to applicable state or provincial law; and (4) all other actions that the applicable Entities and parties determine to be necessary, including making filings or recordings that may be required by applicable law in connection with the Plan and the Restructuring Transactions Memorandum. The Confirmation Order shall, and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, contemplated by, or necessary to effectuate the Plan.

Notwithstanding anything herein to the contrary, the Debtors shall consult with the Required Consenting Parties to determine whether to engage in the Restructuring Transactions in accordance with the structure contemplated by the Restructuring Transactions Memorandum, and the Debtors or Reorganized Debtors may not engage in the Restructuring Transactions in accordance with the structure contemplated by the Restructuring Transactions Memorandum without the prior reasonable written consent of the Required Consenting Parties. The Debtors shall, subject to any limitations imposed on distribution by professionals (including, for the avoidance of doubt, any requirement such professionals have in the way of non-reliance and/or access letters, as the case may be), provide the Required Consenting Parties with reasonable access to materials in the Debtors' (or their agents') possession reasonably necessary for the Required Consenting Parties to evaluate whether to engage in the Restructuring Transactions in accordance with the structure contemplated by the Restructuring Transactions Memorandum. The Debtors shall cooperate on a reasonable basis with the Required Consenting Parties in connection with proposals by any of the Required Consenting Parties.

C. Reorganized Debtors.

On the Effective Date, the New Board shall be established consistent with the Restructuring Support Agreement, and the Reorganized Debtors shall adopt their New Organizational Documents. The Reorganized Debtors shall be authorized to adopt any other agreements, documents, and instruments and to take any other actions contemplated under the Plan as necessary to consummate the Plan, including making payments under or entry into a key employee incentive or retention program. Cash payments to be made pursuant to the Plan will be made by the Debtors or Reorganized Debtors. The Debtors and Reorganized Debtors will be entitled to transfer funds between and among themselves as they determine to be necessary or appropriate to enable the Debtors or Reorganized Debtors, as applicable, to satisfy their obligations under the Plan. Except as set forth herein, any changes in intercompany account balances resulting from such transfers will be accounted for and settled in accordance with the Debtors' historical intercompany account settlement practices and will not violate the terms of the Plan.

From and after the Effective Date, the Reorganized Debtors, subject to any applicable limitations set forth in any post-Effective Date agreement, shall have the right and authority without further order of the Bankruptcy Court to raise additional capital and obtain additional financing as the boards of directors or managers of the applicable Reorganized Debtors deem appropriate.

D. Sources of Consideration for Plan Distributions.

The Debtors and the Reorganized Debtors, as applicable, shall fund distributions under the Plan with: (1) Cash on hand, including Cash from operations and (2) the New Equity.

1. Issuance of New Equity.

All Interests in FEAM shall be cancelled on the Effective Date and, subject to the Restructuring Transactions, Reorganized FEAM shall issue or transfer the New Equity to holders of Claims entitled to receive such New Equity pursuant to the Plan and the Restructuring Support Agreement. The issuance or transference of the New Equity pursuant to the Plan shall be duly authorized without the need for any further corporate action and without any further action by the Debtors or Reorganized Debtors, or by any of their equity holders, members, directors, managers, officers, or employees, as applicable, or by any holders of any Claims or Interests, as applicable. All New Equity issued or transferred under the Plan shall be duly authorized, validly issued, fully paid, and non-assessable (as applicable), and, to the extent Reorganized FEAM is a corporation, the holders of New Equity shall be deemed as a result of having received distributions of New Equity pursuant to the Plan to have accepted the New Organizational Documents (solely in their capacity as members of Reorganized FEAM) without further action or signature. The New Organizational Documents shall be effective as of the Effective Date and, as of such date, shall be deemed to be valid, binding, and enforceable in accordance with its terms, and each holder of New Equity shall be bound thereby (without any further action or signature) in all respects, whether or not such holder has executed the New Organizational Documents.

The New Equity will be issued or transferred under the Plan as follows, and as consistent with the Restructuring Support Agreement and Restructuring Transactions Memorandum: on the Effective Date, the New Equity will be allocated pro rata between the New Equity Note Claim Allocation (based on the aggregate outstanding notional amount of the Notes - which shall include the complete principal amount *plus* any payment in kind - as of the Effective Date) and the New Equity DIP Claim Allocation (based on the aggregate complete principal amount plus any payment in kind interest as of the Effective Date), and each holder of an Allowed Notes Claim shall receive its Pro Rata share of the New Equity Note Claim Allocation and each holder of an Allowed DIP Claim shall receive its Pro Rata share of the New Equity DIP Claim Allocation; *provided*, that, on the Effective Date, the New Equity Group shall purchase (a) fifty percent (50%) of the New Equity Note Claim Allocation at par of dollar value, and (b) fifty percent (50%) of the New Equity DIP Claim Allocation.

At the election of the Noteholders, the New Equity may be subject to a stockholders' agreement and/or the holders of New Equity will be provided with registration rights, in each case, on the terms and conditions that are mutually acceptable to the Reorganized Debtors, the Noteholders, and Ascend.

E. Corporate Existence.

Except as otherwise provided in the Plan or any agreement, instrument, or other document incorporated in the Plan or the Plan Supplement, each Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form of entity, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form of entity, as the case may be, pursuant to the applicable law in the jurisdiction in which each applicable Debtor is incorporated or formed and pursuant to the respective certificate of incorporation and bylaws (or other formation documents and agreements) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents and agreements) are amended under the Plan or otherwise and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law). After the Effective Date, the respective certificate of incorporation and bylaws (or other formation documents or agreements) of one or more of the Reorganized Debtors may be amended or modified without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules. After the Effective Date, one or more of the Reorganized Debtors may be disposed of, dissolved, wound down, merged, converted, liquidated, etc. without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

F. Vesting of Assets in the Reorganized Debtors.

Except as otherwise provided in the Plan (including, for the avoidance of doubt, the Restructuring Transactions Memorandum) or any agreement, instrument, or other document incorporated in, or entered into in connection with or pursuant to, the Plan or Plan Supplement, on the Effective Date, all property in each Estate, all Causes of Action, and any property acquired by any of the Debtors pursuant to the Plan shall vest immediately and completely in each respective Reorganized Debtor, free and clear of all Liens, Claims, charges, or other encumbrances. On and after the Effective Date, except as otherwise provided in the Plan, each Reorganized Debtor may operate its business and may operate, use, acquire, exchange, or dispose of property and compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

G. Cancellation of Existing Securities and Agreements.

On the Effective Date, except to the extent otherwise provided in the Plan, all notes, instruments, certificates, credit agreements, indentures, and other instruments or documents directly or indirectly evidencing Claims or Interests shall be cancelled, and the obligations of the Debtors thereunder or in any way related thereto shall be deemed satisfied in full, cancelled, discharged, and of no further force or effect whatsoever. Holders of or parties to such cancelled instruments, Securities, and other documentation will have no rights arising from or relating to such instruments, Securities, and other documentation, or the cancellation thereof, except the rights provided for pursuant to this Plan.

H. Corporate Action.

Upon and after the Effective Date, all actions contemplated under the Plan and the Restructuring Transactions Memorandum shall be deemed authorized and approved by the Bankruptcy Court in all respects without any further corporate, board, manager, or equity holder action, including: (1) adoption or assumption, as applicable, of the Compensation and Benefit Programs; (2) selection of the directors, managers, and officers for the Reorganized Debtors; (3) the issuance and distribution of the New Equity; (4) implementation of the Restructuring Transactions; (5) all other actions contemplated under the Plan (whether to occur before, on, or after the Effective Date); (6) adoption, execution, and/or filing of the New Organizational Documents; (7) the rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; and (8) all other acts or actions contemplated or reasonably necessary or appropriate to promptly consummate the Restructuring Transactions contemplated by the Plan (whether to occur before, on, or after the Effective Date). All matters provided for in the Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate, partnership, limited liability company, or other governance action required by the Debtors or the Reorganized Debtors, as applicable, in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further corporate or other action by any Security holders, members, managers, directors, or officers of the Debtors or the Reorganized Debtors, as applicable. On or (as applicable) prior to the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be (or shall be deemed to have been) authorized and (as applicable) directed to issue, execute, and deliver the agreements, documents, Securities, and instruments contemplated under the Plan (or necessary or desirable to effect the transactions and the Restructuring Transactions contemplated under the Plan and the Restructuring Transactions Memorandum) in the name of and on behalf of the Reorganized Debtors, including the New Equity, the New Organizational Documents, and any and all other agreements, documents, Securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Plan and the Restructuring Transactions Memorandum shall be effective notwithstanding any requirements under non-bankruptcy law.

I. New Organizational Documents.

On the Effective Date, the New Organizational Documents shall be adopted automatically by the applicable Reorganized Debtors and shall be amended or amended and restated, as applicable, as may be required to be consistent with the provisions of the Plan, the Restructuring Support Agreement, and the Restructuring Transactions Memorandum. To the extent required under the Plan or applicable non-bankruptcy law, each of the Reorganized Debtors will file its New Organizational Documents with the applicable Secretary of State and/or other applicable authorities in its respective state, province or country of organization if and to the extent required in accordance with the applicable laws of the respective state, province or country of organization. The New Organizational Documents

will authorize the issuance of the New Equity and will prohibit the issuance of non-voting equity Securities, to the extent required under section 1123(a)(6) of the Bankruptcy Code. After the Effective Date, the Reorganized Debtors may amend and restate their respective New Organizational Documents in accordance with the terms thereof and in compliance with the laws of their jurisdiction or organization, and the Reorganized Debtors may file such amended certificates or articles of incorporation, bylaws, or such other applicable formation documents, and other constituent documents as permitted by the laws of the respective states, provinces, or countries of incorporation and the New Organizational Documents.

J. Indemnification Provisions in Organizational Documents.

As of the Effective Date, the New Organizational Documents of each Reorganized Debtor shall, to the fullest extent permitted by applicable law, provide for the indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses to, current and former managers, directors, officers, employees, or agents at least to the same extent as the Indemnification Provisions in the certificate of incorporation, bylaws, or similar organizational document of each of the respective Debtors on the Petition Date, against any claims or causes of action whether derivative, liquidated or unliquidated, fixed, or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted.

In addition, all other Indemnification Provisions, consistent with applicable law, currently in place shall be reinstated and remain intact and irrevocable, and shall survive the Effective Date on terms no less favorable to such current and former managers, directors, officers, employees, and agents of, or acting on behalf of, the Debtors than the Indemnification Provisions in place prior to the Effective Date.

K. Directors, Managers, and Officers of the Reorganized Debtors.

As of the Effective Date, the term of the current members of the board of directors or managers of FEAM shall expire, and all of the managers for the initial term of the New Board shall be appointed in accordance with the New Organizational Documents and each other constituent document of each Reorganized Debtor. To the extent known, the identity of the members of the New Board will be disclosed in the Plan Supplement or prior to the Confirmation Hearing, consistent with section 1129(a)(5) of the Bankruptcy Code, in accordance with the terms of the Restructuring Support Agreement. Each director or manager of the Reorganized Debtors shall serve from and after the Effective Date pursuant to the terms of the applicable New Organizational Documents, other constituent documents, and applicable laws of the respective Reorganized Debtors' jurisdiction of formation.

L. Effectuating Documents; Further Transactions.

On and after the Effective Date, the Reorganized Debtors, and their respective officers, directors, members, or managers (as applicable), are authorized to and may issue, execute, deliver, file, or record such contracts, Securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the Restructuring Transactions Memorandum, and the Securities issued pursuant to the Plan in the name of and on behalf of the Reorganized Debtors, without the need for any approvals, authorization, or consents except for those expressly required pursuant to the Plan.

M. Section 1146 Exemption.

To the fullest extent permitted by section 1146(a) of the Bankruptcy Code, any transfers (whether from a Debtor to a Reorganized Debtor or to any other Person) of property under the Plan or pursuant to: (1) the issuance, distribution, transfer, or exchange of any debt, equity Security, or other interest in the Debtors or the Reorganized Debtors; (2) the Restructuring Transactions; (3) the creation, modification, consolidation, termination, refinancing, and/or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (4) the making, assignment, or recording of any lease or sublease; or (5) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, assignments, or other instrument of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, personal

property transfer tax, sales or use tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, regulatory filing or recording fee, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forego the collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax, recordation fee, or governmental assessment. All filing or recording officers (or any other Person with authority over any of the foregoing), wherever located and by whomever appointed, shall comply with the requirements of section 1146(a) of the Bankruptcy Code, shall forego the collection of any such tax or governmental assessment, and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

N. Director and Officer Liability Insurance.

Notwithstanding anything in the Plan to the contrary, the Reorganized Debtors shall be deemed to have assumed all of the Debtors' D&O Liability Insurance Policies pursuant to section 365(a) of the Bankruptcy Code effective as of the Effective Date. Entry of the Confirmation Order will constitute the Bankruptcy Court's approval of the Reorganized Debtors' foregoing assumption of each of the unexpired D&O Liability Insurance Policies. Notwithstanding anything to the contrary contained in the Plan, Confirmation of the Plan shall not discharge, impair, or otherwise modify any indemnity obligations assumed by the foregoing assumption of the D&O Liability Insurance Policies, and each such indemnity obligation will be deemed and treated as an Executory Contract that has been assumed by the Debtors under the Plan as to which no Proof of Claim need be filed.

In addition, after the Effective Date, none of the Reorganized Debtors shall terminate or otherwise reduce the coverage under any D&O Liability Insurance Policies (including any "tail policy") in effect on or after the Petition Date, with respect to conduct occurring prior thereto, and all directors and officers of the Debtors who served in such capacity at any time prior to the Effective Date shall be entitled to the full benefits of any such policy for the full term of such policy, to the extent set forth therein, regardless of whether such directors and officers remain in such positions after the Effective Date.

O. Management Incentive Plan.

On or after the Effective Date, the Reorganized Debtors shall adopt the Management Incentive Plan on terms to be determined by the New Board and subject to the consent of BEP and NEG.

P. Employee and Retiree Benefits.

Unless otherwise provided herein, and subject to Article V hereof, all employee wages, compensation, and benefit programs in place as of the Effective Date with the Debtors shall be assumed by the Reorganized Debtors and shall remain in place as of the Effective Date, and the Reorganized Debtors will continue to honor such agreements, arrangements, programs, and plans. Notwithstanding the foregoing, pursuant to section 1129(a)(13) of the Bankruptcy Code, from and after the Effective Date, all retiree benefits (as such term is defined in section 1114 of the Bankruptcy Code), if any, shall continue to be paid in accordance with applicable law.

Q. Preservation of Causes of Action.

In accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain and may enforce all rights to commence and pursue any and all Causes of Action, whether arising before or after the Petition Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors' rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article VIII of the Plan, which shall be deemed released and waived by the Debtors and Reorganized Debtors as of the Effective Date.

The Reorganized Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the**

Debtors or the Reorganized Debtors will not pursue any and all available Causes of Action against it. The Debtors and the Reorganized Debtors expressly reserve all rights to prosecute any and all Causes of Action against any Entity. Unless any Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order of the Bankruptcy Court, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

R. Noteholders' and New Equity Group's Expenses.

On the Effective Date, the Debtors or Reorganized Debtors shall distribute Cash to the Noteholders and the New Equity Group in an amount equal to the Noteholders' and New Equity Group's respective expenses; *provided*, that each of the Noteholders and the New Equity Group shall provide the Debtors with the invoices for which it seeks payment no later than ten (10) days prior to the Effective Date. If the Debtors dispute any expenses, the Debtors shall (i) pay the undisputed portion of the Noteholders' and New Equity Group's respective expenses and (ii) notify the Noteholders and New Equity Group, as applicable, within ten (10) days after presentation of the invoices thereby.

ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

On the Effective Date, except as otherwise provided in Article V.H.1 and elsewhere herein, all Executory Contracts or Unexpired Leases not otherwise assumed or rejected will be deemed assumed by the applicable Reorganized Debtor without the need for any further notice to or action, order, or approval of the Bankruptcy Court, as of the Effective Date, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code, other than those Executory Contracts and Unexpired Leases that: (1) are identified on the Rejected Executory Contracts and Unexpired Leases Schedule; (2) previously expired or terminated pursuant to their own terms; (3) have been previously assumed or rejected by the Debtors pursuant to a Final Order; (4) are the subject of a motion to reject that is pending on the Effective Date; or (5) have an ordered or requested effective date of rejection that is after the Effective Date.

Entry of the Confirmation Order shall constitute an order of the Bankruptcy Court approving the assumptions, assumptions and assignments, or rejections of the Executory Contracts or Unexpired Leases as set forth in the Plan or the Rejected Executory Contracts and Unexpired Leases Schedule, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Except as otherwise specifically set forth herein, assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Each Executory Contract or Unexpired Lease assumed pursuant to the Plan or by the Bankruptcy Court order but not assigned to a third party before the Effective Date shall re-vest in and be fully enforceable by the applicable contracting Reorganized Debtor in accordance with its terms, except as such terms may have been modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order on or after the Effective Date, but may be withdrawn, settled, or otherwise prosecuted by the Reorganized Debtors.

To the maximum extent permitted by law, to the extent any provision in any Executory Contract or Unexpired Lease assumed or assumed and assigned pursuant to the Plan restricts or prevents, or purports to restrict or prevent, or is breached or deemed breached by, the assumption or assumption and assignment of such Executory Contract or Unexpired Lease (including any "change of control" provision), then such provision shall be deemed modified such that the transactions contemplated by the Plan shall not entitle the non-Debtor party thereto to terminate such Executory Contract or Unexpired Lease or to exercise any other default-related rights with respect thereto.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Unless otherwise provided by a Final Order of the Bankruptcy Court, all Proofs of Claim with respect to Claims arising from the rejection of Executory Contracts or Unexpired Leases pursuant to the Plan or the Confirmation Order, if any, must be Filed with the Bankruptcy Court within thirty (30) days after the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such rejection, (2) the effective date of such rejection, or (3) the Effective Date. **Any Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors or the Reorganized Debtors, the Estates, or their property without the need for any objection by the Reorganized Debtors or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully satisfied, released, and discharged, notwithstanding anything in the Proof of Claim to the contrary.** All Allowed Claims arising from the rejection of the Debtors' Executory Contracts or Unexpired Leases shall be classified as General Unsecured Claims and shall be treated in accordance with Article III.B.6 of this Plan.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

The Debtors or the Reorganized Debtors, as applicable, shall pay Cures, if any, as such amounts come due in the ordinary course of business, with the amount and timing of payment of any such Cure dictated by the Debtors' ordinary course of business. Unless otherwise agreed upon in writing by the parties to the applicable Executory Contract or Unexpired Lease, all requests for payment of Cure that differ from the ordinary course amounts paid or proposed to be paid by the Debtors or the Reorganized Debtors to a counterparty must be Filed with the Bankruptcy Court on or before 30 days after the Effective Date. Any such request that is not timely filed shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any other party in interest or any further notice to or action, order, or approval of the Bankruptcy Court. Any Cure shall be deemed fully satisfied, released, and discharged upon payment by the Debtors or the Reorganized Debtors of the Cure in the Debtors' ordinary course of business; *provided*, that nothing herein shall prevent the Reorganized Debtors from paying any Cure despite the failure of the relevant counterparty to file such request for payment of such Cure amount. The Reorganized Debtors also may settle any Cure without any further notice to or action, order, or approval of the Bankruptcy Court. In addition, any objection to the assumption of an Executory Contract or Unexpired Lease under the Plan must be Filed with the Bankruptcy Court on or before 30 days after the Effective Date. Any such objection will be scheduled to be heard by the Bankruptcy Court at the Debtors' or Reorganized Debtors', as applicable, first scheduled omnibus hearing for which such objection is timely Filed. Any counterparty to an Executory Contract or Unexpired Lease that fails to timely object to the proposed assumption of any Executory Contract or Unexpired Lease will be deemed to have consented to such assumption.

If there is any dispute regarding any Cure, the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" within the meaning of section 365 of the Bankruptcy Code, or any other matter pertaining to assumption, then payment of the applicable Cure amount shall occur as soon as reasonably practicable after entry of a Final Order resolving such dispute, approving such assumption (and, if applicable, assignment), or as may be agreed upon by the Debtors or the Reorganized Debtors, as applicable, and the counterparty to the Executory Contract or Unexpired Lease.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Cures, Claims, or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or any bankruptcy-related defaults, arising at any time prior to the effective date of assumption. **Any and all Proofs of Claim based upon Executory Contracts or Unexpired Leases that have been assumed in the Chapter 11 Cases, including pursuant to the Confirmation Order, shall be deemed disallowed and expunged as of the later of (1) the date of entry of an order of the Bankruptcy Court (including the Confirmation Order) approving such assumption, (2) the effective date of such assumption, or (3) the Effective Date, without the need for any objection thereto or any further notice to or action, order, or approval of the Bankruptcy Court**.

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases.

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors or the Reorganized Debtors, as applicable, under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Reorganized Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties or continued maintenance obligations with respect to goods previously purchased by the Debtors pursuant to rejected Executory Contracts or Unexpired Leases.

E. Insurance Policies.

Each of the Debtors' insurance policies and any agreements, documents, or instruments relating thereto, are treated as Executory Contracts under the Plan. Unless otherwise provided in the Plan, on the Effective Date, (1) the Debtors shall be deemed to have assumed all insurance policies and any agreements, documents, and instruments relating to coverage of all insured Claims and (2) such insurance policies and any agreements, documents, or instruments relating thereto shall revest in the Reorganized Debtors.

F. Reservation of Rights.

Nothing contained in the Plan or the Plan Supplement shall constitute an admission by the Debtors or any other party that any contract or lease is in fact an Executory Contract or Unexpired Lease or that any Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Reorganized Debtors, as applicable, shall have forty-five (45) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

G. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

H. Employee Compensation and Benefits.

1. Compensation and Benefit Programs.

Subject to the provisions of the Plan, all Compensation and Benefits Programs shall be treated as Executory Contracts under the Plan and deemed assumed on the Effective Date pursuant to the provisions of sections 365 and 1123 of the Bankruptcy Code, except for:

(a) all employee equity or equity-based incentive plans and any awards or agreements granted thereunder or pursuant thereto, and any provisions set forth in the Compensation and Benefits Programs that provide for rights to acquire Interests in any of the Debtors; and

(b) Compensation and Benefits Programs that, as of the entry of the Confirmation Order, are the subject of a pending motion to reject, or have been specifically waived by the beneficiaries of any employee benefit plan or contract.

The assumption of Compensation and Benefits Programs pursuant to the terms herein shall not be deemed to trigger any applicable change of control, vesting, termination, or similar provisions therein, and no counterparty shall have rights under a Compensation and Benefits Program assumed pursuant to the Plan other than those applicable immediately prior to such assumption.

2. Workers' Compensation Programs.

As of the Effective Date, except as set forth in the Plan Supplement, the Debtors and the Reorganized Debtors shall continue to honor their obligations under: (a) all applicable workers' compensation laws in states in which the Reorganized Debtors operate and (b) the Debtors' written contracts, agreements, agreements of indemnity, self-insured workers' compensation bonds, policies, programs, and plans for workers' compensation and workers' compensation insurance. All Proofs of Claims on account of workers' compensation shall be deemed withdrawn automatically and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided*, that nothing in the Plan shall limit, diminish, or otherwise alter the Debtors' or Reorganized Debtors' defenses, Causes of Action, or other rights under applicable non-bankruptcy law with respect to any such contracts, agreements, policies, programs, and plans; *provided*, *further*, that nothing herein shall be deemed to impose any obligations on the Debtors in addition to what is provided for under applicable state law.

I. Contracts and Leases Entered Into After the Petition Date.

Contracts and leases entered into after the Petition Date by any Debtor, including any Executory Contracts and Unexpired Leases assumed by such Debtor, will be performed by the applicable Debtor or the Reorganized Debtors in the ordinary course of their business. Accordingly, such contracts and leases (including any assumed Executory Contracts and Unexpired Leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS

A. Distributions on Account of Claims Allowed as of the Effective Date.

Except as otherwise provided herein, in a Final Order, or as otherwise agreed to by the Debtors or the Reorganized Debtors, as the case may be, and the holder of the applicable Allowed Claim on the first Distribution Date, the Reorganized Debtors shall make initial distributions under the Plan on account of Claims Allowed on or before the Effective Date, subject to the Reorganized Debtors' right to object to Claims; *provided*, that (1) Allowed Administrative Claims with respect to liabilities incurred by the Debtors in the ordinary course of business during the Chapter 11 Cases or assumed by the Debtors prior to the Effective Date shall be paid or performed in the ordinary course of business in accordance with the terms and conditions of any controlling agreements, course of dealing, course of business, or industry practice, (2) Allowed Priority Tax Claims shall be paid in accordance with Article II.D of the Plan, and (3) Allowed General Unsecured Claims shall be paid in accordance with Article III.B.6 of the Plan. To the extent any Allowed Priority Tax Claim is not due and owing on the Effective Date, such Claim shall be paid in full in Cash in accordance with the terms of any agreement between the Debtors and the holder of such Claim or as may be due and payable under applicable non-bankruptcy law or in the ordinary course of business. Thereafter, a Distribution Date shall occur no less frequently than once in every thirty (30) days, as necessary, in the Reorganized Debtors' sole discretion.

B. Disbursing Agent.

All distributions under the Plan shall be made by the Reorganized Debtors. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court. Additionally, in the event that the Disbursing Agent is so otherwise ordered, all costs and expenses of procuring any such bond or surety shall be borne by the Reorganized Debtors.

C. Rights and Powers of Disbursing Agent.

1. Powers of the Disbursing Agent.

The Disbursing Agent shall be empowered to: (a) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (b) make all distributions contemplated hereby; (c) employ professionals to represent it with respect to its responsibilities; and (d) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

2. Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the amount of any reasonable fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement claims (including reasonable attorney fees and expenses) made by the Disbursing Agent shall be paid in Cash by the Reorganized Debtors.

D. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

On the Distribution Record Date, the Claims Register shall be closed and any party responsible for making distributions shall instead be authorized and entitled to recognize only those record holders listed on the Claims Register as of the close of business on the Distribution Record Date. The Disbursing Agent shall have no obligation to recognize any transfer of Claims occurring after the Distribution Record Date. In addition, with respect to payment of any Cure amounts or disputes over any Cure amounts, neither the Debtors nor the Disbursing Agent shall have any obligation to recognize or deal with any party other than the non-Debtor party to the applicable executory contract or unexpired lease as of the Effective Date, even if such non-Debtor party has sold, assigned, or otherwise transferred its Claim for a Cure amount. For the avoidance of doubt, the Distribution Record Date shall not apply to distributions to holders of public Securities.

2. Delivery of Distributions in General.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to holders of Allowed Claims as of the Distribution Record Date at the address for each such holder as indicated on the Debtors' records as of the date of any such distribution; *provided*, *however*, that the manner of such distributions shall be determined at the discretion of the Reorganized Debtors.

3. Minimum Distributions.

No fractional units of New Equity shall be distributed and no Cash shall be distributed in lieu of such fractional amounts. When any distribution pursuant to the Plan on account of an Allowed Claim would otherwise result in the issuance of an amount of units of New Equity that is not a whole number, the actual distribution of shares of New Equity shall be rounded as follows: (a) fractions of one-half (½) or greater shall be rounded to the next higher whole number and (b) fractions of less than one-half (½) shall be rounded to the next lower whole number with no further payment therefor. The total number of units of New Equity to be distributed to holders of Allowed Claims hereunder shall be adjusted as necessary to account for the foregoing rounding. Further, no Cash payment of less than $100.00 shall be made to a holder of an Allowed Claim on account of such Allowed Claim.

4. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any holder of Allowed Claims is returned as undeliverable, no distribution to such holder shall be made unless and until the Disbursing Agent has determined the then-current address of such holder, at which time such distribution shall be made to such holder without interest; *provided*, *however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the Effective Date. After such date, all unclaimed property or interests in property shall revert to the Reorganized Debtors automatically and without need for a further order by the Bankruptcy Court (notwithstanding any applicable federal, provincial or state escheat, abandoned, or unclaimed property laws to the contrary), and the Claim of any holder of Claims to such property or Interest in property shall be discharged and forever barred.

E. Manner of Payment.

At the option of the Disbursing Agent, any Cash payment to be made hereunder may be made by check or wire transfer or as otherwise required or provided in applicable agreements.

F. Exemption from Registration Requirements.

The issuance and distribution of the New Equity as contemplated by Article IV, Section D.1 hereof shall be exempt from, among other things, the registration requirements of Section 5 of the Securities Act and any other applicable law requiring registration prior to the offering, issuance, distribution, or sale of the New Equity in accordance with, and pursuant to, section 1145 of the Bankruptcy Code and/or Section 4(a)(2), Regulation D promulgated thereunder or another available exemption from registration under the Securities Act. Such New Equity issued in accordance with, and pursuant to, section 1145 of the Bankruptcy Code will be freely tradable in the United States by the recipients thereof, subject to the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act, and compliance with applicable securities laws and any rules and regulations of the United States Securities and Exchange Commission, if any, applicable at the time of any future transfer of such New Equity or instruments and subject to any restrictions in the New Organizational Documents. The securities comprising the New Equity issued pursuant to section 1145 of the Bankruptcy Code (a) are not "restricted securities" as defined in Rule 144(a)(3) under the Securities Act and (b) are freely tradable and transferable by any initial recipient thereof that (i) is not an "affiliate" of the Reorganized Debtors as defined in Rule 144(a)(1) under the Securities Act, (ii) has not been such an "affiliate" within ninety (90) calendar days of such transfer, (iii) has not acquired the New Equity from an "affiliate" within one year of such transfer and (iv) is not an entity that is an "underwriter" as defined in subsection (b) of section 1145 of the Bankruptcy Code.

Any New Equity not being issued principally in exchange for an existing Claim against, or Interest in, the Debtors will not be exempt from the registration requirements of Section 5 of the Securities Act under section 1145 of the Bankruptcy Code. Such New Equity will be distributed pursuant to Section 4(a)(2) of the Securities Act or another available exemption from registration under the Securities Act. The securities comprising the New Equity issued as described in the preceding sentence will be considered "restricted securities" as defined by Rule 144 of the Securities Act and may be resold, exchanged, assigned or otherwise transferred only pursuant to registration, or an applicable exemption from registration, under the Securities Act and other applicable law.

Should the Reorganized Debtors elect on or after the Effective Date to reflect any ownership of the New Equity to be issued under this Plan through the facilities of DTC, the Reorganized Debtors need not provide any further evidence other than this Plan or the Confirmation Order with respect to the treatment of the New Equity to be issued under this Plan under applicable securities laws. DTC shall be required to accept and conclusively rely upon this Plan and the Confirmation Order in lieu of a legal opinion regarding whether the New Equity to be issued under this Plan are exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services.

Notwithstanding anything to the contrary in this Plan, no Entity (including, for the avoidance of doubt, DTC) may require a legal opinion regarding the validity of any transaction contemplated by this Plan, including, for the avoidance of doubt, whether the New Equity to be issued under this Plan is exempt from registration and/or eligible for DTC book-entry delivery, settlement, and depository services.

The Debtors recommend that potential recipients of the New Equity consult their own counsel: (i) with respect to the New Equity issued under this Plan, concerning whether such potential recipients will constitute "underwriters" pursuant to section 1145(b) of the Bankruptcy Code at the time of the issuance of the New Equity; and (ii) the ability of such potential recipients to freely trade the New Equity in compliance with the federal securities laws and any applicable "blue sky" laws, including certain blue sky state notice requirements that may continue to apply with respect to resales of the New Equity. The Debtors make no representation concerning the ability of a person to dispose of any New Equity.

G. Compliance with Tax Requirements.

In connection with the Plan, to the extent applicable, the Debtors, Reorganized Debtors, Disbursing Agent, and any applicable withholding agent shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions made pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, such parties shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions,

or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors and Reorganized Debtors reserve the right to allocate all distributions made under the Plan in compliance with all applicable wage garnishments, alimony, child support, and similar spousal awards, Liens, and encumbrances.

H. Allocations.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest.

I. No Postpetition Interest on Claims.

Unless otherwise specifically provided for in the Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, postpetition interest shall not accrue or be paid on any prepetition Claims, and no holder of a Claim shall be entitled to interest accruing on or after the Petition Date on such Claim. Additionally, and without limiting the foregoing, interest shall not accrue or be paid on any Disputed Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Disputed Claim, if and when such Disputed Claim becomes an Allowed Claim.

J. Foreign Currency Exchange Rate.

Except as otherwise provided in a Bankruptcy Court order, as of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal*, National Edition, on the Effective Date.

K. Setoffs and Recoupment.

Except as expressly provided in this Plan, each Reorganized Debtor may, pursuant to section 553 of the Bankruptcy Code, set off and/or recoup against any Plan Distributions to be made on account of any Allowed Claim, any and all claims, rights, and Causes of Action that such Reorganized Debtor may hold against the holder of such Allowed Claim to the extent such setoff or recoupment is either (1) agreed in amount among the relevant Reorganized Debtor(s) and the holder of the Allowed Claim or (2) otherwise adjudicated by the Bankruptcy Court or another court of competent jurisdiction; *provided*, *however*, that neither the failure to effectuate a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by a Reorganized Debtor or its successor of any and all claims, rights, and Causes of Action that such Reorganized Debtor or its successor may possess against the applicable holder; *provided*, *further*, that the Debtors or the Reorganized Debtors shall not be authorized to set off or recoup against any Allowed Notes Claim and the distributions to be made pursuant to the Plan on account of such Allowed Notes Claim. In no event shall any holder of a Claim be entitled to recoup such Claim against any claim, right, or Cause of Action of the Debtors or the Reorganized Debtors, as applicable, unless such holder actually has performed such recoupment and provided notice thereof in writing to the Debtors in accordance with Article XII.G hereof on or before the Effective Date, notwithstanding any indication in any Proof of Claim or otherwise that such holder asserts, has, or intends to preserve any right of recoupment.

L. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

The Debtors or the Reorganized Debtors, as applicable, shall reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor or a Reorganized Debtor. Subject to the last sentence of this paragraph, to the extent a holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor or a Reorganized Debtor on account of such Claim, such holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the applicable Reorganized Debtor, to the extent the holder's total recovery

on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such holder to timely repay or return such distribution shall result in the holder owing the applicable Reorganized Debtor annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the fourteen (14)-day grace period specified above until the amount is repaid.

2. Claims Payable by Third Parties.

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' insurance policies until the holder of such Allowed Claim has exhausted all remedies with respect to such insurance policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies.

Except as otherwise provided in the Plan, distributions to holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Nothing contained in the Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Disputed Claims Process.

There is no requirement to file a Proof of Claim (or move the Bankruptcy Court for allowance) to have a Claim Allowed for the purposes of the Plan, except as provided in Article V.B of the Plan. On and after the Effective Date, except as otherwise provided in this Plan, all Allowed Claims shall be satisfied in the ordinary course of business of the Reorganized Debtors as if the Chapter 11 Cases had not been commenced, except that (unless expressly waived pursuant to the Plan) the Allowed amount of such Claims shall be subject to the limitations or maximum amounts permitted by the Bankruptcy Code, including sections 502 and 503 of the Bankruptcy Code, to the extent applicable. The Debtors, in consultation with the Required Consenting Parties, as applicable, shall have the exclusive authority to (i) determine, without the need for notice to or action, order, or approval of the Bankruptcy Court, that a claim subject to any Proof of Claim that is Filed is Allowed and (ii) file, settle, compromise, withdraw, or litigate to judgment any objections to Claims as permitted under this Plan. If the Debtors or Reorganized Debtors dispute any Claim, such dispute shall be determined, resolved, or adjudicated, as the case may be, in the manner as if the Chapter 11 Cases had not been commenced and shall survive the Effective Date as if the Chapter 11 Cases had not been commenced; *provided*, that the Debtors, in consultation with the Required Consenting Parties, or the Reorganized Debtors may elect, at their sole option, to object to any Claim (other than Claims expressly Allowed by this Plan) and to have the validity or amount of any Claim adjudicated by the Bankruptcy Court. All Proofs of Claim Filed in the Chapter 11 Cases shall be considered objected to and Disputed without further action by the Debtors. **Except as otherwise provided herein, all Proofs of Claim Filed after the Effective Date shall be disallowed and forever barred, estopped, and enjoined from assertion, and shall not be enforceable against any Reorganized Debtor, without the need for any objection by the Reorganized Debtors or any further notice to or action, order, or approval of the Bankruptcy Court.**

B. Allowance of Claims.

After the Effective Date, each of the Reorganized Debtors shall have and retain any and all rights and defenses such Debtor had with respect to any Claim immediately prior to the Effective Date. The Debtors may affirmatively

determine to deem Unimpaired Claims Allowed to the same extent such Claims would be allowed under applicable non-bankruptcy law.

C. Claims Administration Responsibilities.

Except as otherwise specifically provided in the Plan, after the Effective Date, the Reorganized Debtors shall have the sole authority: (1) to File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) to settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court. For the avoidance of doubt, except as otherwise provided herein, from and after the Effective Date, each Reorganized Debtor shall have and retain any and all rights and defenses such Debtor had immediately prior to the Effective Date with respect to any Disputed Claim or Interest, including the Causes of Action retained pursuant to Article IV.R of the Plan.

Any objections to Claims and Interests other than General Unsecured Claims shall be served and filed on or before the 180th day after the Effective Date or by such later date as ordered by the Bankruptcy Court. All Claims and Interests other than General Unsecured Claims not objected to by the end of such 180-day period shall be deemed Allowed unless such period is extended upon approval of the Bankruptcy Court. For the avoidance of doubt, the Bankruptcy Court may extend the time period to object to Claims set forth in this paragraph at any time, including before or after the expiration of 180 days after the Effective Date, in its discretion or upon request by the Debtors or any party in interest.

Notwithstanding the foregoing, the Debtors and Reorganized Debtors shall be entitled to dispute and/or otherwise object to any General Unsecured Claim in accordance with the Bankruptcy Code or any applicable nonbankruptcy law. If the Debtors, or Reorganized Debtors dispute any General Unsecured Claim, such dispute shall be determined, resolved, or adjudicated, as the case may be, in the manner as if the Chapter 11 Cases had not been commenced. In any action or proceeding to determine the existence, validity, or amount of any General Unsecured Claim, any and all claims or defenses that could have been asserted by the applicable Debtor(s) or the Entity holding such General Unsecured Claim are preserved as if the Chapter 11 Cases had not been commenced.

D. Adjustment to Claims or Interests without Objection.

Any duplicate Claim or Interest or any Claim or Interest that has been paid, satisfied, amended, or superseded may be adjusted or expunged on the Claims Register by the Reorganized Debtors without the Reorganized Debtors having to File an application, motion, complaint, objection, or any other legal proceeding seeking to object to such Claim or Interest and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Disallowance of Claims or Interests.

All Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors or the Reorganized Debtors allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (a) the Entity, on the one hand, and the Debtors, in consultation with the Required Consenting Parties, or the Reorganized Debtors, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (b) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

F. No Distributions Pending Allowance.

Notwithstanding any other provision of the Plan, if any portion of a Claim is a Disputed Claim, as applicable, no payment or distribution provided hereunder shall be made on account of such Claim unless and until such Disputed Claim becomes an Allowed Claim; *provided*, that if only the Allowed amount of an otherwise valid Claim is Disputed, such Claim shall be deemed Allowed in the amount not Disputed and payment or distribution shall be made on account

of such undisputed amount; *provided*, *further*, that this section shall not apply to the Allowed Notes Claims, and distributions provided under the Plan shall be made on account the Allowed Notes Claims on the Effective Date.

G. Distributions After Allowance.

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions (if any) shall be made to the holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as reasonably practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the holder of such Claim the distribution (if any) to which such holder is entitled under the Plan as of the Effective Date, without any interest to be paid on account of such Claim.

ARTICLE VIII.
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Discharge of Claims and Termination of Interests.

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, instrument, or other agreement or document created or entered into pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Reorganized Debtors), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any liability (including withdrawal liability) to the extent such Claims or Interests relate to services performed by employees of the Debtors prior to the Effective Date and that arise from a termination of employment, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (1) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based upon such debt, right, or interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (3) the holder of such a Claim or Interest has accepted the Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims (other than the Reinstated Claims) and Interests (other than the Intercompany Interests that are Reinstated) subject to the occurrence of the Effective Date.

B. ***Release of Liens.***

Except as otherwise provided in the Plan, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan on the Effective Date and concurrently with the applicable distributions made or other treatment pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, except for Other Secured Claims that the Debtors elect to Reinstate in accordance with this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns. Any holder of such Secured Claim (and the applicable agents for such holder) shall be authorized and directed, at the sole cost and expense of the Reorganized Debtors, to release any collateral or other property of any Debtor (including any cash collateral and possessory collateral) held by such holder (and the applicable agents for such holder), and to take such actions as may be reasonably requested by the Reorganized Debtors to evidence the release of such Lien, including the execution, delivery, and filing or recording of such releases. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

To the extent that any holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such holder, has filed or recorded publicly any Liens and/or security interests to secure such holder's Secured Claim, then as soon as practicable on or after the Effective Date, such holder (or

the agent for such holder) shall take any and all steps requested by the Debtors or the Reorganized Debtors that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such holder's behalf.

C. ***Releases by the Debtors.***

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each and all of the Debtors, the Reorganized Debtors, and their Estates, in each case on behalf of themselves and their respective Affiliates and Related Parties, directly or derivatively, by, through, for, or because of the foregoing Entities, from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims, asserted or assertable on behalf of the Debtors, that the Debtors, the Reorganized Debtors, or their Estates or Affiliates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Debtor or such Affiliate or Related Party, based on or relating to, or in any manner arising from, in whole or in part, the Debtors and their respective Affiliates and Related Parties (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any Security of the Debtors or their respective Affiliates and Related Parties, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the ownership and/or operation of the Debtors by any Released Party or the distribution or transfer of any Cash or other Property of the Debtors to any Released Party, the Debtors' capital structure, management, ownership or operation thereof, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, filing, or consummation of the Restructuring Support Agreement and all exhibits thereto, the Definitive Documents, the Transaction Documents, the Commitment Letters, or any Restructuring Transaction, the DIP Facility Documents, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement and all exhibits thereto, the Definitive Documents, the Transaction Documents, the Plan (including, for the avoidance of doubt, the Plan Supplement), the DIP Facility Documents, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or agreement contemplated by the Plan or in reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before taking place on or before the Effective Date related or relating to any of the foregoing.

Notwithstanding anything contained herein to the contrary, the foregoing release does not release (i) any obligations of any party under the Plan or any document, instrument, or agreement executed to implement the Plan, (ii) any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan, or (iii) the rights of holders of Allowed Claims or Interests to receive distributions under the Plan.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (a) in exchange for the good and valuable consideration provided by each of the Released Parties, including, without limitation, the Released Parties' contributions to facilitating the Restructuring Transactions and implementing the Plan; (b) a good faith settlement and compromise of the Claims released by the Debtor Release; (c) in the best interests of the Debtors and all holders of Claims and Interests; (d) fair, equitable, and reasonable; (e) given and made after due notice and opportunity for hearing; and (f) a bar to any of the Debtors,

the Reorganized Debtors, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.

D. ***Releases by the Releasing Parties.***

Except as otherwise expressly set forth in this Plan or the Confirmation Order, on and after the Effective Date, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, pursuant to section 1123(b) of the Bankruptcy Code, on and after the Effective Date, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by each Releasing Party (including any successor trustee or other representative in the Chapter 11 Cases any successor cases), in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other Entities who may purport to assert any Claim or Cause of Action owned by the Releasing Parties, director or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Releasing Parties, from any and all direct or derivative Claims and Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors and their respective Affiliates and Related Parties, that any such Entity would have been legally entitled to assert in its own right (whether individually or collectively) or on behalf of the holder of any Claim against, or Interest in, a Releasing Party or other Entity, or that any holder of any Claim against, or Interest in, a Releasing Party or other Entity could have asserted on behalf of the Releasing Party, based on or relating to, or in any manner arising from, in whole or in part, the Debtors and their respective Affiliates and Related Parties (including the management, ownership, or operation thereof), the purchase, sale, or rescission of any Security of such Entities or Reorganized FEAM, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between or among any Debtor and any Released Party, the ownership and/or operation of the Debtors by any Released Party or the distribution or transfer of any Cash or other property of the Debtors to any Released Party, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Restructuring Support Agreement and all exhibits thereto, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Chapter 11 Cases, the Definitive Documents, the Transaction Documents, the DIP Facility Documents, or any Restructuring Transaction, contract, instrument, release, transaction or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or in reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement and all exhibits thereto, the Definitive Documents, the Transaction Documents, the Plan (including, for the avoidance of doubt, the Plan Supplement), the DIP Facility Documents, the filing of the Chapter 11 Cases and any successor cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of Securities pursuant to the Restructuring Transactions and/or the Plan, or the distribution of property under the Restructuring Transactions and/or the Plan or any other related agreement, and the formulation, preparation, dissemination, negotiation, or filing thereof, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing.

Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release: (a) any rights and remedies of any holder of a Claim solely against any Debtor or its Estate, arising in the ordinary course of business prior to the Petition Date, including an administrative expense claim under section 503(b) of the Bankrtupcy Code, to prosecute such Claim against the applicable Debtor and its Estate, and to defend any objection to such Claim; (b) any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including any Claim or obligation arising under the Plan; or (c) any Claims or Causes of Action arising under the DIP Orders or DIP Facility Documents.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained herein, and, further, shall constitute the Bankruptcy Court's finding that the

Third-Party Release is: (a) consensual; (b) essential to the Confirmation of the Plan; (c) given in exchange for the good and valuable consideration provided by each of the Released Parties, including, without limitation, the Released Parties' substantial contributions to facilitating the Restructuring Transactions and implementing the Plan; (d) a good faith settlement and compromise of the Claims released by the Third-Party Release; (e) in the best interests of the Debtors and their Estates; (f) fair, equitable, and reasonable; (g) given and made after due notice and opportunity for hearing; and (h) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

E. ***Exculpation.***

Except as otherwise specifically provided in the Plan, to the fullest extent permissible under applicable law, effective as of the Effective Date, no Exculpated Party shall have or incur liability for, and each Exculpated Party is hereby released and exculpated from, any Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the Plan Supplement, or any Restructuring Transaction, contract, instrument, release or other agreement or document created or entered into before or during the Chapter 11 Cases, any preference, fraudulent transfer, or other avoidance claim arising pursuant to chapter 5 of the Bankruptcy Code or other applicable law, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

The Exculpated Parties have, and upon confirmation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

F. ***Injunction.***

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid or delivered pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to the Plan, shall be discharged pursuant to the Plan, or are subject to exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, Reorganized Debtors, or the Released Parties: (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (iii) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests satisfied, released, or settled pursuant to the Plan.

G. *Protections Against Discriminatory Treatment.*

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Reorganized Debtors or deny, revoke,

suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Reorganized Debtors, or another Entity with whom the Reorganized Debtors have been associated, solely because each Debtor has been a debtor under chapter 11 of the Bankruptcy Code, has been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases but before the Debtors are granted or denied a discharge), or has not paid a debt that is dischargeable in the Chapter 11 Cases.

H. Document Retention.

On and after the Effective Date, the Reorganized Debtors may maintain documents in accordance with their standard document retention policy, as may be altered, amended, modified, or supplemented by the Reorganized Debtors.

I. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the Confirmation Date: (1) such Claim has been adjudicated as non-contingent or (2) the relevant holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered prior to the Confirmation Date determining such Claim as no longer contingent.

ARTICLE IX.
CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

A. Conditions Precedent to the Effective Date.

It shall be a condition to the Effective Date that the following conditions shall have been satisfied or waived pursuant to the provisions of Article IX.B hereof:

109. the Bankruptcy Court shall have entered the Confirmation Order, which shall be in form and substance consistent in all respects with the Restructuring Support Agreement and otherwise in form and substance acceptable to the Debtors and the Noteholders, and reasonably acceptable to Ascend, to the extent provided for by the Restructuring Support Agreement;

110. the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and the Restructuring Transactions;

111. the Plan, the Definitive Documents, and all documents contained in any Plan Supplement, including the Commitment Letters and all other exhibits, schedules, amendments, modifications or supplements to the Plan Supplement, shall have been executed and/or filed, in form and substance consistent in all respects with the Restructuring Support Agreement and subject to the consent rights provided for by section 3.02 of the Restructuring Support Agreement;

112. no court of competent jurisdiction or other competent governmental or regulatory authority shall have issued a final and non-appealable order making illegal or otherwise restricting, preventing or prohibiting, in a material respect, the consummation of the Plan, the Restructuring Transactions, the Restructuring Support Agreement or any of the Definitive Documents contemplated thereby;

113. all professional fees and expenses of retained professionals required to be approved by the Bankruptcy Court shall have been paid in full or amounts sufficient to pay such fees and expenses after the Effective Date have been placed in the Professional Escrow Account in accordance with Article II.C hereof pending approval by the Bankruptcy Court;

114. the Debtors shall have paid the reasonable and documented fees and expenses, including professional fees and expenses of (a) the Noteholders and (b) the New Equity Group, each in accordance with the terms of the Restructuring Support Agreement and this Plan;

115. the DIP Orders shall have been entered by the Bankruptcy Court and shall remain in full force and effect;

116. the Debtors shall not be in default under the DIP Facility or the DIP Orders (or, to the extent that the Debtors are in default on the proposed Effective Date, such default shall have been waived by the DIP Lenders or cured by the Debtors in a manner consistent with the DIP Facility Documents or DIP Orders) and there shall not have occurred and/or be continuing any event, act, or omission that, but for the expiration of time, would permit any DIP Lender to terminate the DIP Facility in accordance with its terms upon the expiration of such time and the DIP Credit Agreement shall be in full force and effect;

117. the Debtors shall have paid all reasonable and documented fees and expenses of the DIP Agent in accordance with the DIP Orders, solely to the extent the Debtors incur debtor-in-possession financing during the Chapter 11 Cases;

118. all Compensation and Benefits Programs shall be assumed;

119. the Restructuring Support Agreement shall remain in full force and effect and no event shall have occurred or be occurring, unless such event has been waived, modified, extended, or otherwise amended by the applicable non-breaching parties thereto, that would (x) give rise to a termination right on the part of the Consenting Parties or (y) allow for termination of the Restructuring Support Agreement as to all parties, in each case with or without the passage of time under any applicable cure period; and

120. the parties under the Commitment Letters shall have fulfilled their obligations thereunder and all transactions contemplated therein shall have been effectuated.

B. Waiver of Conditions.

The conditions to Consummation set forth in this Article IX may be waived by the Debtors in accordance with the Restructuring Support Agreement and subject to the consent rights provided for by section 3.02 of the Restructuring Support Agreement, without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

C. Effect of Failure of Conditions.

If Consummation does not occur, the Plan shall be null and void in all respects and nothing contained in the Plan, the Disclosure Statement, or the Restructuring Support Agreement shall: (1) constitute a waiver or release of any claims by the Debtors, Claims, or Interests; (2) prejudice in any manner the rights of the Debtors, any holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, any holders of Claims or Interests, or any other Entity.

D. Substantial Consummation

"Substantial Consummation" of the Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

ARTICLE X.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Except as otherwise specifically provided in this Plan and subject to the consent rights set forth in the Restructuring Support Agreement, the Debtors reserve the right to modify the Plan, whether such modification is material or immaterial, and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to those restrictions on modifications set forth in the Plan and the requirements of section 1127 of the Bankruptcy Code, Rule 3019 of the Federal Rules of Bankruptcy Procedure, and, to the extent applicable, sections 1122, 1123, and 1125 of the Bankruptcy Code, each of the Debtors (subject to the consent rights set forth in the Restructuring Support Agreement) expressly reserves its respective rights to revoke or withdraw, or to alter, amend, or modify the Plan with respect to such Debtor, one or more times, after Confirmation, and, to the extent necessary may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan.

B. Effect of Confirmation on Modifications.

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan.

The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date and to File subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of such Debtor or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by such Debtor or any other Entity.

ARTICLE XI.
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or relating to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

121. allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests;

122. decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;

123. resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Cures pursuant to

section 365 of the Bankruptcy Code; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed; (c) the Reorganized Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V hereof, any Executory Contracts or Unexpired Leases to the list of Executory Contracts and Unexpired Leases to be rejected or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

124. ensure that distributions to holders of Allowed Claims are accomplished pursuant to the provisions of the Plan and adjudicate any and all disputes arising from or relating to distributions under the Plan;

125. adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

126. adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

127. enter and implement such orders as may be necessary to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement, including the Restructuring Support Agreement;

128. enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

129. resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

130. issue injunctions, enter and implement other orders, or take such other actions as may be necessary to restrain interference by any Entity with Consummation or enforcement of the Plan;

131. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, exculpations, and other provisions contained in Article VIII hereof and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

132. resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the holder of a Claim for amounts not timely repaid pursuant to Article VI.L hereof;

133. enter and implement such orders as are necessary if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

134. determine any other matters that may arise in connection with or relate to the Plan, the Plan Supplement, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement, including the Restructuring Support Agreement;

135. enter an order concluding or closing the Chapter 11 Cases;

136. adjudicate any and all disputes arising from or relating to distributions under the Plan;

137. consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

138. determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

139. hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

140. hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

141. hear and determine all disputes involving the existence, nature, scope, or enforcement of any exculpations, discharges, injunctions, and releases granted in the Plan, including under Article VIII hereof, regardless of whether such termination occurred prior to or after the Effective Date;

142. enforce all orders previously entered by the Bankruptcy Court; and

143. hear any other matter not inconsistent with the Bankruptcy Code.

ARTICLE XII.
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to Article IX.A hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan (including, for the avoidance of doubt, the documents and instruments contained in the Plan Supplement) shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, any and all holders of Claims or Interests (irrespective of whether such holders of Claims or Interests have, or are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors.

B. Additional Documents.

On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary to effectuate and further evidence the terms and conditions of the Plan and the Restructuring Support Agreement. The Debtors or the Reorganized Debtors, as applicable, and all holders of Claims receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees.

All fees payable pursuant to section 1930(a) of the Judicial Code, as determined by the Bankruptcy Court at a hearing pursuant to section 1128 of the Bankruptcy Code, shall be paid by each of the Reorganized Debtors (or the Disbursing Agent on behalf of each of the Reorganized Debtors) for each quarter (including any fraction thereof) until the earlier of entry of a final decree closing such Chapter 11 Cases or an order of dismissal or conversion, whichever comes first.

D. Statutory Committee and Cessation of Fee and Expense Payment.

On the Effective Date, any statutory committee appointed in the Chapter 11 Cases shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases. The Reorganized Debtors shall no longer be responsible for paying any fees or expenses incurred by the members of or advisors to any statutory committees after the Effective Date.

E. Reservation of Rights.

Except as expressly set forth in the Plan, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order, and the Confirmation Order shall have no force or effect if the Effective Date does not occur. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by any Debtor with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the holders of Claims or Interests prior to the Effective Date.

F. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, Affiliate, officer, manager, director, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. Notices.

All notices, requests, and demands to or upon the Debtors to be effective shall be in writing (including by facsimile transmission) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

Debtors	**Counsel to the Debtors**
5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, CA 92344 Attention: Paul Weibel, Chief Financial Officer and Corporate Secretary E-mail address: pweibel@5eadvancedmaterials.com	Winston & Strawn LLP 35 W. Wacker Dr. Chicago, IL 60601 Attention: Daniel J. McGuire E-mail address: dmcguire@winston.com -and- Pachulski Stang Ziehl & Jones LLP 919 North Market Street, 17th Floor P.O. Box 8705 Wilmington, Delaware 19899-8705 (Courier 19801) Attention: Laura Davis Jones
Counsel to the New Equity Group	**Counsel to BEP**
Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attention: Adam Goldberg and George Klidonas	Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attention: Brian E. Schartz and Allyson B. Smith -and- Kirkland & Ellis LLP 300 North LaSalle Street Chicago, IL 60654 Attention: Claire E. Stephens

United States Trustee
Office of the United States Trustee 844 King Street, Suite 2207 Lockbox 35 Wilmington, Delaware 19801

After the Effective Date, the Reorganized Debtors have the authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must file a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Reorganized Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

H. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

I. Entire Agreement.

Except as otherwise indicated, and without limiting the effectiveness of the Restructuring Support Agreement, the Plan (including, for the avoidance of doubt, the documents and instruments in the Plan Supplement, including the Commitment Letters) supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

J. Exhibits.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits and documents from the Debtors' restructuring website at [□] or the Bankruptcy Court's website at https://ecf.deb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

K. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the Debtors' or Reorganized Debtors' consent, as applicable; *provided*, that any such deletion or modification must be consistent with the Restructuring Support Agreement; and (3) nonseverable and mutually dependent.

L. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with section 1125(g) of the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code in the offer, issuance, sale, and purchase of securities offered and sold under the Plan and any previous plan, and, therefore, neither any of such parties or individuals or the Reorganized Debtors will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan or the offer, issuance, sale, or purchase of the Securities offered and sold under the Plan and any previous plan.

M. Closing of Chapter 11 Cases.

Upon the occurrence of the Effective Date, the Reorganized Debtors shall be permitted to close all of the Chapter 11 Cases except for one of the Chapter 11 Cases as determined by the Reorganized Debtors, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in such Chapter 11 Case. The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close any remaining Chapter 11 Case.

N. Waiver or Estoppel.

Each holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, or papers Filed with the Bankruptcy Court prior to the Confirmation Date.

[*Remainder of page intentionally left blank*]

Dated: [□], 2024

5E ADVANCED MATERIALS, INC.

on behalf of itself and all other Debtors

/s/
[□]
[TITLE]

EXHIBIT F

DIP Term Sheet

5E ADVANCED MATERIALS, INC.

DEBTOR-IN-POSSESSION FACILITY TERM SHEET

DECEMBER 5, 2023

This term sheet (the "**DIP Term Sheet**") summarizes certain terms and conditions (and does not purport to summarize all of the terms and conditions) of a potential superpriority secured debtor-in-possession term loan credit facility (the "**DIP Facility**") to be provided to the DIP Facility Borrower (as defined herein), in its capacity as a debtor and debtor in possession (together with its affiliated debtors, the "**Debtors**"), in connection with their respective cases (along with the cases of their affiliated debtors, the "**Chapter 11 Cases**") under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The DIP Facility will be subject to the approval of, and consummated in the Chapter 11 Cases in, a United States Bankruptcy Court in a jurisdiction to be agreed upon by the Debtors and BEP (the "**Bankruptcy Court**"), in accordance with the DIP/Cash Collateral Orders and the DIP Credit Agreement and the DIP/Cash Collateral Motion. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Restructuring Support Agreement to which this DIP Term Sheet is attached as **Exhibit F** (the "**Restructuring Support Agreement**").

Without limiting the generality of the foregoing, this DIP Term Sheet and the undertakings contemplated herein are subject in all respects to the negotiation, execution and delivery of definitive documentation in form and substance consistent with this DIP Term Sheet and otherwise acceptable to the Company and the DIP Lenders as well as the satisfactory completion of due diligence.

This DIP Term Sheet is presented for discussion purposes only, does not constitute a commitment to provide, accept, or consent to any financing or otherwise create any implied or express legally binding or enforceable obligation on any party (or any affiliates of a party), at law or in equity, to negotiate or enter into definitive documentation related to the DIP Facility or to negotiate in good faith or otherwise. This DIP Term Sheet is provided as part of a settlement proposal in furtherance of settlement discussions and is entitled to protection from any use or disclosure to any party or person pursuant to Federal Rule of Evidence 408 and any applicable statutes, doctrines or rules protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions.

DIP Facility	
Borrower	• 5E Advanced Materials, Inc. (the "**DIP Facility Borrower**")
Guarantors	• Each subsidiary of the DIP Facility Borrower that is a guarantor under that certain Note Purchase Agreement, dated as of August 11, 2022 (the "**Prepetition Debt Facility**"), by and between the DIP Facility Borrower, as issuer, BEP Special Situations IV LLC ("**BEP**"), as a purchaser, and other persons party to such agreement, as purchasers, certain guarantors, and Alter Domus (US) LLC, as collateral agent (the "**Prepetition Debt Facility Agent**") (such guarantors collectively with the DIP Facility Borrower, the "**Loan Parties**")
Agent	• Alter Domus (US) LLC
Lenders	• BEP and/or its affiliates (the "**DIP Lender**")
Amount & Type	A superpriority senior secured debtor-in-possession term loan credit facility (the "**DIP Facility**"), which shall consist of:

	• "roll-up" term loans equal to $[35] million, whereby a portion of the Secured Debt Facility (as defined in the Restructuring Term Sheet) shall be converted into term loans under the DIP Facility (the "**DIP Roll-Up Loans**") equal to the amount on a dollar for dollar basis of DIP New Money Loans actually funded and on such day as the DIP New Money Loans are actually funded. For the avoidance of doubt, the roll up amounts will be principal and/or interest, but not any fees or "make whole" amounts that may otherwise be payable under Secured Debt Facility (if any) • "new money" term loans in an aggregate principal amount equal to $[10] million (the "**DIP New Money Loans**", together with the DIP Roll-Up Loans, the "**DIP Loans**"), subject to and upon entry of the Interim DIP/Cash Collateral Order and Final DIP/Cash Collateral Order, as applicable. • "**DIP New Money Loan Commitments**" comprise the commitments with respect to the DIP New Money Loans; • "**DIP Obligations**" comprise all principal, interest, fees, premiums, costs, expenses and other amounts owing to the DIP Lender and the DIP Agent in respect of the DIP Facility; and • "**DIP Claims**" comprise any and all claims against any DIP Facility obligor on account of the DIP Obligations. With respect to the DIP Facility,
Term	• [4] months
Use of Proceeds	• The proceeds of the DIP Facility shall be used, upon entry of the Interim DIP/Cash Collateral Order (up to $[●]), and the balance upon entry of the Final DIP/Cash Collateral Order in respect of the Chapter 11 Cases o To pay certain costs, fees and expenses related to the Chapter 11 Cases o To pay certain adequate protection payments related to the Chapter 11 Cases o To fund certain working capital needs of the Debtors during the Chapter 11 Cases
Interest Rate	• At all times prior to the occurrence of an Event of Default, interest on the DIP Loans shall accrue at a per annum rate equal to 15%. All such interest shall be paid monthly in arrears and [in cash]. • Upon the occurrence and during the continuance of an Event of Default, unless otherwise waived by the DIP Lender, the Interest Rate on all DIP Obligations (including interest on overdue principal, interest and other amounts) shall accrue at an additional 2% per annum.
Fees	• [Upfront fee of 2.50%] • [Exit fee of 1.00%]
Amortization	• None
DIP Collateral	• Substantially all present and after acquired property (whether tangible, intangible, real, personal or mixed) of the Loan Parties
Priority of DIP Collateral	• Superpriority priming liens on all encumbered assets and a first lien on all unencumbered assets, subject to customary exceptions and prior permitted liens under the Prepetition Debt Facility.
Adequate Protection	• The secured parties under the Prepetition Debt Facility and the DIP Lender shall be entitled to receive usual and customary adequate protection for any diminution in value arising from (a) the sale, lease or use by the Debtors of prepetition collateral in respect of such prepetition indebtedness, including cash collateral, (b) the priming of their security interests and liens in the prepetition collateral in respect of such prepetition indebtedness

	and (c) the imposition of the automatic stay pursuant to section 362 of title 11 of the United States Code
Milestones	• Consistent with the Milestones set forth in the Restructuring Support Agreement
Carve-out	• All liens and priorities afforded for the DIP Facility shall be subject to payment of (i) Court and U.S. Trustee fees; (ii) up to $75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code, (iii) approved expenses incurred by members of the Creditors' • Committee; (iv) Debtors' and Creditors' Committee's professional fees and expenses • incurred until the first business day following delivery of a notice by the Lenders following an event of default; and (v) for Debtors' professional fees incurred after such date up to $275,000 (the "Carve-Out").
Release	• Upon entry of the Final DIP/Cash Collateral Order, a full release by the Loan Parties of BEP and its affiliates, in a form satisfactory to BEP in its reasonable discretion
Conditions Precedent to Closing and Funding	• Usual and customary for financings of this type
Mandatory and Voluntary Prepayments	• Usual and customary for financings of this type
Representations and Warranties	• Usual and customary for financings of this type
Financial Reporting Requirements	• Usual and customary for financings of this type, including financial statement reporting, budget reporting and budget variance reporting. Budget variance reporting to be provided every two weeks. Liquidity reporting (including receipts/disbursements and opening/ending cash) to be provided every week
Financial Covenants	• Usual and customary for financings of this type
Other Covenants	• Other affirmative and negative covenants usual and customary for financings of this type
Events of Default	• Usual and customary for financings of this type
Voting	• Usual and customary for financings of this type
Counsel to BEP	• Kirkland & Ellis LLP
Counsel to DIP Agent	• Holland & Knight LLP

EXHIBIT G

Amended and Restated Note Purchase Agreement

AMENDED AND RESTATED NOTE PURCHASE AGREEMENT

BY AND AMONG

5E ADVANCED MATERIALS, INC.,

THE GUARANTORS,

THE PURCHASERS,

AND

ALTER DOMUS (US) LLC

as Collateral Agent

Dated as of [_____], 2024

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Exhibit B – Collateral Agent and Purchaser Terms
Exhibit C – Taxes; Increased Costs
Exhibit D – Compliance Certificate
Exhibit E – Form of Note
Exhibit F – Form of Amended and Restated Investor and Registration Rights Agreement

Schedules

Schedule 2.2 – Purchasers
Schedule 7.4 – Existing Indebtedness
Schedule 7.7 – Existing Investments

THIS AMENDED AND RESTATED NOTE PURCHASE AGREEMENT (as the same may be amended, restated, modified, or supplemented from time to time, this "**Agreement**"), dated as of [_____], 2024 (the "**Restatement Date**") is entered into by and among, BEP Special Situations IV LLC ("**Bluescape**"), Ascend Global Investment Fund SPC, for and on behalf of Strategic SP ("**Ascend**"), [Element Global, Inc ("**Element**") / 5ECAP Debt, LLC ("**5ECAP Debt**")] and any other persons otherwise a party hereto from time to time (each a "**Purchaser**"), 5E Advanced Materials, Inc., a Delaware corporation with offices located at 9329 Mariposa Road, Suite 210, Hesperia, CA, 92344 ("**Issuer**"), the Guarantors from time to time party hereto and Alter Domus (US) LLC ("**Alter Domus**"), as collateral agent (in such capacity, together with its successors and assigns in such capacity, "**Collateral Agent**"), provides the terms on which the Purchasers shall purchase the Notes (each as defined below) as set forth herein.

This Agreement (including all Exhibits and Schedules) shall amend, restate and replace in its entirety the Original Note Purchase Agreement (as defined below) (including all exhibits and schedules attached thereto) on and as of the Restatement Date;

The parties agree hereby as follows:

1. DEFINITIONS AND OTHER TERMS

1.1 Terms. Capitalized terms used herein shall have the meanings set forth in Section 1.5 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term "financial statements" shall include the accompanying notes and schedules. Notwithstanding anything to the contrary contained herein, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, (a) the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded, and (b) all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 or otherwise (on a prospective or retroactive basis or otherwise) to be treated as capital lease obligations in the financial statements.

1.2 Section References. Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

1.3 Divisions. For all purposes under the Note Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

1.4 Australian Banking Code of Practice. Each party to this Agreement agrees that the Australian Banking Code of Practice does not apply to the Note Documents and the transactions under them.

1.5 Definitions. The following terms are defined in the Sections or subsections referenced opposite such terms:

"**Additional Shares**"	Section 2.9(a)
"**Agreement**"	Preamble
"**Claims**"	Section 12.2(b)
"**Closing Date**"	Section 2.2(a)(ii)
"**Collateral Agent**"	Preamble
"**Collateral Agent Expenses**"	Exhibit B, Section 6
"**Collateral Agent Fees**"	Section 2.4(b)
"**Collateral Agent License**"	Section 9.8
"**Common Stock Change Event**"	Section 2.11(a)(iv)
"**Communications**"	Section 10
"**Connection Income Taxes**"	Exhibit C, Section 1
"**Conversion Consideration**"	Section 2.8(c)
"**Cure Period**"	Section 8.13
"**Cure Right**"	Section 8.13
"**Declined Amount**"	Section 2.2(c)
"**Default Rate**"	Section 2.3(b)
"**Degressive Issuance**"	Section 2.8(d)(vi)
"**Environmental Laws**"	Section 5.21(a)
"**Environmental Permits**"	Section 5.21(a)
"**Event of Default**"	Section 8
"**Excess Funding Guarantor**"	Section 12.15(f)
"**Excluded Taxes**"	Exhibit C, Section 1
"**Expiration Date**"	Section 2.8(d)(v)
"**Expiration Time**"	Section 2.8(d)(v)
"**FATCA**"	Exhibit C, Section 1
"**Financial Covenant**"	Section 8.13.
"**Foreign Purchaser**"	Exhibit C, Section 1
"**Guaranteed Obligations**"	Section 12.15

"**Indemnified Person**"	Section 12.2(b)
"**Indemnified Taxes**"	Exhibit C, Section 1
"**Intended Tax Treatment**"	Section 12.17
"**Issuer**"	Preamble
"**Mandatory Prepayment Date**"	Section 2.2(c)
"**New Subsidiary**"	Section 6.10
"**Note**" and "**Notes**"	Section 2.2
"**Other Connection Taxes**"	Exhibit C, Section 1
"**Other Taxes**"	Exhibit C, Section 1
"**Participant Register**"	Section 12.1
"**Perfection Certificate**" and "**Perfection Certificates**"	Section 5.1
"**PIK Interest**"	Section 2.3(d)
"**Pre-Approved Director**"	Section 6.15
"**Purchase Price**"	Section 2.2(a)(i)
"**Purchaser**" and "**Purchasers**"	Preamble
"**Purchaser's Note Record**"	Section 2.6
"**Purchaser Transfer**"	Section 12.1
"**Recipient**"	Exhibit C, Section 1
"**Reference Property**"	Section 2.11(a)(iv)
"**Reference Property Unit**"	Section 2.11(a)(iv)
"**Register**"	Section 12.1
"**Restatement Date**"	Preamble
"**Spin-Off**"	Section 2.8(d)(iii)(2)
"**Spin-Off Valuation Period**"	Section 2.8(d)(iii)(2)
"**Successful Capital Raise**"	Section 1.4
"**Successor Person**"	Section 2.11(a)(iv)(2)
"**Tender/Exchange Offer Valuation Period**"	Section 2.8(d)(v)
"**Termination Date**"	Exhibit B, Section 8
"**U.S. Person**"	Exhibit C, Section 1
"**U.S. Tax Compliance Certificate**"	Exhibit C, Section 7
"**Weighted Average Issuance Price**"	Section 2.8(d)(vi)
"**Withholding Agent**"	Exhibit C, Section 1

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes, without limitation, all accounts receivable and other sums owing to Issuer.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Acquired Debt**" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming, a Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"**Additional Assets**" means:

(1) any assets (other than cash, Cash Equivalents, securities and notes) to be owned by Issuer or any Subsidiary and used in a Permitted Business; or

(2) Capital Stock of a Person that becomes a Subsidiary as a result of the acquisition of such Capital Stock by Issuer or another Subsidiary from any Person other than Issuer or a Subsidiary; *provided, however*, that, in the case of this clause (2), such Subsidiary is primarily engaged in a Permitted Business.

"**Affiliate**" means any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to a Purchaser, any investment fund or managed account that is managed on a discretionary basis by the same investment manager as such Purchaser will be deemed to be an Affiliate of such Purchaser. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"**Affiliate Transaction**" means a transaction in which Issuer or any Subsidiaries acts to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of Issuer or any Subsidiaries, unless:

(1) the Affiliate Transaction is on terms that are no less favorable to Issuer or the relevant Subsidiary, taken as a whole, than those that would have been obtained in a comparable

transaction by Issuer or such Subsidiary with a Person that is not an Affiliate of Issuer or such Subsidiary;

(2) Issuer delivers to the Purchasers, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $1,000,000, a resolution of the Board of Directors set forth in an Officer's Certificate certifying that such Affiliate Transaction complies with Section 7.9 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(3) Issuer delivers to the Purchasers, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $5.0 million, a favorable written opinion from a nationally recognized investment banking, appraisal or accounting firm (A) as to the fairness of the transaction to Issuer and the Subsidiaries from a financial point of view; or (B) stating that the terms of such transaction are, taken as a whole, no less favorable to Issuer or the relevant Subsidiary than those that would have been obtained in a comparable arm's-length transaction by Issuer or such Subsidiary with a Person that is not an Affiliate of Issuer or any Subsidiary.

The definition of "Affiliate Transaction" above is subject to the exceptions in Section 7.9.

"**Anti-Corruption Laws**" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"**Anti-Terrorism Laws**" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"**Asset Sale**" means any Transfer, excluding:

(1) Transfers involving assets having a Fair Market Value in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000);

(2) a transfer of assets (including, without limitation, Capital Stock) between or among Issuer and the Subsidiaries;

(3) an issuance of Capital Stock by a Subsidiary to Issuer or to another Subsidiary;

(4) any sale or other disposition of damaged, worn-out or obsolete assets or assets otherwise unsuitable or no longer required for use (including the abandonment or other disposition of property that is, in the reasonable judgment of Issuer, no longer profitable, economically practicable to maintain or useful in the conduct of the business of Issuer and the Subsidiaries, taken as whole), in each case, in the ordinary course of the business of Issuer and the Subsidiaries;

(5) a Restricted Payment that does not violate Section 7.7, or a Permitted Investment;

(6) the sale, lease, sublease, license, sublicense, consignment, conveyance or other disposition of products, services, Intellectual Property, inventory and other assets in the ordinary course of business, including leases with respect to facilities that are temporarily not in use or pending their disposition;

(7) a disposition of leasehold improvements or leased assets in connection with the termination of any operating lease;

(8) (x) dispositions of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements; or (y) the sale, settlement, termination, unwinding or other disposition of Hedging Obligations or other financial instruments in the ordinary course of business;

(9) any foreclosure, condemnation, expropriation or any similar action with respect to the property or other assets of Issuer or any Subsidiary;

(10) the sublease or assignment to third parties of leased facilities in the ordinary course of business;

(11) the transfer, sale or other disposition resulting from any involuntary loss of title, casualty event, involuntary loss or damage to or destruction of, or any condemnation or other taking of, any property or assets of Issuer or any Subsidiary;

(12) the creation of or realization on a Lien to the extent that the granting of such Lien was not in violation of Section 7.5;

(13) any surrender or waiver of contract rights or settlement, release, recovery on or surrender of contract, tort or other claims;

(14) the sale or other disposition of cash or Cash Equivalents pursuant to transactions not prohibited by this Agreement; and

(15) sales, transfers and other dispositions of Investments in joint ventures made in the ordinary course of business or to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements.

"**ASX**" means ASX Limited (ACN 008 624 691) or the securities exchange operated by it (as the context requires).

"**Attributable Debt**" means in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; *provided, however*, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Attributable Debt

represented thereby will be the amount of liability in respect thereof determined in accordance with the definition of "Capital Lease Obligation".

"**Australia**" means the Commonwealth of Australia (and "**Australian**" shall be construed accordingly).

"**Australian Corporations Act**" means the Australian Corporations Act 2001 (Cth).

"**Australian Obligors**" means each Subsidiary of the Issuer established or incorporated in Australia that is, or is required to become, a Guarantor hereunder.

"**Australian Security Documents**" means the General Security Deed and the Operating Company Pledge Agreement.

"**Authorized Denomination**" means, with respect to a Note, a principal amount thereof equal to $1,000 or any integral multiple of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof).

"**Banking Code of Practice**" means the Banking Code of Practice published by the Australian Banking Association, as amended, revised or amended and restated from time to time.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"**Beneficial Owner**" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms "Beneficially Owns" and "Beneficially Owned" have correlative meanings.

"**Blocked Person**" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"**Board of Directors**" means the Board of Directors (or the functional equivalent thereof) of Issuer or any duly authorized committee of such Board of Directors.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"**Capital Lease Obligation**" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be

capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease on or prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty; *provided* that such determination shall be made without giving effect to Accounting Standards Codification 842, *Leases* (or any other Accounting Standards Codification having similar result or effect) (and related interpretations) to the extent any lease (or similar arrangement) would be required to be treated as a capital lease thereunder where such lease (or arrangement) would have been treated as an operating lease under GAAP as in effect immediately prior to the effectiveness of such Accounting Standards Codification.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition. Unless the context otherwise requires, Capital Stock shall refer to Capital Stock of Issuer.

"**Cash Equivalents**" means:

(1) any evidence of Indebtedness issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof with a final maturity not exceeding five years from the date of acquisition;

(2) deposits, certificates of deposit or acceptances of any financial institution that is a member of the Federal Reserve System and whose unsecured long term debt is rated at least "A" by Standard & Poor's Ratings, a division of McGraw Hill Financial, Inc. ("**S&P**"), or at least "A2" by Moody's Investors Service, Inc. ("**Moody's**") or any respective successor agency;

(3) commercial paper with a maturity of 365 days or less issued by a corporation (other than an Affiliate of Issuer) organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and rated at least "A-1" by S&P and at least "P-1" by Moody's or any respective successor agency;

(4) repurchase agreements and reverse repurchase agreements relating to marketable direct obligations issued or unconditionally guaranteed by the United States or issued by any agency thereof and backed by the full faith and credit of the United States maturing within 365 days from the date of acquisition;

(5) readily marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 365 days from the date of acquisition and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's or any respective successor agency;

(6) demand deposits, savings deposits, time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of $500,000,000 and a rating of "A" (or such other similar equivalent rating) or higher by at least one "nationally recognized statistical rating organization"

(as defined in Section 3(a)(62) of the Exchange Act) with maturities of not more than 365 days from the date of acquisition;

(7) money market funds which invest substantially all of their assets in securities described in the preceding clauses (1) through (6); and

(8) in the case of a Foreign Subsidiary, instruments equivalent to those referred to in clauses (1) through (7) above denominated in a foreign currency, which are (i) substantially equivalent in tenor, (ii) issued by, or entered into with, foreign persons with credit quality generally accepted by businesses in the jurisdictions in which such Foreign Subsidiary operates and (iii) customarily used by businesses for short-term cash management purposes in any jurisdiction outside of the United States to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary.

"**Change in Control**" means the occurrence of any of the following: (a) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole, to any Person, (b) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any of The NASDAQ Global Select Market, The NASDAQ Global Market or The New York Stock Exchange (or any of their respective successors), (c) any recapitalization or change of the Common Stock as a result of which the Common Stock would be converted into stock, other securities, other property or assets, any share exchange, or any consolidation or merger or other transaction of the Issuer pursuant to which the Common Stock will be converted into cash, securities or other property or assets (or any combination thereof), unless the Beneficial Owners of the Common Stock immediately prior to such transaction Beneficially Own more than 50% of all classes of voting stock of the continuing or surviving company, (d) the Issuer's stockholders approve any plan or proposal for the liquidation or dissolution of the Issuer, (e) the consummation of any transaction or series of transactions (including, without limitation, pursuant to a merger or consolidation), the result of which any "person" or "group" within the meaning of Section 13(d) of the Exchange Act becomes the Beneficial Owner, directly or indirectly, of more than 50% of the voting power of the Voting Stock of the Issuer, (f) any transaction (other than a transaction permitted pursuant to Section 7.3) as a result of which Issuer ceases to own, directly or indirectly, 100% of the Capital Stock of the Operating Company, or (g) any "change of control" (or any comparable term) in any document pertaining to any Junior Indebtedness, the aggregate principal amount of which is in excess of One Million Dollars ($1,000,000) and such "change of control" allows the holders of such Indebtedness to redeem such Indebtedness or otherwise requires Issuer to prepay such Indebtedness.

"**Close of Business**" means 5:00 p.m., New York City time.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; *provided*, that, to the extent that the Code is used to define any term herein or in any Note Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; *provided further*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other

than the State of New York, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Issuer and each Guarantor described on Exhibit A, subject to a Lien under the Note Documents in favor of the Collateral Agent, on behalf of the Secured Parties, to secure the Obligations.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Issuer or any Guarantor at any time.

"**Collateral Agent**" is Alter Domus, not in its individual capacity, but solely in its capacity as collateral agent, together with its successors and assigns in such capacity, on behalf of and for the ratable benefit of the Secured Parties.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Common Stock**" means the common stock, par value $0.01, of Issuer.

"**Compliance Certificate**" is that certain certificate in substantially the form attached hereto as Exhibit D.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Issuer or any Guarantor maintains a Deposit Account or the securities intermediary or commodity intermediary at which Issuer or any Guarantor maintains a Securities Account or a Commodity Account, Issuer or such Guarantor, as applicable, and Collateral Agent pursuant to which Collateral Agent, for the ratable benefit of the Secured Parties, obtains "control" (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"**Conversion Date**" means, with respect to a Note, the first Business Day on which the requirements set forth in Section 2.8(b) to convert such Note are satisfied.

"**Conversion Price**" means, as of any time, an amount equal to (A) one thousand dollars ($1,000) *divided by* (B) the Conversion Rate in effect at such time.

"**Conversion Rate**" initially means [●] shares of Common Stock per $1,000 principal amount of Notes; *provided*, *however*, that the Conversion Rate is subject to adjustment pursuant to Section 2.8; *provided*, *further*, that whenever this Agreement refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate as of the Close of Business on such date.

"**Conversion Share**" means any share of Common Stock issued or issuable upon conversion of any Note.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Disqualified Stock**" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the earlier of (x) the date that is 91 days after the Maturity Date and (y) the date that is 91 days after the date the Notes cease to remain outstanding; *provided* that only the portion of the Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock; *provided*, *further*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of Issuer or the Subsidiaries or by any such plan to such employees, such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability. Notwithstanding anything to the contrary in the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require Issuer to repurchase or redeem such Capital Stock upon the occurrence of a change of control or similar provision will not constitute Disqualified Stock if the change of control or similar provisions applicable to such Capital Stock are not more favorable to the holders of such Capital Stock than the terms applicable to the Notes; *provided* that Issuer may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 7.7. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Issuer or any and the Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory repurchase or redemption provisions of, such Disqualified Stock exclusive of accrued dividends (other than the accretion, accumulation or payment-in-kind of dividends).

"**Dollars,**" "**dollars**" and "**$**" each mean lawful money of the United States.

"**DTC**" means the Depository Trust Company.

"**Effective Date**" means August 11, 2022.

"**Effective Price**" has the following meaning with respect to the issuance or sale of any shares of Common Stock or any Equity-Linked Securities:

(a) in the case of the issuance or sale of shares of Common Stock, the value of the consideration received by the Issuer for such shares, expressed as an amount per share of Common Stock; and

(b) in the case of the issuance or sale of any Equity-Linked Securities, an amount equal to a fraction whose:

(i) numerator is equal to sum, without duplication, of (x) the value of the aggregate consideration received by the Issuer for the issuance or sale of such Equity-Linked Securities; and (y) the value of the minimum aggregate additional consideration, if any, payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(ii) denominator is equal to the maximum number of shares of Common Stock underlying such Equity-Linked Securities;

provided, *however*, that:

(w) for purposes of this definition, (I) the value of consideration received by the Issuer shall be determined without deduction of any customary underwriting or similar commissions, reasonable compensation or reasonable concessions paid or allowed by the Issuer in connection with such issue or sale and without deduction of any reasonable and documented expenses payable by the Issuer, (II) to the extent any such consideration consists of property other than cash, the value of such property shall be its fair market value as determined in good faith by the Board of Directors, and (III) if shares of Common Stock or Equity-Linked Securities are issued or sold together with other Capital Stock or securities or other assets of the Issuer for a consideration that covers both, the Board of Directors shall determine in good faith the portion of the consideration so received to be allocable to such shares of Common Stock or Equity-Linked Securities.

(x) for purposes of clause (b) above, if such minimum aggregate consideration, or such maximum number of shares of Common Stock, is not determinable at the time such Equity-Linked Securities are issued or sold, then (I) the initial consideration payable under such Equity-Linked Securities, or the initial number of shares of Common Stock underlying such Equity-Linked Securities, as applicable, will be used; and (II) at each time thereafter when such amount of consideration or number of shares becomes determinable or is otherwise adjusted (other than pursuant to "anti-dilution" or similar provisions consistent with those set forth in Sections 2.8(d)(i) through (v) herein), there will be deemed to occur, for purposes of Section 2.8(d)(vi) and without affecting any prior adjustments theretofore made to the Conversion Rate, an issuance of additional Equity-Linked Securities;

(y) for purposes of clause (b) above, the surrender, extinguishment, maturity or other expiration of any such Equity-Linked Securities will be deemed not to constitute consideration payable to purchase or otherwise acquire shares of Common Stock pursuant to such Equity-Linked Securities; and

(z) the "value" of any such consideration will be the fair value thereof, as of the date such shares or Equity-Linked Securities, as applicable, are issued or sold, determined in good faith by the Board of Directors (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

"**Eligible Investor**" means a person who is able to acquire and hold each Note (and any shares of Common Stock issuable upon conversion of the Notes) without disclosure under section 708 of the Australian Corporations Act.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**Equity-Linked Securities**" means any rights, options or warrants to purchase or otherwise acquire (whether immediately, during specified times, upon the satisfaction of any conditions or otherwise) any shares of Common Stock.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Ex-Dividend Date**" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Exchange Act**" means the United States Securities and Exchange Act of 1934, as amended, and the rules and regulation promulgated thereunder.

"**Excluded Accounts**" shall mean (a) any Collateral Account of Issuer or any Guarantor that is used by such Person solely as a payroll account for the employees of Issuer or its Subsidiaries, provided that the aggregate balance maintained therein shall not exceed the aggregate amount of such payments to be paid in the then next two (2) payroll periods or the funds in which consist solely of funds held by Issuer or any Subsidiary in trust for any director, officer or employee of Issuer or any Subsidiary or any employee benefit plan maintained by Issuer or any Subsidiary in the ordinary course of business or funds representing deferred compensation for the directors and employees of Issuer or any Subsidiary, (b) escrow accounts, Collateral Accounts and trust accounts, in each case either securing Permitted Liens or otherwise entered into in the ordinary course of business and consistent with prudent business practice conduct where Issuer or the applicable Guarantor holds the funds exclusively for the benefit of an unaffiliated third party, provided that the amounts in such accounts (in the aggregate) do not exceed One Million Dollars ($1,000,000) at any time, (c) accounts that are swept to a zero balance on a daily basis to a Collateral Account that is subject to a Control Agreement, and (d) Collateral Accounts and securities accounts held in jurisdictions outside the United States.

"**Excluded Subsidiary**" shall mean (a) any subsidiary that is prohibited by any applicable law or, on the date such subsidiary is acquired (provided, that such prohibition is not be created in contemplation of such acquisition), its organizational documents, in each case, from guaranteeing the Obligations; (b) any subsidiary that is prohibited by any contractual obligation that existed on the date any such subsidiary is acquired (provided, that such prohibition is not created in contemplation of such acquisition) from guaranteeing the Obligations; (c) any subsidiary to the extent that the provision of any subsidiary guarantee of the Obligations would require the consent, approval, license or authorization of any governmental authority which has not been obtained, any subsidiary that is subject to such restrictions (provided that after such time that such restrictions

on subsidiary guarantees are waived, lapse, terminate or are no longer effective, such subsidiary shall no longer be an Excluded Subsidiary by virtue of this clause (c)); (d) any Subsidiary organized under the laws of the United States, any state of the United States or the District of Columbia that (i) has no material assets other than capital stock of one or more subsidiaries that are "controlled foreign corporations" within the meaning of Section 957(a) of the Internal Revenue Code or (ii) is a subsidiary of a subsidiary that is a "controlled foreign corporation" within the meaning of Section 957(a) of the Internal Revenue Code (provided any subsidiary described in the foregoing clauses (d)(i) or (d)(ii) shall be an Excluded Subsidiary only with respect to the subsidiary guarantee of an obligation of a United States person); (e) any Subsidiary that is not incorporated or organized under the laws of the United States, any state of the United States, the District of Columbia or Australia; and (f) any subsidiary for which the provision of a subsidiary guarantee would result in a material adverse tax or regulatory consequence to Issuer or any Subsidiary as reasonably determined by Issuer in consultation with the Collateral Agent.

"**Exempt Issuance**" means (A) the Issuer's issuance or grant of shares of Common Stock or options to purchase shares of Common Stock to employees, directors or consultants of the Issuer or any of its Subsidiaries, pursuant to plans that have been approved by a majority of the independent members of the Board of Directors or that exist as of the Effective Date; (B) the Issuer's issuance of securities upon the exercise, exchange or conversion of any securities that are exercisable or exchangeable for, or convertible into, shares of Common Stock and are outstanding as of the Effective Date; *provided* that such exercise, exchange or conversion is effected pursuant to the terms of such securities as in effect on the Effective Date; (C) the Issuer's issuance of the Notes and any shares of Common Stock upon conversion of the Notes; (D) the Issuer's issuance of shares of Common Stock or any options or convertible securities issued in connection with a merger or other business combination or an acquisition of the securities or assets of another Person, business unit, division or business, other than in connection with the broadly marketed offering and sale of equity or convertible securities for third-party financing of such transaction; and (E) the Issuer's issuance of shares of Common Stock in an offering for cash for the account of the Issuer that is underwritten on a firm commitment basis and is registered with the SEC under the Securities Act. For purposes of this definition, "consultant" means a consultant that may participate in an "employee benefit plan" in accordance with the definition of such term in Rule 405 under the Securities Act.

"**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of the Required Purchasers, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Issuer or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of the Required Purchasers, could reasonably be expected to result in a material diminution in value of the Collateral.

"**Existing Indebtedness**" means all Indebtedness of Issuer and its Subsidiaries in existence on the Effective Date in an amount greater than Five Hundred Thousand Dollars ($500,000) as set forth on Schedule 7.4 hereto.

"**Fair Market Value**" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors.

"**FCH**" means Fort Cady Holdings Pty Ltd (ABN 56 617 760 746), a company incorporated under the laws of Australia with its registered office at 63 Summerhill Drive, Stake Hill, Western Australia 6181, Australia.

"**Fee Letter**" means that certain Fee Letter, dated as of the Closing Date, among the Issuer and Collateral Agent, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

"**Fort Cady Borate Project**" means the Operating Company's mining project in San Bernardino County, California.

"**GAAP**" is (a) in respect of the Australian Obligors only, the Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board and the Australian Corporations Act, as appropriate for for-profit oriented entities, as in effect from time to time; and (b), in all other cases, generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination.

"**General Intangibles**" are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**General Security Deed**" means the General Security Deed governed by Australian law and dated on or about the Closing Date, between the Australian Obligors and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"**Guarantor**" is any Person party hereto as of the date hereof (or from time to time) providing a Guaranty in favor of Collateral Agent for the ratable benefit of the Secured Parties (including without limitation pursuant to Section 6.10).

"**Guarantor's Books**" are each Guarantor's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding such Guarantor's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements, in each case, not entered into by such Person for speculative purposes;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk, in each case, not entered into by such Person for speculative purposes;

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices, in each case, not entered into by such Person for speculative purposes; and

(4) any similar transaction or combination of the foregoing, in each case, not entered into by such Person for speculative purposes.

"**Indebtedness**" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent and without duplication:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions; or

(5) representing the balance deferred and unpaid of the purchase price of any property or services, which purchase price is more than six months after the date of placing the property in service or taking delivery and title thereto;

if and to the extent any of the preceding items would appear as a liability upon a balance sheet (excluding the footnotes) of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes (i) to the extent not otherwise included, the guarantee by the specified Person of any Indebtedness of any other Person and (ii) all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) equal to the lesser of (x) the Fair Market Value of such asset as of the date of determination and (y) the amount of such Indebtedness.

Notwithstanding anything to the contrary in the foregoing paragraph, the term "Indebtedness" will not include (a) in connection with any Permitted Investment or other acquisition or any Transfer or other disposition, purchase price adjustments, indemnities or royalty, earn-out, contingent or other deferred payments of a similar nature, unless such payments are required under GAAP to appear as a liability on the balance sheet (excluding the footnotes); *provided* that at the time of closing, the amount of any such payment is not determinable or, to the extent such payment has become fixed and determined, the amount is paid within 30 days thereafter; (b) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money; (c) deferred or prepaid revenues; (d) any Capital Stock other than Disqualified Stock; (e) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; or (f) deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries. Indebtedness shall be calculated without giving effect to the effects of Accounting Standards Codification Topic 815 "Derivatives and Hedging" and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory administrator, provisional liquidator, receiver and manager, controller (in the case of appointments under Australian law, as defined in the Australian Corporations Act) or other similar officer, assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

"**Insolvent**" means not Solvent.

"**Intellectual Property**" means all of Issuer's or any Guarantor's right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information;

(c) any and all Technology, including Software;

(d) any and all design rights which may be available to Issuer or such Guarantor;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Interest Payment Date**" means, with respect to a Note, each February 15 and August 15 of each year, commencing on February 15, 2023 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

"**Internal Revenue Code**" means the Internal Revenue Code of 1986, as amended.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" means, with respect to any specified Person, all direct or indirect investments by such specified Person in other Persons (including Affiliates) in the forms of loans (including guarantees of Indebtedness), advances or capital contributions (excluding (i) commission, travel and similar advances to officers and employees made in the ordinary course of business and (ii) extensions of credit to customers or advances, deposits or payment to or with suppliers, lessors or utilities or for workers' compensation, in each case, that are incurred in the ordinary course of business), or purchases or other acquisitions for consideration of Indebtedness, Capital Stock or other securities. The acquisition by Issuer or any Subsidiary of a Person that holds an Investment in a third Person that was acquired in contemplation of the acquisition of such

Person will be deemed to be an Investment by Issuer or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person determined as provided in this Agreement. Except as otherwise provided in this Agreement, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value but after giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of the repayment or disposition thereof for cash, not to exceed the original amount of such Investment.

"**Investor and Registration Rights Agreement**" means that certain Amended and Restated Investor and Registration Rights Agreement, to be dated as of the Restatement Date, between Issuer and the Purchasers.

"**IRS**" means the United States Internal Revenue Service.

"**Issuer's Books**" are Issuer's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding Issuer's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Junior Indebtedness**" means Indebtedness for borrowed money that is unsecured or contractually subordinated or lien subordinated to the Obligations or to any Guaranty (excluding (i) any intercompany Indebtedness between or among Issuer and any of the Subsidiaries, (ii) Indebtedness permitted by clauses (10), (12), (13), (15), (16), (17), (18), (19), (20), and (21) of the definition of "Permitted Debt", and (iii) revolving Indebtedness under any unsecured working capital lines of credit or overdraft facilities incurred in the ordinary course of business).

"**Knowledge**" means to the "best of" Issuer's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"**Last Reported Sale Price**" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Issuer.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property, and for the avoidance of doubt includes any other security interest securing any obligation of any Person or any other agreement or arrangement having a similar effect

(including any "security interest" as defined in sections 12(1) and (2) of the PPSA, but excluding anything which is a "security interest" by operation of section 12(3) of the PPSA which does not in substance secure payment or performance of an obligation).

"**Make-Whole Fundamental Change**" means a Change in Control.

"**Make-Whole Fundamental Change Conversion Period**" means the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date.

"**Make-Whole Fundamental Change Effective Date**" means the date on which a Make-Whole Fundamental Change occurs or becomes effective.

"**Market Disruption Event**" means, for the purposes of determining amounts due upon conversion, (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

"**Material Adverse Change**" is (a) a material adverse change in the business, operations or condition (financial or otherwise) of Issuer and its Subsidiaries, when taken as a whole; or (b) a material impairment of (i) the prospect of repayment of any portion of the Obligations, (ii) the legality, validity or enforceability of any Note Document, (iii) the rights and remedies of Collateral Agent or Purchasers under any Note Document except as the result of the action or inaction of the Collateral Agent or Purchasers or (iv) the validity, perfection or priority of any Lien in favor of Collateral Agent for the benefit of the Secured Parties on any of the Collateral except as the result of the action or inaction of the Collateral Agent or Purchasers.

"**Material Agreement**" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; *provided, however*, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"**Maturity Date**" means August 15, 2028.

"**Net Proceeds**" means the aggregate cash proceeds and Cash Equivalents received by Issuer or any of the Subsidiaries in respect of any Asset Sale (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees and sales commissions, and any relocation expenses incurred as a result of the Asset Sale, taxes paid or payable as a result of the Asset Sale, in each case, after taking into account, without duplication, (1) any available tax credits or deductions and any tax sharing arrangements, and amounts required to be applied to the

repayment of Indebtedness secured on a senior basis by a Permitted Lien (other than with respect to an all-assets Lien securing such Indebtedness) on the asset or assets that were the subject of such Asset Sale, and any reserve for adjustment in respect of the sale price of such asset or assets established in accordance with GAAP, (2) any reserve or payment with respect to liabilities associated with such asset or assets and retained by Issuer or any of the Subsidiaries after such sale or other disposition thereof, including, without limitation, severance costs, pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction, (3) any cash escrows in connection with purchase price adjustments, reserves or indemnities (until released) and (4) in the case of any Asset Sale by a Subsidiary that is not a Guarantor, payments to holders of Capital Stock in such Subsidiary in such capacity (other than such Capital Stock held by Issuer or any Subsidiary) to the extent that such payment is required to permit the distribution of such proceeds in respect of the Capital Stock in such Subsidiary held by Issuer or any Subsidiary.

"**Note Documents**" are, collectively, this Agreement, the Notes, the Investor and Registration Rights Agreement, the Fee Letter, each Control Agreement, the Pledge Agreement, the Australian Security Documents, the Perfection Certificates, each Compliance Certificate, any guarantees, any subordination agreements or priority agreements, any note, or notes or guaranties executed by Issuer, a Guarantor or any other Person, any agreements creating or perfecting rights in the Collateral (including all insurance certificates and endorsements, landlord consents and bailee consents) and any other present or future agreement entered into by Issuer, any Guarantor or any other Person for the benefit of the Purchasers and Collateral Agent, as applicable, in connection with this Agreement; all as amended, restated, or otherwise modified.

"**Obligations**" are all of Issuer's and each Guarantor's obligations to pay when due any debts, principal, interest, Redemption Price, Purchasers' Expenses, Collateral Agent Fees, Collateral Agent Expenses, indemnification expenses, and any other amounts Issuer or any Guarantor owes the Collateral Agent or the Purchasers now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Note Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Issuer or any Guarantor assigned to the Purchasers and/or Collateral Agent in connection with this Agreement and the other Note Documents, and the performance of Issuer's and each Guarantor's duties under the Note Documents.

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Open of Business**" means 9:00 a.m., New York City time.

"**Operating Company**" means 5E Boron Americas, LLC.

"**Operating Company Pledge Agreement**" means the pledge agreement dated on or about the Closing Date, between FCH and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Operating Documents**" are, for any Person, such Person's formation documents (being, in the case of an Australian Obligor, its certificate of registration and certificate(s) of change of name, or similar documents), as certified by the Secretary of State (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date or Restatement Date (as the context may require), and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto, and (d) if such Person is an Australian Obligor, its constitution.

"**Original Note Purchase Agreement**" means that certain Note Purchase Agreement dated as of August 11, 2022 among the Company, the Guarantors named therein, the Purchasers named therein and Alter Domus (US) LLC, as Collateral Agent.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"**Permitted Business**" means any business conducted by Issuer or any of the Subsidiaries on the Effective Date or disclosed in filings with the SEC on or prior to the Effective Date and any business that, in the good faith judgment of the Board of Directors, is similar or reasonably related, ancillary, supplemental or complementary thereto or a reasonable extension, development or expansion thereof.

"**Permitted Debt**" means:

(1) the incurrence by Issuer of unsecured Indebtedness in an aggregate principal amount at any one time outstanding under this clause (1), including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) below to refinance any Indebtedness incurred pursuant to this clause, not to exceed an amount equal to Fifty Million Dollars ($50,000,000), less the principal amount of Permitted Debt under clauses (2) and (7) hereof, at any one time outstanding; *provided* that such Indebtedness (x) shall not have a Stated Maturity prior to the date that is 91 days after the Maturity Date, (y) the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the remaining Weighted Average Life to Maturity of the Notes, and (z) the other terms of such Indebtedness will not be materially more restrictive to the Issuer and its Subsidiaries (as reasonably determined by the Issuer acting in good faith) when taken as a whole, than the terms of this Agreement;

(2) the incurrence by Issuer or any of the Subsidiaries under the Notes and the Guaranties in respect thereof;

(3) the incurrence by Issuer or any of the Subsidiaries of Existing Indebtedness;

(4) the incurrence by Issuer or any of the Subsidiaries of Indebtedness represented by either (A) Capital Lease Obligations, or (B) mortgage financings or purchase money obligations, in either case of sub-clause (A) or (B), incurred for the purpose of financing or reimbursing all or any part of the purchase price or cost of design, development, construction, installation, expansion, repair or improvement of property (either real or personal), plant or equipment or other fixed or capital assets used or useful in the business of Issuer or any of the Subsidiaries (in each case, whether through the direct purchase of such assets or the purchase of Capital Stock of any Person owning such assets), in an aggregate principal amount, including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) below to refinance any Indebtedness incurred pursuant to this clause (4), not to exceed at any one time outstanding, in the case of each of sub-clause (A) and (B), $2.0 million;

(5) the incurrence by the Operating Company or any of its Subsidiaries of secured Indebtedness in connection with project level activities not to exceed Four Hundred Twenty-Five Million Dollars $(425,000,000) in the aggregate at any one time outstanding (provided that such Indebtedness shall be for project level activities (i) customary for a business of the type the Operating Company engages in as of the Effective Date or (ii) disclosed in filings with the SEC on or prior to the Effective Date);

(6) Indebtedness constituting an extension or renewal of, replacement of, or substitution for, or issued in exchange for, or the net proceeds of which are used to repay, redeem, repurchase, refinance or refund, including by way of defeasance (all of the above, for purposes of Section 7.4, "refinance"), then outstanding Indebtedness ("**Permitted Refinancing Indebtedness**"), other than Permitted Debt under clause (2) hereof, in an amount not to exceed the principal amount or liquidation value of the Indebtedness so refinanced, plus premiums, fees and expenses; *provided*, that:

(i) in case the Obligations are refinanced in part or the Indebtedness to be refinanced is pari passu with the Obligations, the new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made pari passu with or subordinated (x) in right of payment to the remaining Obligations or (y) is secured by Liens otherwise permitted under Section 7.5;

(ii) in case the Indebtedness to be refinanced is Junior Indebtedness, the new Indebtedness, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made subordinate in right of payment to the Obligations at least to the extent that the Junior Indebtedness to be refinanced is subordinated to the Obligations;

(iii) in case the Indebtedness to be refinanced is Junior Indebtedness secured by Liens, such new Indebtedness' Lien shall have the same or lower priority as the Junior Indebtedness to be refinanced and shall not be secured by a Lien on any collateral other than the collateral securing the Indebtedness being refinanced and shall be subject to an intercreditor agreement reasonably satisfactory to the Issuer, the Collateral Agent and the Required Purchasers;

(iv) in the case of Junior Indebtedness that is unsecured, such new Indebtedness shall also be unsecured;

(v) the new Indebtedness does not have a Stated Maturity prior to the Stated Maturity of the Indebtedness to be refinanced, and the Weighted Average Life to Maturity of the new Indebtedness is at least equal to the remaining Weighted Average Life to Maturity of the Indebtedness being refinanced;

(vi) if the Indebtedness being refinanced is unsecured Indebtedness, such Permitted Refinancing Indebtedness is unsecured Indebtedness;

(vii) in no event may Indebtedness of Issuer or any Guarantor be refinanced pursuant to this clause by means of any Indebtedness of any Subsidiary that is not a Guarantor; and

(viii) such new Indebtedness is incurred by the Person who is the obligor of the replaced Indebtedness and no additional obligors become liable for such new Indebtedness except to the extent such Person guaranteed the replaced Indebtedness;

(7) the incurrence by Issuer or any of the Subsidiaries of additional Indebtedness or Disqualified Stock, including, without duplication, all Permitted Refinancing Indebtedness incurred under clause (6) above to refinance any Indebtedness; *provided* that the aggregate principal amount (or accrued value, as applicable) of the Indebtedness incurred pursuant to clauses (1), (2) and (7) shall not exceed Fifty Million Dollars ($50,000,000) at any one time outstanding; *provided* that under no circumstances shall Indebtedness incurred under this clause (7) be subject to Liens on Collateral securing the Obligations; *provided further* that such Indebtedness (x) shall not have a Stated Maturity prior to the date that is 91 days after the Maturity Date, (y) the Weighted Average Life to Maturity of such Indebtedness shall not be shorter than the remaining Weighted Average Life to Maturity of the Notes, and (z) the other terms of such Indebtedness will not be materially more restrictive to the Issuer (as reasonably determined by the Issuer acting in good faith) when taken as a whole, than the terms of this Agreement;

(8) the incurrence by Issuer or any of the Subsidiaries of intercompany Indebtedness (or the guarantees of any such intercompany Indebtedness) between or among Issuer or any of the Subsidiaries, in each case, to the extent constituting a Permitted Investment; *provided*, *however*, that if Issuer or any Guarantor is the obligor on such Indebtedness and the payee is not Issuer or a Guarantor, then such Indebtedness (other than Indebtedness incurred in the ordinary course in connection with the cash or tax management operations of Issuer and its Subsidiaries) must be expressly subordinated to the prior payment or conversion in full of all Obligations; *provided*, *further*, that (i) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness being held by a Person other than Issuer or a Subsidiary and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either Issuer or a Subsidiary, will be deemed, in each case, to constitute an incurrence of such Indebtedness by Issuer or such Subsidiary, as the case may be, that was not permitted by this clause (8);

(9) the issuance by any of the Subsidiaries to Issuer or to any of the Subsidiaries of shares of any Disqualified Stock, preferred stock or preferred interest in each case, to the extent constituting a Permitted Investment; *provided*, *however*, that if any of the Subsidiaries is the issuer of such Disqualified Stock, preferred stock or preferred interest and such Disqualified Stock, preferred stock or preferred interest is not held by Issuer or a Guarantor, then such Disqualified Stock, preferred stock or preferred interest must be expressly subordinated to the prior payment or

conversion in full of all Obligations then due with respect to the Notes, in the case of Issuer, or the Guaranty, in the case of a Guarantor; *provided*, *further*, that (i) any subsequent issuance or transfer of Capital Stock that results in any such Disqualified Stock, preferred stock or preferred interests, as applicable, being held by a Person other than Issuer or a Subsidiary and (ii) any sale or other transfer of any such Disqualified Stock, preferred stock or preferred interests, as applicable, to a Person that is not Issuer or a Subsidiary will be deemed, in each case, to constitute an issuance of such Disqualified Stock, preferred stock or preferred interests, as applicable, by such Subsidiary that was not permitted by this clause (9);

(10) Hedging Obligations that are not incurred for speculative purposes but for the purpose of (a) fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Agreement to be outstanding; (b) fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (c) fixing or hedging commodity price risk, including the price or cost of raw materials, emission rights, manufactured products or related commodities, with respect to any commodity purchases or sales;

(11) the guarantee by Issuer or any of the Guarantors of Indebtedness of Issuer or a Guarantor, and the guarantee by any Subsidiary that is not a Guarantor of Indebtedness of another Subsidiary that is not a Guarantor, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of Section 7.4; *provided* that if the Indebtedness being guaranteed is subordinated in right of payment to or pari passu with the Obligations, then the guarantee must be subordinated or pari passu, as applicable, in right of payment to the same extent as the Indebtedness guaranteed;

(12) the incurrence by Issuer or any of the Subsidiaries of Indebtedness in respect of workers' compensation claims, unemployment or other insurance or self-insurance obligations, health, disability or other benefits to employees or former employees and their families, bankers' acceptances and similar obligations in the ordinary course of business;

(13) the incurrence by Issuer or any of the Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five (5) Business Days;

(14) the incurrence by Issuer or any of the Subsidiaries of Indebtedness arising from customary agreements of Issuer or any such Subsidiary providing for indemnification, adjustment of purchase price, earn-out, royalty, milestone or similar obligations, in each case, incurred or assumed in connection with the acquisition or sale or other disposition of any business, assets or Capital Stock of Issuer or any of the Subsidiaries, other than, in the case of any such disposition by Issuer or any of the Subsidiaries, guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock;

(15) the incurrence of contingent liabilities arising out of endorsements of checks and other negotiable instruments for deposit or collection in the ordinary course of business;

(16) the incurrence of Indebtedness in the ordinary course of business under any agreement between Issuer or any of the Subsidiaries and any commercial bank or other financial institution relating to Treasury Management Arrangements;

(17) the incurrence of Indebtedness in respect of (A) letters of credit, bank guarantees, surety, indemnity, stay, customs, appeal, replevin or performance bonds and similar instruments issued for the account of Issuer or the account of any of the Subsidiaries, in each case, to the extent incurred in the ordinary course of business and in an aggregate amount not to exceed Two Million Dollars ($2,000,000), and (B) completion guarantees, statutory obligations, surety, environmental or appeal bonds, bids, leases, government contracts, contracts (other than for borrowed money), performance bonds or other obligations of a like nature, in each case, to the extent incurred in the ordinary course of business and in an aggregate amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000);

(18) the incurrence of Indebtedness consisting of (a) the financing of insurance premiums in the ordinary course of business or (b) take-or-pay obligations contained in supply agreements in the ordinary course of business;

(19) to the extent constituting Indebtedness, Indebtedness representing any taxes, assessments or governmental charges to the extent such taxes are being contested in good faith and adequate reserves have been provided therefor in conformity with GAAP;

(20) customer deposits and advance payments received in the ordinary course of business from customers or vendors for goods or services purchased in the ordinary course of business;

(21) Indebtedness in the form of (a) guarantees of loans and advances to officers, directors and employees permitted under clause (8) of the definition of "Permitted Investments," and (b) reimbursements owed to officers, directors and employees of Issuer or any of its Subsidiaries; and

(22) Indebtedness consisting of guarantees of indebtedness or other obligations of joint ventures permitted under clause (21) of the definition of "Permitted Investments," in an amount incurred under this clause (22), not to exceed at any one time outstanding, One Million Dollars ($1,000,000).

"**Permitted Investments**" means:

(1) (i) any Investment in Issuer, any Guarantor or the Operating Company, (ii) any Investment by any Subsidiary that is not a Guarantor in Issuer or any Subsidiary (in each case, other than any Investment in any Capital Stock of Issuer) and (iii) any Investment by Issuer or any Subsidiary in any Excluded Subsidiary in an aggregate amount not to exceed One Million Dollars ($1,000,000) in the aggregate since the Effective Date;

(2) any Investment in Cash Equivalents;

(3) any Investment by Issuer or any Subsidiary in a Person, if, as a result of, or in connection with, such Investment:

(i) such Person becomes or will become a Guarantor; or

(ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, Issuer or any Guarantor;

(4) any Investment made as a result of the receipt of non-cash consideration from a Transfer that was made pursuant to and in compliance with Section 7.1 or from a sale or other disposition of assets not constituting a Transfer;

(5) any Investments to the extent made in exchange for, or with the proceeds of, the issuance of Capital Stock (other than Disqualified Stock) of Issuer;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of Issuer or any of the Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(7) Investments represented by Hedging Obligations;

(8) loans and advances, and guarantees of such loans and advances, to officers, directors or employees (a) for business-related travel expenses, moving expenses and other similar expenses, including as part of a recruitment or retention plan, in each case incurred in the ordinary course of business or consistent with past practice or to fund any such Person's purchase of Capital Stock of Issuer or any direct or indirect parent entity of Issuer and (b) required by applicable employment laws;

(9) any Investment of Issuer or any of the Subsidiaries existing on the Effective Date in an amount greater than Five Hundred Thousand Dollars ($500,000) as set forth on Schedule 7.7 hereto, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Effective Date; *provided* that the amount of any such Investment may be increased as otherwise permitted under this Agreement;

(10) guarantees of Indebtedness and lease and other ordinary course obligations otherwise permitted by the terms of this Agreement;

(11) receivables owing to Issuer or any of the Subsidiaries, prepaid expenses, and lease, utility, workers' compensation and other deposits, if created, acquired or entered into in the ordinary course of business;

(12) payroll, business-related travel and similar advances that are made in the ordinary course of business;

(13) Investments consisting of purchases and acquisitions of inventory, supplies, material or equipment pursuant to joint marketing, joint development or similar arrangements with

other Persons in the ordinary course of business and entered with bona fide counterparties operating in the same industry as Issuer;

(14) advances, loans, rebates and extensions of credit (including the creation of receivables and endorsements for collection and deposit) to suppliers, customers and vendors, and performance guarantees, in each case in the ordinary course of business;

(15) Investments resulting from the acquisition of a Person otherwise permitted by this Agreement, which Investments at the time of such acquisition were held by the acquired Person and were not acquired in contemplation of the acquisition of such Person;

(16) stock, obligations or securities received in satisfaction of judgments and any renewal or replacement thereof;

(17) [reserved];

(18) other Investments in any Person having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value) that, when taken together with all other Investments made pursuant to this clause (18), do not, at any time outstanding, exceed One Million Dollars ($1,000,000), net of any cash return of capital with respect to such Investments received by Issuer or any Subsidiary;

(19) (i) lease, utility and other similar deposits, (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar deposits, and (iii) guaranties of business obligations owed to landlords, suppliers, customers, franchisees and licensees of Issuer and its Subsidiaries, in each case, in the ordinary course of business;

(20) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Agreement; and

(21) Investments in joint ventures, corporate collaborations or strategic alliances in the ordinary course of business of Issuer or any of the Subsidiaries otherwise permitted by this Agreement; *provided* that any such cash Investments do not exceed One Million Dollars ($1,000,000).

"**Permitted Liens**" means:

(1) Liens on the Collateral securing any Indebtedness (and other related obligations) incurred pursuant to clauses (1), (2) and (5) of the definition of "Permitted Debt", including any Permitted Refinancing Indebtedness thereof;

(2) Liens on property of a Person existing at the time such Person becomes a Subsidiary or is merged with or into or consolidated with Issuer or any Subsidiary; *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of such Person becoming a Subsidiary or such merger or consolidation and do not extend to any assets other than those of the Person that becomes a Subsidiary or is merged into or consolidated with

Issuer or any Subsidiary (plus improvements and accessions to such property or proceeds or distributions thereof);

(3) Liens on property (including Capital Stock) existing at the time of acquisition of the property by Issuer or any Subsidiary (plus improvements and accessions to such property or proceeds or distributions thereof); *provided* that such Liens were in existence prior to such acquisition and not incurred in contemplation of such acquisition;

(4) Liens to secure Capital Lease Obligations or purchase money obligations, as permitted to be incurred pursuant to clause (4) of the definition of "Permitted Debt," and encumbering only the assets acquired with or financed by such Indebtedness (and other related Obligations) (plus improvements and accessions to such property or proceeds or distributions thereof);

(5) Liens in the form of licenses or sublicenses of Intellectual Property;

(6) (a) Liens in favor of Issuer or the Guarantors; (b) Liens on the property of any Subsidiary that is not a Guarantor in favor of any other Subsidiary and (c) Liens on the property of any Subsidiary of Issuer that is not a Subsidiary in favor of Issuer or any of the Subsidiaries;

(7) Liens (other than Liens imposed by the Employee Retirement Income Security Act of 1974, as amended) in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), insurance, surety, bid, performance, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance bonds and other similar obligations (in each case, exclusive of obligations for the payment of Indebtedness); *provided* that such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or any order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(8) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, which proceedings (or order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien; *provided* that any reserve or other appropriate provision as is required in conformity with GAAP has been made therefor;

(9) any state of facts an accurate survey would disclose, prescriptive easements or adverse possession claims, minor encumbrances, easements or reservations of, or rights of others for, or pursuant to any leases, licenses, rights-of-way or other similar agreements or arrangements, development, air or water rights, sewers, electric lines, telegraph and telephone lines and other utility lines, pipelines, service lines, railroad lines, improvements and structures located on, over or under, any property, drains, drainage ditches, culverts, electric power or gas generating or co-generation, storage and transmission facilities and other similar purposes, zoning or other restrictions as to the use of real property or minor defects in title, which were not incurred to secure payment of Indebtedness and that do not in the aggregate materially adversely affect the value or

marketability of said properties or materially impair their use in the operation of the business of the owner or operator of such properties or business;

(10) (i) Liens incurred or pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security and employee health and disability benefits, or casualty-liability insurance or self-insurance and (ii) deposits in respect of letters of credit, bank guarantees or similar instruments issued for the account of Issuer or any of the Subsidiaries in the ordinary course of business and supporting obligations of the type set forth in sub-clause (i); *provided* that such Liens are for amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or any order entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property subject to any such Lien;

(11) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made in conformity with GAAP;

(12) Liens incurred by the Operating Company or any of its Subsidiaries securing Indebtedness under clause (5) of the definition of "Permitted Debt";

(13) Liens in favor of any collecting or payor bank having a right of setoff, revocation, refund or chargeback with respect to money or instruments of Issuer or any Subsidiary on deposit with or in possession of such bank;

(14) any obligations or duties affecting any of the property of Issuer or any of the Subsidiaries to any municipality or public authority with respect to any franchise, grant, license, or permit that do not materially impair the use of such property for the purposes for which it is held;

(15) Liens on any amounts held by a trustee in the funds and accounts under an indenture securing any bonds issued for the benefit of Issuer or any of the Guarantors;

(16) Liens on deposit accounts incurred to secure Treasury Management Arrangements pursuant to such Treasury Management Arrangements incurred in the ordinary course of business;

(17) any netting or set-off arrangements entered into by Issuer or any of the Subsidiaries in the ordinary course of its banking arrangements (including, for the avoidance of doubt, cash pooling arrangements) for the purposes of netting debit and credit balances of Issuer or any of the Subsidiaries;

(18) Liens imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers', warehousemen's, materialmen's, landlords', workmen's, suppliers', repairmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business (including customary contractual landlords' liens under operating leases entered into in the ordinary course of business); and which do not in the aggregate materially detract from the value of the property of Issuer and the Subsidiaries, taken

as a whole, and do not materially impair the use thereof in the operation of the business of Issuer and the Subsidiaries, taken as a whole;

(19) Liens on proceeds of insurance securing Indebtedness permitted pursuant to clause (17) and/or (18) of the definition of "Permitted Debt";

(20) to the extent constituting a Lien, escrow arrangements securing indemnification obligations in connection with an acquisition of a Person or a disposition that is otherwise permitted under this Agreement;

(21) security deposits under real property leases that are made in the ordinary course of business; and

(22) Liens arising from UCC financing statement or PPSA financing statement filings regarding operating leases, bailments or consignments entered into by Issuer and the Subsidiaries and other precautionary UCC financing statements or similar filings.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"**Pledge Agreement**" means that certain Pledge Agreement dated as of the Closing Date, between Issuer and Collateral Agent, on behalf of the Secured Parties, as amended, amended and restated, supplemented or otherwise modified from time to time.

"**PPSA**" means the Australian Personal Property Securities Act 2009 (Cth) and any regulations in force at any time under that Act, including the Australian Personal Property Securities Regulations 2010 (Cth).

"**Pro Rata Share**" is, as of any date of determination, with respect to each Purchaser, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Notes held by such Purchaser by the aggregate outstanding principal amount of all Notes.

"**Prohibited Transaction**" means a 'prohibited transaction,' as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code.

"**Property**" means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

"**Purchaser**" is any one of the Purchasers.

"**Purchasers**" are the Persons identified on Schedule 2.2 hereto and each successor and assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Purchasers' Expenses**" are (a) all reasonable audit fees and expenses, costs, and expenses (including reasonable and documented attorneys' fees and expenses (whether generated in house or by outside counsel), as well as appraisal fees, fees incurred on account of lien searches,

inspection fees, and filing fees) for preparing, amending, negotiating and administering the Note Documents, and (b) all fees and expenses (including attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for defending and enforcing the Note Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Purchasers in connection with the Note Documents.

"**Qualified Capital Stock**" means Capital Stock of Issuer that is not Disqualified Stock.

"**R&D Expenditure**" means any expenditure incurred by Issuer or any Subsidiary in research and development or clinical development efforts, or any license or distribution agreements, in connection with the Products or other potential product candidates that may be introduced by Issuer for carrying on the business of Issuer and its Subsidiaries that Issuer determines in good faith will enhance the income generating ability of Issuer and the Subsidiaries, taken as a whole.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Regulatory Action**" means an administrative, regulatory, or judicial enforcement action, proceeding, investigation or inspection, warning letter, untitled letter, other notice of violation letter, recall, seizure, injunction or consent decree, issued by a Governmental Authority.

"**Reinvestment Deferred Amount**" means, with respect to any Reinvestment Event, the aggregate Net Proceeds received by Issuer or any Subsidiary in connection therewith that are not applied to prepay the Notes pursuant to Section 2.2(c) as a result of the delivery of a Reinvestment Notice.

"**Reinvestment Event**" means any Asset Sale in respect of which Issuer has delivered a Reinvestment Notice.

"**Reinvestment Notice**" means a written notice executed by a Responsible Officer stating that no Default or Event of Default has occurred and that Issuer (directly or indirectly through a Subsidiary) intends and expects to use all or a specified portion of the Net Proceeds of an Asset Sale to reinvest in Additional Assets or R&D Expenditures.

"**Reinvestment Prepayment Amount**" means, with respect to any Reinvestment Event, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to reinvest in Additional Assets or R&D Expenditures.

"**Reinvestment Prepayment Date**" means, with respect to any Reinvestment Event, the earlier of (a) the date occurring 360 days after such Reinvestment Event and (b) the date on which Issuer shall have determined not to, or shall have otherwise ceased to, reinvest in Additional Assets or R&D Expenditures with all or any portion of the relevant Reinvestment Deferred Amount.

"**Related Persons**" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each

insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

"**Reportable Event**" means a reportable event described in Section 4043(c) of ERISA, unless the notice requirement has been duly waived.

"**Required Purchasers**" means Purchasers holding more than 50% in aggregate principal amount of the Notes.

"**Requirement of Law**" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of Issuer acting alone.

"**Restatement Date**" means [_____], 2024.

"**Restricted Payment**" means Issuer or any Subsidiary acting to:

(1) declare or pay any dividend or make any other payment or distribution on or in respect of Issuer's or any Subsidiary's Capital Stock (including any such payment in connection with any merger or consolidation involving such Person), except (x) dividends or distributions payable solely in Capital Stock (other than Disqualified Stock) of Issuer or such Subsidiary, and (y) dividends or distributions payable solely to Issuer or any of the Subsidiaries (and, if such Subsidiary is not a wholly-owned subsidiary, to its other Capital Stock holders on a pro rata basis with respect to the class of Capital Stock on which such dividend or distribution is made, or on a basis that results in the receipt by Issuer or any of the Subsidiaries of dividends or distributions of at least its pro rata share of such dividend or distribution);

(2) purchase, redeem or otherwise acquire or retire for value, directly or indirectly, any Capital Stock of Issuer;

(3) make any principal payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness of Issuer or any Subsidiary that is Junior Indebtedness, except, (x) payments of principal at the Stated Maturity thereof, and (y) in the case of any Existing Indebtedness with a Stated Maturity prior to the Maturity Date, the purchase, repurchase, redemption, defeasance or other acquisition of any such Existing Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition; or

(4) make any Investment other than a Permitted Investment.

"**Restructuring Support Agreement**" means that certain Restructuring Support Agreement entered into as of [___], 2023 among Bluescape, Ascend, Issuer and each other

Company Party (as defined in the Restructuring Support Agreement) and Consenting Party (as defined in the Restructuring Support Agreement).

"**Revenue**" means, with respect to any period, revenue of the Issuer and its Subsidiaries as determined in accordance with GAAP for such period.

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, "Scheduled Trading Day" means a Business Day.

"**SEC**" means the Securities and Exchange Commission.

"**Secured Parties**" means the Collateral Agent and the Purchasers.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made under the Code.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Software**" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"**Solvent**" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the other Note Documents, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto), provided that, in relation to any Person that is an Australian Obligor, such Person will not be "Solvent" to the extent that it is: (i) taken (under section 459F(1) of the Australian Corporations Act) to have failed to comply with a statutory demand; or (ii) the subject of an event described in section 459C(2)(b) or section 585 of the Australian Corporations Act.

"**Specified Contribution**" means (a) an equity contribution made by holders of Capital Stock in the Issuer or (b) the issuance of Junior Indebtedness, in either case, the proceeds of which are used in accordance with the provisions set forth in Section 8.13.

"**Stated Maturity**" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal, as applicable, was scheduled to be paid in the documentation governing such Indebtedness, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof; *provided*, *however*, that, with respect to clause (3) of definition of Restricted Payments, the Stated Maturity of any Existing Indebtedness shall be the Stated Maturity as of the Effective Date or a later date to the extent the documents governing such Indebtedness shall have been amended or modified to provide for such later date.

"**Stock Price**" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is pursuant to clause (a) or (c) of the definition of "Change in Control," then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

"**Subsidiary**" is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries. For purposes of Section 8 only, "Subsidiaries" shall exclude any single Subsidiary or group of Subsidiaries where such Subsidiary's revenue or such group of Subsidiaries' revenue (in each case in accordance with GAAP) or assets is less than five percent (5.0%) of the aggregate (A) revenue and (B) assets (including both tangible and intangible, and measured as the lower of fair market value or book value), of Issuer and all its Subsidiaries, in each case measured on a consolidated basis for Issuer and all its Subsidiaries. Where such term is used without a referent Person, such term shall be deemed to mean a Subsidiary of Issuer, unless the context otherwise requires.

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

"**Technology**" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"**Trademarks**" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not,

applications to register and registrations of the same and like protections, and the entire goodwill of the business of Issuer and each Guarantor connected with and symbolized by such trademarks.

"**Trading Day**" means a day on which (a) there is no Market Disruption Event, and (b) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Select Market or, if the Common Stock (or such other security) is not then listed or quoted on The NASDAQ Global Select Market, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded; *provided* that if the Common Stock (or such other security) is not so listed or traded, "Trading Day" means a Business Day.

"**Transactions**" means the issuance of the Notes pursuant to this Agreement.

"**Transfer**" means (i) the sale, lease, conveyance or other disposition of any assets or rights (whether in a single transaction or a series of related transactions) outside of the ordinary course of business of Issuer or any Subsidiary, and (ii) the issuance of Capital Stock by any of Issuer's Subsidiaries or the sale of Capital Stock in any of Issuer's Subsidiaries (other than directors' qualifying Capital Stock or Capital Stock required by applicable law to be held by a Person other than Issuer or one of its Subsidiaries).

"**Treasury Management Obligations"** means any agreement or other arrangement governing the provision of treasury or cash management services, including, without limitation, deposit accounts, overdraft, overnight draft, credit cards, debit cards, p-cards (including purchasing cards, employee credit card programs and commercial cards), funds transfer, automated clearinghouse, direct debit, zero balance accounts, returned check concentration, check endorsement guarantees, controlled disbursement, lockbox, account reconciliation and reporting and trade finance services, netting services, cash pooling or sweep arrangements, payment processing, credit and debit card acceptance or merchant services and other treasury or cash management services.

"**Unqualified Opinion**" means an opinion on financial statements from an independent certified public accounting firm acceptable to the Required Purchasers in their reasonable discretion which opinion shall not include any qualifications or any going concern limitations other than customary qualifications related to negative profits and debt maturities within one year of applicable maturity date.

"**Unrestricted Cash**" means (a) unrestricted cash and Cash Equivalents of the Issuer and its Subsidiaries and (b) cash and Cash Equivalents of the Issuer and its Subsidiaries that are restricted only in favor of the Collateral Agent or subject to a Control Agreement in favor of the Collateral Agent; in each case whether cash or Cash Equivalents are "unrestricted" or "restricted" is to be determined in accordance with GAAP.

"**VAT**" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in

substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then-remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of such Indebtedness, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then-outstanding principal amount of such Indebtedness.

2. NOTES AND TERMS OF PAYMENT

2.1 [Reserved]

2.2 Issuance of Notes.

(a) Purchase and Sale of Notes.

(i) On August 26, 2022 (the "**Closing Date**"), the Issuer issued and sold to Bluescape, and Bluescape purchased and acquired from the Issuer, for a purchase price of Sixty Million Dollars ($60,000,000) (the "**Purchase Price**") Secured Promissory Notes (each a "**Note**" and, collectively, the "**Notes**") in an aggregate principal amount of Sixty Million Dollars ($60,000,000).

(ii) As of the date of this Agreement, Bluescape is the holder of $[64,600,000] in aggregate principal amount of Notes (the "**BEP Notes**"). Subject to the terms and conditions of this Agreement and the Restructuring Support Agreement, Bluescape shall sell and transfer to [each of] Ascend [and Element / 5ECAP Debt], and [each of] Ascend [and Element / 5ECAP Debt] shall purchase from Bluescape BEP Notes in an aggregate principal amount of $[__], plus any accrued and unpaid interest through, but not including, the Restatement Date, for a total of $[32,300,000] aggregate principal amount of Notes so transferred. On the Restatement Date, Issuer shall issue to each Purchaser as of the Restatement Date, Notes in the form attached as Exhibit E hereto in the respective amounts for each such Purchaser set forth on Schedule 2.2 hereto.

(iii) Schedule 2.2 hereto sets forth, with respect to each Purchaser, the aggregate principal amount of Notes to be held by each Purchaser on the Restatement Date.

(b) Repayment. The Issuer shall make semi-annual payments of interest only on each Interest Payment Date, commencing on February 1, 2023, and continuing on each Interest Payment Date thereafter. All outstanding principal and accrued and unpaid interest with respect to the Notes is due and payable in full on the Maturity Date.

(c) Mandatory Prepayments.

(i) If the principal amount of the Notes is accelerated (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), Issuer shall immediately pay to Purchasers, payable to each Purchaser in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) the outstanding principal amount of the Notes, plus (ii) accrued and unpaid interest thereon through the prepayment date, plus (iii) all other Obligations that are due and payable, including Purchasers' Expenses and interest at the Default Rate, if applicable, with respect to any past due amounts.

(ii) If on any date Issuer or any Subsidiary shall receive Net Proceeds from any Asset Sale, Issuer shall apply an amount equal to one hundred percent (100%) of such Net Proceeds, to prepay the Notes; *provided* that,

(1) Issuer may deliver a Reinvestment Notice with respect to the percentage of such Net Proceeds in the Issuer Retention column below, and shall apply an amount equal to the percentage of such Net Proceeds in the Note Repayment column below, to prepay the Notes:

Proceeds (millions)	**Note Repayment (%)**	**Issuer Retention (%)**
First $10.0	25.0%	75.0%
Next $10.0	35.0%	65.0%
Next $10.0	45.0%	45.0%
Any remaining proceeds thereafter	50.0%	50.0%

and

(2) notwithstanding the foregoing, on each Reinvestment Prepayment Date, Issuer shall apply an amount equal to the Reinvestment Prepayment Amount with respect to the relevant Reinvestment Event to prepay the Notes (together with any applicable premium).

All Net Proceeds from Asset Sales shall be deposited in a Collateral Account pending repayment or reinvestment in accordance with the terms of this Section 2.2(c).

Amounts to be applied in connection with prepayments made pursuant to this Section 2.2(c)(ii) shall be payable to each Purchaser in accordance with its respective Pro Rata Share; *provided* that any Purchaser may decline any such prepayment (collectively, the "**Declined Amount**"), in which case the Declined Amount shall be retained by Issuer. Each prepayment of the Notes under this Section 2.2(c)(ii) shall be accompanied by accrued interest to the date of such prepayment on the amount prepaid. Issuer shall deliver to each Purchaser notice of each prepayment of Notes in whole or in part pursuant to this Section 2.2(c)(ii) not less than five (5) Business Days prior to the date such prepayment shall be made (each, a "**Mandatory Prepayment Date**"). Such notice shall set forth (i) the Mandatory Prepayment Date, (ii) the aggregate amount of such prepayment, and (iii) the option of each Purchaser to (x) decline its share of such prepayment or (y) accept Declined Amounts. Any Purchaser that wishes to exercise its option to decline such prepayment or to accept Declined Amounts shall notify Issuer not later than three (3) Business Days prior to the Mandatory Prepayment Date.

Issuer shall not, and shall not permit any of the Subsidiaries to, use any Net Proceeds received from any Asset Sale to repay any Junior Indebtedness.

2.3 Payment of Interest on the Notes.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Notes shall accrue interest at a per annum rate equal to (i) from the Closing Date to the Restatement Date, (x) 4.5% for interest paid in cash or (y) 6.00% in the case of PIK Interest, and (ii) from the Restatement Date and thereafter, (x) 4.5% for interest paid in cash or (y) 10.00% in the case of PIK Interest, which interest, in the case of each of the foregoing clauses (i) and (ii), shall be payable semi-annually in arrears in accordance with Section 2.2(b). Such interest shall accrue commencing on, and including, the Closing Date, and shall accrue on the principal amount outstanding under the Notes through and including the day on which the Notes are paid in full (or any payment is made hereunder).

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, all Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus two percentage points (2.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Purchasers.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, all payments by Issuer under the Note Documents shall be made to the respective Purchaser to which such payments are owed, at such Person's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable on each Interest Payment Date. Payments of principal and/or interest or any Redemption Price received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Issuer hereunder or under any other Note Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Notwithstanding the foregoing, Issuer may elect to pay the interest on the principal amount outstanding under the Notes payable pursuant to this Section 2.3 as paid-in-kind interest, added to the aggregate principal amount of the Note on the date such interest would otherwise be due hereunder (the amount of any such paid-in-kind interest being "**PIK Interest**"). The Issuer shall be deemed to have elected to pay PIK Interest unless it shall notify each Purchaser in writing of an election to pay interest in cash at least two (2) Business Days before applicable Interest Payment Date.

2.4 Fees. Issuer shall pay to Collateral Agent and/or the Purchasers (as applicable) the following fees, which shall be deemed fully earned and non-refundable upon payment:

(a) **Purchasers' Expenses**. All Purchasers' Expenses (including reasonable and documented attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Closing Date, when due.

(b) **Collateral Agent Fees**. All fees payable to Collateral Agent as set forth in the Fee Letter at the times and in the amounts specified therein (such fees being referred to herein collectively as the "**Collateral Agent Fees**"). The Collateral Agent Fees are in addition to reimbursement of the Collateral Agent Expenses in accordance with Section 12.2(b) and Exhibit B. The Collateral Agent Fees shall be fully earned when due and shall not be refundable for any reason whatsoever.

2.5 Taxes; Increased Costs. Issuer, Collateral Agent and the Purchasers each hereby agree to the terms and conditions set forth on Exhibit C attached hereto.

2.6 Notes. The Notes shall be substantially in the form attached as Exhibit E hereto, and the terms of this Agreement shall be incorporated by reference into the Notes as if set forth therein; *provided* that in the event of any conflict between the terms of this Agreement and the Notes, the terms of this Agreement shall control. Issuer irrevocably authorizes each Purchaser to make or cause to be made, on or about the Closing Date or the Restatement Date (as the context may require) or at the time of receipt of any payment of principal on such Purchaser's Note, an appropriate notation on such Purchaser's Note (the "**Purchaser's Note Record**") reflecting the purchase of such Notes or (as the case may be) the receipt of such payment. The outstanding amount of the Notes set forth on such Purchaser's Note Record shall be, absent manifest error, prima facie evidence of the principal amount thereof owing and unpaid to such Purchaser, but the failure to record, or any error in so recording, any such amount on such Purchaser's Note Record shall not limit or otherwise affect the obligations of Issuer under any Note or any other Note Document to make payments of principal of or interest on, or any Redemption Price in respect of, any Note when due. Upon receipt of an affidavit of an officer of a Purchaser as to the loss, theft, destruction, or mutilation of its Note, Issuer shall issue, in lieu thereof, a replacement Note in the same principal amount thereof and of like tenor.

2.7 Reserved.

2.8 [Conversion. Subject to the provisions of this Section 2.8, each Purchaser may, at its option, convert such Purchasers' Notes into Conversion Consideration. Notes may be converted in part, but only in Authorized Denominations, and provisions of this Section 2.8 applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(a) When Notes May Be Converted.

(i) *Purchaser Conversion*. A Purchaser may convert its Notes at any time until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date.

(b) Conversion Procedures.

(i) To convert all or a portion of a Note, a Purchaser must (1) complete, manually sign and deliver to the Issuer the conversion notice attached to such Note or a facsimile

of such conversion notice; and (2) deliver such Note to the Issuer (at which time such conversion will become irrevocable).

(ii) At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration due upon such conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to hold such Note (or such portion thereof) as of the Close of Business on such Conversion Date).

(iii) The Person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on the Conversion Date for such conversion.

(iv) If a Note is converted, the Issuer will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue of any shares of Common Stock upon such conversion; *provided*, *however*, that if any tax or duty is due because the applicable Purchaser requested such shares to be registered in a name other than such Purchaser's name, then such Purchaser will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Issuer may refuse to deliver any such shares to be issued in a name other than that of such Purchaser.

(c) Settlement Upon Conversion. The type and amount of consideration (the "**Conversion Consideration**") due in respect of each $1,000 principal amount of a Note (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) to be converted will be a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion.

(i) If the number of shares of Common Stock deliverable pursuant to Section 2.8(c) upon conversion of any Note is not a whole number, then such number will be rounded to the nearest whole number.

(ii) If a Purchaser converts more than one Note on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will be computed based on the total principal amount of Notes converted on such Conversion Date by or with respect to such Purchaser.

(iii) The Issuer will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Purchaser on or before the second Business Day immediately after the Conversion Date for such conversion.

(iv) At all times when any Notes are outstanding, the Issuer will reserve, out of its authorized but unissued and unreserved shares of Common Stock, a number of shares of Common Stock sufficient to permit the conversion of all then-outstanding Notes, assuming the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to Section 2.9.

(v)Each Conversion Share delivered upon conversion of any Note will be duly and validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien

or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Purchaser holding such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Issuer will cause each Conversion Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

(vi) Upon conversion, a Purchaser shall not receive any separate cash payment for accrued and unpaid interest, if any. The Issuer's delivery of the Conversion Consideration shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any (other than for the avoidance of doubt, PIK Interest), to, and including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited.

(d) Adjustments to the Conversion Rate. The Conversion Rate will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations*. If the Issuer issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Issuer effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which Section 2.11 will apply), then the Conversion Rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date of such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock combination; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, stock split or stock combination.

Any adjustment made under this Section 2.8(d)(i) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such share split or share combination, as applicable. If any dividend, distribution, stock split or stock combination of the type described in this Section 2.8(d)(i) is declared or announced, but not so paid or made, then the Conversion Rate

will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants*. If the Issuer distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which Section 2.8(d)(iii)(1) and Section 2.8(f) will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

Any increase made under this Section 2.8(d)(ii) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised),

the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants.

For purposes of this Section 2.8(d)(ii), in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Issuer receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Board of Directors.

(iii) *Spin-Offs and Other Distributed Property*.

(1) *Distributions Other than Spin-Offs*. If the Issuer distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Issuer, or rights, options or warrants to acquire Capital Stock of the Issuer or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(i) or 2.8(d)(ii);

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(iv);

(c) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in Section 2.8(f);

(d) Spin-Offs for which an adjustment to the Conversion Rate is required pursuant to Section 2.8(d)(iii)(2);

(e) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which Section 2.8(d)(v) will apply; and

(f) a distribution solely pursuant to a Common Stock Change Event, as to which Section 2.11 will apply,

then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - FMV}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Board of Directors), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

Any increase made under the portion of this Section 2.8(d)(iii) above shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. If *FMV* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Purchaser will receive, for each $1,000 principal amount of Notes (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) held by such Purchaser on the Ex-Dividend Date for such distribution, at the same time and on the same terms as holders of Common Stock, the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Purchaser would have received if such Purchaser had owned, on such Ex-Dividend Date, a number of shares of Common Stock equal to the Conversion Rate in effect on such Ex-Dividend Date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Issuer distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Issuer to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which Section 2.11 will apply; or (y) a tender offer or exchange offer for shares of Common Stock, as to which Section 2.8(d)(v) will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a "**Spin-Off**"), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the "**Spin-Off Valuation Period**") beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the Close of Business on the last Trading Day of the Spin-Off Valuation Period; *provided* that if the Conversion Date for a Note occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this Section 2.8(d)(iii)(2) is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions*. If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

Any increase pursuant to this Section 2.8(d)(iv) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. If *D* is equal to or greater than *SP*, then, in lieu of the foregoing adjustment to the Conversion Rate, each Purchaser will receive, for each $1,000 principal amount of Notes (including, for the avoidance of doubt, any PIK Interest paid with respect thereto) held by such Purchaser on the Ex-Dividend Date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, the amount of cash that such Purchaser would have received if such Purchaser had owned, on such Ex-Dividend Date, a number of shares of Common Stock equal to the Conversion Rate in effect on such Ex-Dividend Date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers*. If the Issuer or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock, and the value (determined as of the Expiration Time by the Board of Directors) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP \times OS_1)}{SP \times OS_0}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;

AC = the aggregate value (determined as of the time (the "**Expiration Time**") such tender or exchange offer expires by the Board of Directors) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the "**Tender/Exchange Offer Valuation Period**") beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, *however*, that the Conversion Rate will in no event be adjusted down pursuant to this Section 2.8(d)(v), except to the extent provided in the immediately following paragraph. The increase to the Conversion Rate under this Section 2.8(d)(v) shall occur at the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period; *provided* that if the Conversion Date for a Note occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including as a result of the Issuer being precluded from consummating such tender or exchange offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(vi) If, on or after the Closing Date and on or prior to the 3-month anniversary of the Closing Date, the Issuer or any of its Subsidiaries issues or otherwise sells any shares of Common Stock, or any Equity-Linked Securities, in each case at an Effective Price per share of Common Stock that is less than the Conversion Price in effect (before giving effect to the adjustment required by this Section 2.8(d)(vi)) as of the date of the issuance or sale of such shares or Equity-Linked Securities (such an issuance or sale, a "**Degressive Issuance**"), then, effective as of the Close of Business on such date, the Conversion Rate will be increased to an amount equal to (x) one thousand dollars ($1,000) *divided by* (y) the Weighted Average Issuance Price. For these purposes, the "**Weighted Average Issuance Price**" will be equal to:

$$\frac{(CP \times OS) + (EP \times X)}{OS + X}$$

where:

CP = such Conversion Price;

OS = the sum of (1) number of shares of Common Stock and(2) the number of shares into which the Notes could be converted if fully converted, in each case outstanding immediately before such Degressive Issuance;

EP = the Effective Price per share of Common Stock in such Degressive Issuance; and

X = the sum, without duplication, of (x) the total number of shares of Common Stock issued or sold in such Degressive Issuance; and (y) the maximum number of shares of Common Stock underlying such Equity-Linked Securities issued or sold in such Degressive Issuance;

provided, *however*, that (1) the Conversion Rate will not be adjusted pursuant to this Section 2.8(d)(vi) solely as a result of an Exempt Issuance or as a result of any transaction in respect of which an adjustment is made pursuant to Section 2.8(d)(i), (ii), (iii), (iv) and/or (v); (2) the issuance of shares of Common Stock pursuant to any such Equity-Linked Securities will not constitute an additional issuance or sale of shares of Common Stock for purposes of this Section 2.8(d)(vi) (it being understood, for the avoidance of doubt, that the issuance or sale of such Equity-Linked Securities, or any re-pricing or amendment thereof, will be subject to this Section 2.8(d)(vi)); and (3) in no event will the Conversion Rate be decreased pursuant to this Section 2.8(d)(vi). For purposes of this Section 2.8(d)(vi), any re-pricing or amendment of any Equity-Linked Securities (including, for the avoidance of doubt, any Equity-Linked Securities existing as of the Effective Date) will be deemed to be the issuance of additional Equity-Linked Securities, without affecting any prior adjustments theretofore made to the Conversion Rate. The Issuer will not effect any Degressive Issuance that would result in an adjustment to the Conversion Rate pursuant to this Section 2.8(d)(vi) that requires the approval of the Issuer's stockholders pursuant to the listing standards of The Nasdaq Global Select Market, unless the Issuer has obtained such stockholder approval before such Degressive Issuance.

(e) No Adjustments in Certain Cases. Notwithstanding anything to the contrary in this Section 2.8(d), the Issuer will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to this Section 2.8(d) (other than a stock split or combination of the type set forth in Section 2.8(d)(i), a tender or exchange offer of the type set forth in Section 2.8(d)(v) or a Degressive Issuance) if each Purchaser participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Purchaser of Notes, in such transaction or event without having to convert such Purchaser's Notes and as if such Purchaser held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Purchaser on such date.

(f) Stockholder Rights Plans. If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Issuer has in effect any stockholder rights plan, then the Purchaser holding such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Agreement upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to Section 2.8(d)(iii)(1) on account of such separation as if, at the time of such separation, the Issuer had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to readjustment in accordance with such Section if such rights expire, terminate or are redeemed.

(g) Limitation on Effecting Transactions Resulting in Certain Adjustments. The Issuer will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to Section 2.8(d) or Section 2.9 to an amount that would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock or in a manner which is inconsistent with the listing rules of the ASX.

(h) Equitable Adjustments to Prices. Whenever any provision of this Agreement requires the Issuer to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), the Issuer will make proportionate adjustments, if any, to such calculations to account for any adjustment to the Conversion Rate pursuant to Section 2.8(d)(i) that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date or effective date, as applicable, of such event occurs, at any time during such period.

(i) Calculation of Number of Outstanding Shares of Common Stock. For purposes of Section 2.8(d), the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Issuer's treasury (unless the Issuer pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(j) Calculations. All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(k) Notice of Conversion Rate Adjustments. Upon the effectiveness of any adjustment to the Conversion Rate pursuant to Section 2.8(d), the Issuer will promptly send notice to the Purchasers containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

(l) Voluntary Adjustments. To the extent permitted by law and applicable stock exchange rules, the Issuer, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Issuer; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(m) Notice of Voluntary Increase. If the Board of Directors determines to increase the Conversion Rate pursuant to Section 2.8(l), then, no later than the first Business Day of the related twenty (20) Business Day period referred to in Section 2.8(l), the Issuer will send notice to each Purchaser of such increase, the amount thereof and the period during which such increase will be in effect.]

2.9 [Adjustments to the Conversion Rate in Connection with a Make-Whole Fundamental Change.

(a) Generally. If a Make-Whole Fundamental Change occurs and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this Section 2.9, the Conversion Rate applicable to such conversion will be increased by a number of shares (the "**Additional Shares**") set forth in the table below corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:

	Stock Price													
Make-Whole Fundamental Change Effective Date														
Closing Date														
August 15, 2023														
August 15, 2024														
August 15, 2025														
August 15, 2026														
August 15, 2027														
August 15, 2028														

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the table above, then:

(i) if such Stock Price is between two Stock Prices in the table above or the Make-Whole Fundamental Change Effective Date is between two dates in the table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the table above or the earlier and later dates in the table above, based on a 365-day year; and

(ii) if the Stock Price is greater than $[●] (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above are adjusted pursuant to Section 2.9(b)), or less than $[●] (subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Agreement or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds [62.5] shares of Common Stock per $1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to Section 2.8(d).

(b) Adjustment of Stock Prices and Number of Additional Shares. The Stock Prices in the first row (*i.e.*, the column headers) of the table set forth in Section 2.9(a) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of Section 2.8(d). The numbers of Additional Shares in the table set forth in Section 2.9(a) will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to Section 2.8(d).

(c) Notice of the Occurrence of a Make-Whole Fundamental Change. If a Make-Whole Fundamental Change occurs, then, promptly and in no event later than the Business Day

immediately after the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change, the Issuer will notify the Purchasers of the occurrence of such Make-Whole Fundamental Change and of such Make-Whole Fundamental Change Effective Date, briefly stating the circumstances under which the Conversion Rate will be increased pursuant to this Section 2.9 in connection with such Make-Whole Fundamental Change.

(d) Overlapping Make-Whole Fundamental Change Conversion Periods. If a Conversion Date occurs during two or more Make-Whole Fundamental Change Periods, a Purchaser converting its Notes will be entitled to a single increase to the Conversion Rate with respect to the first to occur of the applicable Make-Whole Fundamental Changes, and the later Make-Whole Fundamental Change(s) will be deemed to not have occurred for purposes of this Section 2.9.]

2.10 Reserved.

2.11 Effect of Common Stock Change Event.

(a) Generally. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Issuer;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a "**Reference Property Unit**"), then, notwithstanding anything to the contrary in this Agreement or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration due upon conversion of any Note will be determined in the same manner as if each reference to any number of shares of Common Stock in this Section 2 (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of Section 2.8(a), each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number

of Reference Property Units; and (III) for purposes of the definition of "Ex-Dividend Date," the term "Common Stock" will be deemed to refer to any class of securities forming part of such Reference Property; and

(2) for these purposes, the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith by the Issuer (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Issuer will notify the Purchasers of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Issuer and the resulting, surviving or transferee Person (if not the Issuer) of such Common Stock Change Event (the "**Successor Person**") will execute and deliver to the Purchasers such supplemental instruments, if any, as the Issuer reasonably determines are necessary or desirable to (x) provide for subsequent conversions of Notes in the manner set forth in this Section 2.11; (y) provide for subsequent adjustments to the Conversion Rate pursuant to Section 2.8(d) in a manner consistent with this Section 2.11; and (z) contain such other provisions, if any, that the Issuer reasonably determines are appropriate to preserve the economic interests of the Purchasers and to give effect to the provisions of this Section 2.11(a). If the Reference Property includes shares of stock or other securities or assets of a Person other than the Successor Person, then such other Person will also execute such supplemental instrument(s) and such supplemental instrument(s) will contain such additional provisions, if any, that the Issuer reasonably determines are appropriate to preserve the economic interests of Purchasers.

(b) Notice of Common Stock Change Events. The Issuer will provide notice of each Common Stock Change Event to the Purchasers no later than the effective date of such Common Stock Change Event.

(c) Compliance Covenant. The Issuer will not become a party to any Common Stock Change Event unless its terms are consistent with this Section 2.11.

3. CONDITIONS OF NOTES

3.1 Conditions Precedent to Restatement Date. The effectiveness of this Agreement on the Restatement Date is subject to the satisfaction of the following conditions precedent.

(a) a copy of this Agreement, duly executed by Issuer, each Purchaser, each Guarantor and Collateral Agent;

(b) [delivery of the Notes in an aggregate principal amount of $[___], plus any accrued and unpaid interest through, but not including, the Restatement Date, duly executed by Issuer, to [each of] Ascend [and Element / 5ECAP Debt]];

(c) to the extent requested by the Purchasers or Collateral Agent, a properly completed and duly executed IRS Form W-9 (or other applicable tax form) from Issuer and all other documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations;

(d) the Operating Documents and good standing certificates of Issuer and each Guarantor certified by the Secretary of State (or equivalent agency) of Issuer's and such Guarantor's jurisdiction of organization or formation and each jurisdiction in which Issuer and each Guarantor is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Restatement Date;

(e) a certificate of Issuer executed by the Secretary of Issuer and each Guarantor executed by a director of the relevant Guarantor with appropriate insertions and attachments, including with respect to (i) the Operating Documents of Issuer or such Guarantor (which Certificate of Incorporation of Issuer shall be certified by the Secretary of State of the State of Delaware); (ii) the resolutions adopted by the Board of Directors or the board of directors (or the functional equivalent thereof) of such Guarantor (except for any Australian Obligor, for which only an extract of such resolutions will be given) for the purpose of approving the transactions contemplated by the Note Documents; (iii) (in the case of each Guarantor) the up-to-date share register of such Guarantor; and (iv) (in the case of each Guarantor) the identification by name and title, and the specimen signatures of, the officers of such Guarantor authorized to sign the Note Documents to which such Guarantor is party;

(f) a duly executed legal opinion of counsel to Issuer dated as of the Restatement Date, in form and substance satisfactory to the Purchasers;

(g) a duly executed legal opinion of Australian counsel to Issuer and Guarantors dated as of the Restatement Date, in form and substance satisfactory to the Purchasers;

(h) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the Restatement Date; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further* that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the purchase of Notes;

(i) no Event of Default or an event that with the passage of time could result in an Event of Default, shall exist;

(j) payment of the fees, Purchasers' Expenses, legal fees and expenses of the Collateral Agent in connection with the negotiation of this Agreement and the other Note Documents and Collateral Agent Fees then due as specified in Section 2.4 hereof;

(k) a completed Perfection Certificate for Issuer and each Guarantor; and

(l) [any necessary amendment or restatement of other Note documents, including security documents, to be confirmed.]

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Without prejudice to the Liens granted by each Australian Obligor under each Australian Security Document to which it is party, on the Closing Date, the Issuer and each Guarantor hereby granted to Collateral Agent, for the ratable benefit of the Secured Parties, to secure the payment and performance in full of all of the Obligations and the Guaranteed Obligations, as applicable, a continuing first priority security interest in, and pledged to Collateral Agent, for the ratable benefit of the Secured Parties, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products and supporting obligations (as defined in the Code) in respect thereof. In respect of the Australian Obligors only, to the extent there is any inconsistency between this Section 4.1 and any provision of any Australian Security Document, the relevant provision of such Australian Security Document shall prevail.

If Issuer or any Guarantor shall acquire any commercial tort claim (as defined in the Code), upon the Closing Date, Issuer or such Guarantor shall grant to Collateral Agent, for the ratable benefit of the Secured Parties, a first priority security interest therein and in the proceeds and products and supporting obligations (as defined in the Code) thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent and the Required Purchasers.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid or converted in full. Upon payment or conversion in full of the Obligations (other than inchoate indemnity obligations) and at such time as the Purchasers' obligation to purchase the Notes has terminated, Collateral Agent shall (acting at the direction of the Required Purchasers), at the sole cost and expense of Issuer, release its Liens in the Collateral and all rights therein shall revert to Issuer and the Guarantors.

4.2 Authorization to File Financing Statements. On the Closing Date, each of Issuer and the Guarantors authorized Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral (held for the ratable benefit of the Secured Parties), without notice to Issuer or any Guarantor, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Note Documents. Notwithstanding anything herein to the contrary, Collateral Agent shall have no obligation to file any financing statements or take any other actions required to perfect Collateral Agent's security interests in the Collateral unless expressly directed to do so in writing by the Required Purchasers.

5. REPRESENTATIONS AND WARRANTIES

Issuer and each Guarantor represents and warrants to Collateral Agent and the Purchasers as follows as of the Restatement Date:

5.1 Due Organization, Authorization: Power and Authority. Issuer and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Issuer and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its

ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Issuer and each of the Guarantors has delivered to Collateral Agent and the Purchasers a completed perfection certificate and any updates or supplements thereto on, before or after the Closing Date (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). For the avoidance of doubt, Collateral Agent and Purchasers agree that Issuer may from time to time update certain information in the Perfection Certificates after the Closing Date to the extent permitted by one or more specific provisions in this Agreement. Issuer represents and warrants that all the information set forth on the Perfection Certificates pertaining to Issuer and each of the Guarantors is accurate and complete, in all non-ministerial respects.

The execution, delivery and performance by Issuer and each Guarantor of the Note Documents to which it is, or they are, a party have been duly authorized, and do not (i) conflict with any of Issuer's or such Guarantor's organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Issuer or such Guarantor, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default or material breach under any Material Agreement by which Issuer, any of its Subsidiaries or any of their respective properties, is bound. Neither Issuer nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Issuer and each Guarantor have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Note Documents, free and clear of any and all Liens except Permitted Liens, and neither Issuer nor any Guarantor has any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent and the Purchasers in connection herewith in respect of which Issuer or such Guarantor has given Collateral Agent and the Purchasers notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein as required under this Agreement. The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to involuntary Permitted Liens that, under applicable law, have priority over Collateral Agent's Lien.

(c) On the Closing Date, and except as disclosed on the Perfection Certificate (i) the Collateral was not in the possession of any third party bailee, and (ii) no such third party bailee possessed components of the Collateral in excess of One Million Dollars ($1,000,000).

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(e) Issuer and each Guarantor is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens and non-exclusive licenses for off-the-shelf software that is commercially available to the public. Except as noted on the Perfection Certificate (which, upon the consummation of a transaction not prohibited by this Agreement, may be updated to reflect such transaction), neither Issuer nor any of Guarantor is a party to, nor is bound by, any material license or other Material Agreement.

(f) Each employee and contractor of Issuer and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to Issuer or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Change, in each case individually or in the aggregate.

(g) No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by Issuer or any Guarantor or exist to which Issuer or such Guarantor is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Change, in each case individually or in the aggregate.

5.3 Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of Issuer are duly authorized and validly issued, fully paid, nonassessable, and directly owned by Issuer or its applicable Subsidiary and are free and clear of all Liens other than Permitted Liens and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

5.4 Litigation. Except as disclosed on the Perfection Certificate or with respect to which Issuer has provided notice as required hereunder, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Issuer or any of its Subsidiaries involving more than One Million Dollars ($1,000,000).

5.5 No Broker's Fees. None of Issuer nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or the Purchasers for a brokerage commission, finder's fee or like payment in connection with the Note Documents and the transactions contemplated thereby (other than as disclosed to Bluescape prior to the Effective Date).

5.6 No Material Adverse Change; Financial Statements. All consolidated financial statements for Issuer and its consolidated Subsidiaries, delivered to the Purchasers fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of Issuer and its consolidated Subsidiaries, and the consolidated results of operations of Issuer and its consolidated Subsidiaries as of and for the dates presented. Since June 30, 2021, there has not been a Material Adverse Change.

5.7 No General Solicitation. Neither Issuer nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their

behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Notes in a manner that would require registration of the Notes under the Securities Act.

5.8 Accredited Investors. Neither Issuer nor any of its Subsidiaries has offered or sold any of the Notes to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

5.9 Solvency. Issuer is and each Guarantor, when taken as a whole, upon consummation of the transactions contemplated by the Restructuring Support Agreement will be Solvent.

5.10 No Registration Required. Assuming the accuracy of the representations and warranties of each Purchaser contained in Section 12.16, the issuance and sale of the Notes pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither Issuer nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

5.11 SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by Issuer under the Exchange Act or the Securities Act (all such documents, including the exhibits thereto, collectively the "**Issuer SEC Documents**") have been filed with the SEC on a timely basis. The Issuer SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "**Issuer Financial Statements**"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Issuer Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Issuer Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of Issuer and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. BDO USA, LLP is an independent registered public accounting firm with respect to Issuer and has not resigned or been dismissed as independent registered public accountants of Issuer as a result of or in connection with any disagreement with Issuer on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

5.12 Internal Controls. Issuer has disclosed, based on its most recent evaluation prior to the date hereof, to Issuer's outside auditors and the audit committee of the Board of Directors (a) any significant deficiencies and material weaknesses in the design or operation of internal

control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect Issuer'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 Issuer's internal control over financial reporting.

5.13 Disclosure Controls and Procedures. Issuer has established and maintains, and at all times since March 15, 2022, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to Issuer, including its Subsidiaries, that is required to be disclosed by Issuer in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to Issuer's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (a) transactions are executed in accordance with Issuer management's general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (c) access to assets is permitted only in accordance with Issuer management's general or specific authorization and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of Issuer's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect Issuer's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, there has not been any fraud, whether or not material, that involves management or other employees of Issuer or any of its Subsidiaries who have a significant role in Issuer's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of Issuer, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

5.14 Regulatory Compliance. Neither Issuer nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Issuer nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Issuer and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Issuer nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Issuer nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Issuer's nor any of its Subsidiaries' properties or assets has been used by Issuer or such Subsidiary or, to Issuer's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. Issuer and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given

all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Issuer, any of its Subsidiaries, or any of Issuer's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of Issuer, any of its Subsidiaries, or to the Knowledge of Issuer and any of their Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. Issuer, its Subsidiaries and Affiliates, and to the Knowledge of Issuer each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

5.15 Investments. Neither Issuer nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.16 Tax Returns and Payments; Pension Contributions. Issuer and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and Issuer and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Issuer and such Subsidiaries in an amount greater than Two Hundred Thousand Dollars ($200,000), in all jurisdictions in which Issuer or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. Issuer and each of its Subsidiaries, may defer payment of any contested Taxes, provided that Issuer or such Subsidiary, (a) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP, and provided further that such action would not involve, in the reasonable judgment of the Required Purchasers, any risk of the sale, forfeiture or loss of any material portion of the Collateral. Neither Issuer nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Issuer's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than Two Hundred Thousand Dollars ($200,000) becoming due and payable by Issuer or its Subsidiaries. Issuer and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Issuer nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Issuer or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

5.17 Full Disclosure. No written representation, warranty or other statement of Issuer or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Collateral Agent or any Purchaser, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Purchaser, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Issuer in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.18 Enforceability. The Note Documents (other than the Notes) have been duly authorized by Issuer and the Guarantors and, upon the consummation of the transactions contemplated by the Note Documents, shall constitute the legal, valid, and binding obligations of Issuer and the Guarantors, enforceable against Issuer and the Guarantors in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.19 Valid Issuance of Notes and Guarantees.

(a) The Notes have been duly authorized by Issuer and the Guarantors and, when issued against payment of the Purchase Price in accordance with Section 2.2, will be validly issued and will constitute legal, valid and binding obligations of Issuer and the Guarantors, enforceable against Issuer and the Guarantors in accordance with their terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law). The shares of Common Stock issuable upon conversion of the Notes have been duly and validly authorized and reserved by Issuer (to the extent required to be converted under the terms hereof) and, when issued upon conversion in accordance with this Agreement and the Notes, will be validly issued, fully paid and non-assessable, and the issuance of any such shares shall not be subject to any preemptive or similar rights.

(b) The Guarantees provided to this Agreement have been duly authorized by the Guarantors and, when issued against payment of the Purchase Price in accordance with Section 2.2, will be validly issued and will constitute legal, valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.20 Title Ownership. Each of the Issuer, the Guarantors and the Operating Company has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties

and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement.

5.21 Environmental Matters.

(a) The Issuer and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("**Environmental Laws**") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("**Environmental Permits**"), unless the failure to do so has not resulted or would not result in a Material Adverse Change.

(b) Neither the Issuer nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Issuer's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under, Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Change.

(c) There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Issuer or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Change.

5.22 Trustee. No Guarantor enters or has entered into any Note Document, or holds any property, as a trustee of any trust or settlement.

6. AFFIRMATIVE COVENANTS

From and after the Closing Date, so long as any Obligations (other than inchoate indemnification obligations) remain outstanding, Issuer shall, and shall cause each of its Subsidiaries to, and each Guarantor shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Other than specifically permitted hereunder, maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Issuer or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Issuer and its Subsidiaries of their respective

businesses and obligations under the Note Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Secured Parties, in all of the Collateral.

6.2 Financial Statements, Reports, Certificates; Notices.

(a) Deliver to each Purchaser (and with respect to clauses (vii), (viii), (ix) and (xiii) below, also to the Collateral Agent):

(i) within ten (10) days upon a request by any Purchaser, with respect to any given month for which at least thirty (30) days have elapsed since the last day of such month, a company prepared consolidated balance sheet, income statement and cash flow statement, subject to year-end adjustments and the absence of footnotes, covering the consolidated operations of Issuer and its consolidated Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to the Required Purchasers;

(ii) as soon as available, but no later than forty-five (45) days after the last day of each of Issuer's first three fiscal quarters, a company prepared consolidated and, if prepared by Issuer, consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Issuer and its consolidated Subsidiaries for such fiscal quarter certified by a Responsible Officer and in a form reasonably acceptable to the Required Purchasers;

(iii) as soon as available, but no later than ninety (90) days after the last day of Issuer's fiscal year or within five (5) days of filing of the same with the SEC, audited consolidated financial statements covering the consolidated operations of Issuer and its consolidated Subsidiaries for such fiscal year, prepared under GAAP, consistently applied, together with an Unqualified Opinion on financial statements from an independent certified public accounting firm reasonably acceptable to the Required Purchasers (it being understood that any accounting firm of national standing is reasonably acceptable to the Required Purchasers) (other than a qualification with respect to a going concern for the Company's fiscal year ended June 30, 2024);

(iv) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the SEC;

(v)prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Issuer's business or that otherwise could reasonably be expected to have a Material Adverse Change;

(vi) prompt notice of any event that (A) could reasonably be expected to materially and adversely affect the value of the Intellectual Property or (B) could reasonably be expected to result in a Material Adverse Change;

(vii) written notice delivered at least ten (10) days' prior to Issuer's creation of a New Subsidiary in accordance with the terms of Section 6.10);

(viii) written notice delivered at least twenty (20) days' (or such shorter period of time as Required Purchasers may agree) prior to Issuer's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Million Dollars ($1,000,000) in assets or property of Issuer or any of its Subsidiaries or are contract manufacturing sites), (B) changing its respective jurisdiction of organization, (C) changing its organizational structure or type, (D) changing its respective legal name, or (E) changing any organizational number(s) (if any) assigned by its respective jurisdiction of organization;

(ix) upon Issuer or any Guarantor becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, and Issuer's proposal regarding how to cure such Event of Default or event;

(x)immediate notice if Issuer or such Subsidiary has Knowledge that Issuer, or any Subsidiary or Affiliate of Issuer, is a Blocked Person or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xi) notice of any commercial tort claim (as defined in the Code) or letter of credit rights (as defined in the Code) held by Issuer or any Guarantor, in each case in an amount greater than One Million Dollars ($1,000,000) and of the general details thereof;

(xii) if Issuer or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within seven (7) Business Days of receiving such organizational identification number;

(xiii) an updated Perfection Certificate to reflect any amendments, modifications and updates, if any, to certain information in the Perfection Certificate after the Closing Date to the extent such amendments, modifications and updates are permitted by one or more specific provisions in this agreement; *provided* that delivery of such updated Perfection Certificate shall only be required once every six (6) months, starting with the month ending December 31, 2022;

(xiv) prompt written notice of any litigation or governmental proceedings pending or threatened (in writing) against Issuer or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Issuer or any of its Subsidiaries in an amount greater than One Million Dollars ($1,000,000); and

(xv) other information as reasonably requested by any Purchaser; *provided*, that Issuer and each Guarantor, and each of their respective Subsidiaries, as applicable, shall not be required to deliver any information to a Purchaser pursuant to subsections (v), (vi), (x), (xi), and (xiv) above unless a Purchaser has specifically requested the same in writing, in

which case the Issuer and each Guarantor, and each of their respective Subsidiaries, as applicable, shall provide such information pursuant to this Section 6.2(a) unless and until such Purchaser withdraws such request by delivery of written notice to the applicable party; *provided, further*, that such Purchaser may withdraw its request by delivery of written notice to the applicable party at any time, including prior to delivery of any such information requested.

Notwithstanding the foregoing, (x) the financial statements required to be delivered pursuant to clauses (ii) and (iii) above may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which (A) Issuer posts such documents, or provides a link thereto, on Issuer's website on the internet at Issuer's website address or (B) such documents are filed of record with the SEC, and (y) a Purchaser may designate an entity to receive information provided under this Section 6.2(a) (other than any information filed with the SEC).Issuer will be deemed to comply with the delivery requirements of financial and other information pursuant to Sections 6.2(a)(ii) and (iii) by timely filing, within the time periods (including any extension thereof) specified in the SEC's rules and regulations, its quarterly report on Form 10-Q and its annual report on Form 10-K for the corresponding period, as applicable, with the SEC via the SEC's EDGAR system (or any successor thereto).

Notwithstanding anything to the contrary herein, the Issuer or Guarantors shall not provide any information under this Section 6.2(a), if any Purchaser informs the Issuer in writing that it does not wish to receive such information.

(b) No later than forty-five (45) days after the last day of each month, deliver to each Purchaser a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Issuer shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Issuer, Collateral Agent or any Purchaser, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Issuer, or any of its Subsidiaries, as applicable, and their respective Account Debtors shall follow Issuer's, or such Subsidiary's, customary practices as they exist as of the Effective Date. Issuer must promptly notify the Purchasers of all returns, recoveries, disputes and claims that involve more than One Million Dollars ($1,000,000) individually or in the aggregate in any calendar year.

6.4 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file (or obtain timely extensions therefor), all material required tax returns and reports, and timely pay, and require each of its Subsidiaries to timely pay, all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by Issuer or its Subsidiaries, except as otherwise permitted pursuant to the terms of Section 5.13 hereof; deliver to the Purchasers, upon reasonable written demand, appropriate certificates attesting to such payments; and pay all material

amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Issuer's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Issuer's and its Subsidiaries' industry and location and as the Required Purchasers may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to the Purchasers. All property policies shall have a lender's loss payable endorsement showing Collateral Agent (for the ratable benefit of the Secured Parties) as lender loss payee and shall waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent (for the ratable benefit of the Secured Parties), as additional insured. Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Purchasers, that it will give the Collateral Agent thirty (30) (ten (10) days for nonpayment of premium) days prior written notice before any such policy or policies shall be canceled. At the request of the Required Purchasers, Issuer shall deliver to the Purchasers certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at the option of the Required Purchasers, be payable to Collateral Agent, for the ratable benefit of the Secured Parties, on account of the then-outstanding Obligations. If Issuer or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent may make (but has no obligation to do so), at Issuer's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent deems prudent.

6.6 Collateral Accounts.

(a) Maintain Issuer's and Guarantors' Collateral Accounts at depositary institutions that have agreed to execute Control Agreements in favor of Collateral Agent (for the ratable benefit of the Secured Parties) with respect to such Collateral Accounts. The provisions of the previous sentence shall not apply to Excluded Accounts.

(b) Subject to Section 6.6(a), Issuer shall provide the Purchasers and Collateral Agent ten (10) days' prior written notice (or such shorter period of time as Required Purchasers may agree) before Issuer or any Guarantor establishes any Collateral Account. In addition, for each Collateral Account that Issuer or any Guarantor, at any time maintains, Issuer or such Guarantor shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account (held for the ratable benefit of the Secured Parties) in accordance with the terms hereunder prior to the establishment of such Collateral Account. The provisions of the previous sentence shall not apply to Excluded Accounts.

(c) Neither Issuer nor any Guarantor shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with this Section 6.6.

6.7 Protection of Intellectual Property Rights. Issuer and each Guarantor shall use commercially reasonable efforts to: (a) protect, defend and maintain the validity and enforceability of its respective Intellectual Property that is material to its business; (b) promptly advise the Purchasers in writing of material infringement by a third party of its respective Intellectual Property; and (c) not allow any of its respective Intellectual Property material to its respective business to be abandoned, forfeited or dedicated to the public without the prior written consent of the Required Purchasers.

6.8 Litigation Cooperation. Commencing on the Closing Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Purchasers, without expense to Collateral Agent or the Purchasers, Issuer, each Guarantor and each of their respective officers, employees and agents and Issuer's Books, to the extent that Collateral Agent or any Purchaser may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Purchaser with respect to any Collateral or relating to Issuer or any Guarantor.

6.9 Landlord Waivers; Bailee Waivers. In the event that Issuer or any Guarantor, after the Closing Date, intends to add any new offices or business locations, including warehouses but excluding contract manufacturing sites, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then, in the event that the Collateral at any new location is valued (based on book value) in excess of One Million Dollars ($1,000,000) in the aggregate, at the election of the Required Purchasers, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to the Required Purchasers prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.10 Creation/Acquisition of Subsidiaries. In the event any Issuer or any Subsidiary (including for the avoidance of doubt, the Operating Company) of any Issuer creates or acquires any Subsidiary after the Closing Date that is not an Excluded Subsidiary, Issuer or such Subsidiary shall promptly notify the Purchasers of such creation or acquisition, and Issuer or such Subsidiary shall take all actions reasonably requested by the Purchasers in writing to achieve any of the following with respect to such "**New Subsidiary**" (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to cause such New Subsidiary, if such New Subsidiary is organized under the laws of the United States, to become a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent (for the ratable benefit of the Secured Parties) a perfected security interest in (x) one hundred percent (100%) of the stock, units or other evidence of ownership held by Issuer or its Subsidiaries of any such New Subsidiary which is organized under the laws of the United States, and (y) no more than sixty-five percent (65%) of the presently existing and hereafter arising issued and outstanding equity interests, membership units, or other securities owned by Issuer or any Guarantor of any Foreign Subsidiary which shares entitle the holder thereof to vote for directors or any other matter, if adverse tax consequences would result from the pledge of one hundred percent (100%) of such equity interests (provided that the Collateral shall include one hundred percent (100%) of the issued and outstanding non-voting equity interests of such Foreign Subsidiary); *provided*, that any Person who guarantees any Indebtedness incurred by Issuer pursuant to any Junior Indebtedness (or, in

the case of each of the preceding clauses (i) and (ii), any Permitted Refinancing Indebtedness thereof) shall be required to become a Guarantor hereunder.

6.11 Further Assurances. Execute any further instruments and take further action as Collateral Agent or any Purchaser reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

6.12 Title Ownership. Each of the Issuer, the Guarantors and the Operating Company shall at all times maintain good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project) free and clear of Liens prohibited by this Agreement; *provided* that this Section 6.12 shall not prohibit dispositions permitted by Section 7.1.

6.13 Environmental Matters.

(a) The Issuer and its Subsidiaries shall comply, and take all commercially reasonable actions to cause all lessees and other Persons currently operating or occupying its properties to comply, with all applicable Environmental Laws and all Environmental Permits.

(b) The Issuer and its Subsidiaries maintain and renew all Environmental Permits required under Environmental Laws for its operations and properties.

(c) In each case to the extent required by Environmental Laws, the Issuer and its Subsidiaries shall conduct any investigation, remedial or other corrective action required to address any release of, or contamination by, any toxic or hazardous materials, substances, or wastes.

6.14 Compliance Policies. Issuer and each of its Subsidiaries shall maintain compliance policies, procedures, and systems of internal controls as required by and in any event adequate to ensure compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

7. NEGATIVE COVENANTS

From and after the Closing Date, so long as any Obligations (other than inchoate indemnification obligations) remain outstanding, Issuer shall not, and shall not permit any of the Subsidiaries to, and each Guarantor shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Purchasers:

7.1 Dispositions. Effect any Transfer, except for (i) Transfers that do not constitute Asset Sales or (ii) Transfers, the proceeds of which are reinvested or applied as set forth in Section 2.2(c); *provided* that in the case of any Transfers pursuant to this clause (ii), (A) Issuer or such Subsidiary receives consideration at the time of such Transfer at least equal to the Fair Market Value of the asset subject to such Asset Sale, (B) at least 75% of the consideration paid to Issuer or such Subsidiary in connection with such Transfer is, or will be when paid (in the case of milestones, royalties and other deferred payment obligations), in the form of cash or Cash Equivalents, and (C) the aggregate Transfers in each fiscal year shall not exceed One Million Dollars ($1,000,000) per fiscal year. For the purposes of clause (ii) above, the amount (without duplication) of any Indebtedness (other than subordinated Indebtedness) of Issuer or such

Subsidiary that is expressly assumed by the transferee in such Transfer and with respect to which Issuer or such Subsidiary, as the case may be, is unconditionally released by the holder of such Indebtedness shall be deemed cash.

7.2 Changes in Business or Business Locations. (a) Engage in or permit any of the Subsidiaries to engage in any business other than the Permitted Business, and (b) liquidate or dissolve. Issuer shall not, and shall not permit any of the Subsidiaries to, without at least seven (7) Business Days' (or such shorter period of time as Required Purchasers may agree in their sole discretion) prior written notice to the Purchasers and Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than One Million Dollars ($1,000,000) in assets or property of Issuer or any of its Subsidiaries, as applicable or are contract manufacturing sites); (B) change its respective jurisdiction of organization, (C) except as permitted by Section 7.3, change its respective organizational structure or type, (D) change its respective legal name, or (E) change any organizational number(s) (if any) assigned by its respective jurisdiction of organization. Notwithstanding the foregoing, upon at least five (5) Business Days' prior written notice to the Purchasers and Collateral Agent, FCH may be liquidated or dissolved so long as FCH does not own any material assets.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of the Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person (other than pursuant to Permitted Investments, a Transfer permitted under Section 7.1 or as otherwise permitted pursuant to Section 7.7); *provided* that a Subsidiary may merge or consolidate into another Subsidiary (provided that in the case of a merger or consolidation of a Guarantor, the surviving Person has provided a secured Guaranty of Issuer's Obligations hereunder in accordance with Section 6.10) or with (or into) Issuer provided Issuer is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) Create, incur, issue, assume, enter into a guarantee of or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and Issuer shall not issue any Disqualified Stock and shall not permit any of the Subsidiaries to, without the prior written consent of the Required Purchasers, issue any shares of preferred stock or preferred interests.

(b) Notwithstanding anything to contrary herein, Section 7.4(a) above will not prohibit the incurrence of any Permitted Debt.

(c) The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 7.4. For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of any Indebtedness denominated in a

foreign currency shall be utilized, calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred or first committed, in the case of revolving Indebtedness. Notwithstanding anything to the contrary in this Section 7.4, the maximum amount of Indebtedness that Issuer or any Subsidiary may incur pursuant to this Section 7.4 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

(d) The amount of any Indebtedness outstanding as of any date will be (i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount; (ii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and (iii) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of (a) the Fair Market Value of such assets at the date of determination and (b) the amount of the Indebtedness of the other Person.

7.5 Encumbrance. Issuer shall not, and shall not permit any of the Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien securing Indebtedness of any kind on any asset now owned or hereafter acquired, except Permitted Liens.

7.6 Maintenance of Collateral Accounts. With respect to Issuer or any Guarantor, maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Restricted Payments.

(a) Effect a Restricted Payment;

(b) Notwithstanding anything to the contrary therein, Section 7.7(a) will not prohibit:

(i) the payment of any dividend or distribution on account of Capital Stock or the consummation of any redemption within 60 days after the date of declaration of the dividend or distribution on account of Capital Stock, if at the date of declaration or notice, the dividend, distribution or redemption payment would have complied with the provisions of this Section 7.7;

(ii) the purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of Junior Indebtedness or Disqualified Stock of Issuer or any Guarantor in exchange for, by conversion into or out of, or with the net cash proceeds from, an incurrence of Permitted Refinancing Indebtedness, which incurrence occurs substantially concurrently with such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value;

(iii) so long as no Default or Event of Default has occurred and is continuing, the repurchase, redemption or other acquisition or retirement for value of any Capital Stock of Issuer or any Subsidiary of Issuer held by any current or former officer, director, employee or consultant of Issuer or any Subsidiary or any permitted transferee of the foregoing pursuant to any equity subscription agreement, stock option agreement, shareholders' agreement, phantom stock plan or similar agreement; *provided* that the aggregate price paid for all such repurchased, redeemed, acquired or retired Capital Stock may not exceed Two Hundred Thousand Dollars ($200,000) in any twelve-month period; *provided*, *further*, that such amount in any twelve-month period may be increased by an amount not to exceed:

(1) the cash proceeds from the sale of Capital Stock (other than Disqualified Stock) of Issuer to officers, directors, employees or consultants of Issuer, of any of its Subsidiaries or of any of its direct or indirect parent companies that occurs after the Effective Date to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the making of Restricted Payments pursuant to this Section 7.7; plus

(2) the cash proceeds of key man life insurance policies received by Issuer or any Subsidiary after the Effective Date; and, in addition, cancellation of Indebtedness owing to Issuer or any Subsidiary from any current or former officer, director or employee (or any permitted transferees thereof) of Issuer or any Subsidiary in connection with a repurchase of Capital Stock of Issuer or any Subsidiary from such Persons will not be deemed to constitute a Restricted Payment for purposes of this Section 7.7 or any other provisions of this Agreement;

(iv) the purchase, redemption or other acquisition or retirement for value of Capital Stock (x) deemed to occur upon the exercise or conversion of stock options, warrants, convertible notes or similar rights to acquire Capital Stock to the extent that such Capital Stock represent all or a portion of the exercise, exchange or conversion price of those stock options, phantom stock, warrants, convertible notes or similar rights, or (y) made in lieu of payment of withholding taxes in connection with the vesting of Capital Stock or any exercise or exchange of stock options, phantom stock, warrants, convertible notes or similar rights to acquire such Capital Stock;

(v)the making of any Restricted Payment in exchange for Capital Stock (other than Disqualified Stock) of Issuer;

(vi) cash payments in lieu of the issuance of fractional shares; and

(vii) so long as no Default or Event of Default has occurred and is continuing or would be caused thereby, other Restricted Payments in an aggregate amount not to exceed One Million Dollars ($1,000,000) in the aggregate since the Effective Date, plus if any such Restricted Payment under this clause (vii) was used to make an Investment, the cash return of capital with respect to such Investment (less the cost of disposition, if any).

(c) The amount of all Restricted Payments (other than cash), including for purposes of clauses (i) through (vii) above, will be the Fair Market Value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by Issuer or the relevant Subsidiary, as the case may be, pursuant to the Restricted Payment. The Fair Market Value of any assets or securities that are required to be valued by this Section 7.7 will be determined by Issuer or, if such Fair Market Value is in excess of Five Million Dollars ($5,000,000), by Board of Directors, whose resolution with respect thereto will be delivered to the Purchasers.

7.8 [Reserved].

7.9 Transactions with Affiliates.

(a) Complete an Affiliate Transaction.

(b) The following will be deemed not to be Affiliate Transactions and, therefore, will not be subject to this Section 7.9:

(i) any employment or severance agreement or other employee compensation agreement, arrangement or plan, or any amendment thereto, entered into by Issuer or any of the Subsidiaries in the ordinary course of business and approved by the Board of Directors;

(ii) transactions between or among Issuer and the Subsidiaries;

(iii) transactions with a Person that is an Affiliate of Issuer solely because Issuer owns any Capital Stock in such Person;

(iv) the payment of reasonable directors' fees or expenses, the payments of other reasonable benefits and the provision of officers' and directors' indemnification and insurance to the extent permitted by law, in each case in the ordinary course of business;

(v) sales of Capital Stock of Issuer to Affiliates of Issuer and the granting and performance of registration rights;

(vi) transactions pursuant to agreements in effect on the Effective Date;

(vii) Permitted Investments and Restricted Payments as permitted pursuant to Section 7.7;

(viii) any repurchases, redemptions or other retirements for value by Issuer or any of the Subsidiaries of Indebtedness of any class held by any Affiliate of Issuer, so long as such repurchase, redemption or other retirement for value is on the same terms as are made available to investors holding such class of Indebtedness generally, and Affiliates have an economic interest in no more than fifty percent (50%) of the aggregate principal amount of such class of Indebtedness;

(ix) purchases and sales of raw materials or inventory in the ordinary course of business on market terms;

(x) the entering into of a tax sharing agreement, or payments pursuant thereto, between Issuer and/or one or more Subsidiaries, on the one hand, and any other Person with which Issuer or such Subsidiaries are required to file a consolidated tax return or with which Issuer or such Subsidiaries are part of a consolidated group for tax purposes, on the other hand, which payments by Issuer and the Subsidiaries are not in excess of, and which are made in order to satisfy, the tax liabilities that would have been payable by them on a stand-alone basis unless expressly permitted under the definition of "Restricted Payments".

7.10 Dividend and Other Payment Restrictions Affecting Subsidiaries. Create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Subsidiary to: (i) pay dividends or make any other distributions on its Capital Stock, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness owed

to Issuer or any of the Subsidiaries; (ii) make loans or advances to Issuer or any of the Subsidiaries; or (iii) sell, lease or transfer any of its properties or assets to Issuer or any of the Subsidiaries.

(a) The restrictions in this Section 7.10(a) will not apply to encumbrances or restrictions existing under or by reason of:

(i) this Agreement, and any other Indebtedness (and other related obligations) incurred pursuant to clauses (1) and/or (7) of the definition of "Permitted Debt";

(ii) applicable law, rule, regulation, order, approval, license or permit or similar restriction;

(iii) restrictions existing on the Effective Date and any amendments or modifications thereof that do not materially expand the scope of any such restrictions;

(iv) any instrument governing Indebtedness or Capital Stock of a Person acquired by Issuer or any Subsidiaries as in effect at the time of such acquisition, except to the extent incurred in contemplation thereof;

(v)customary non-assignment provisions in contracts, leases, licenses and other commercial or trade agreements otherwise not prohibited under this Agreement;

(vi) Capital Lease Obligations, any agreement governing purchase money obligations, security agreements or mortgages securing Indebtedness of Issuer or a Subsidiary to the extent such encumbrance or restriction restricts the transfer of the property subject to such Capital Lease Obligations, purchase money obligations, security agreements or mortgages;

(vii) any agreement for the sale or other disposition of a Subsidiary that restricts distributions by that Subsidiary pending its sale or other disposition;

(viii) Permitted Refinancing Indebtedness with encumbrances or restrictions then contained in Indebtedness being refinanced that are not materially more restrictive, taken as a whole (as reasonably determined by Issuer), than those contained in the agreements governing the Indebtedness being refinanced;

(ix) other permitted Indebtedness of Issuer and Subsidiaries with terms that are customary and not materially more restrictive than terms of other Indebtedness of Issuer or any Subsidiaries;

(x)Permitted Liens that limit the right of the debtor to dispose of the assets subject to such Liens;

(xi) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, stock sale agreements, agreements relating to investments in a Permitted Business and other similar agreements entered into in the ordinary course of business;

(xii) restrictions on cash or other deposits or net worth, which encumbrances or restrictions are imposed by customers or suppliers or required by insurance, surety or bonding companies, in each case, under contracts into in the ordinary course of business;

(xiii) any encumbrance or restriction arising in the ordinary course of business, not relating to any Indebtedness, that does not, individually or in the aggregate, materially detract from the value of the property of Issuer and Subsidiaries, taken as a whole, or adversely affect Issuer's ability to make principal and interest payments under this Agreement, in each case, as determined in good faith by Issuer; and

(xiv) any amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing of an agreement or arrangement referred to in clauses (i) through (xiii) of this Section 7.10(a); *provided, however*, that such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing is not materially more restrictive, as reasonably determined by Issuer, with respect to such encumbrances and other restrictions taken as a whole than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

(b) For purposes of determining compliance with this Section 7.10, the subordination of loans or advances made to Issuer or a Subsidiary to other Indebtedness incurred by Issuer or any such Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

7.11 Compliance. (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of the issuance of Notes for that purpose; (b) fail to meet the minimum funding requirements of ERISA; (c) permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; (d) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; or (e) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Issuer or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.12 Compliance with Anti-Terrorism Laws. (a) Enter into any documents, instruments, agreements or contracts with any Blocked Person, (b) offer, pay, promise to pay, or authorize the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (c) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (d) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (e) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of

evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

7.13 Limitation on Issuance of Capital Stock. No Guarantor may issue any Capital Stock of such Guarantor (including by way of sales of treasury stock or the issuance of any debt security that is convertible into, or exchangeable for, Capital Stock of such Guarantor) to any Person other than (i) to Issuer or any other Guarantor, (ii) in connection with the transfer of all of the Capital Stock of such Guarantor otherwise permitted under this Agreement, or (iii) the issuance of director's qualifying shares or other nominal shares required by law to be held by a Person other than Issuer or a Guarantor.

7.14 Financial Covenant. From and after [June 28], 2024, permit, at any time, Unrestricted Cash to be less than Seven Million Five Hundred Thousand Dollars ($7,500,000).

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Issuer or, in respect of paragraph (b), any of its Subsidiaries, fails to (a) make any payment of principal or interest on the Notes on its due date, (b) pay any other Obligation within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1(a) hereof), or (c) comply with its obligation to convert a Note in accordance with Section 2 upon the exercise of the conversion right with respect thereto;

8.2 Covenant Default.

(a) Issuer or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes; Pensions), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries); 6.12 (Title Ownership of Operating Company) or Issuer violates any provision in Section 7; or

(b) Issuer, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any other Note Document to which such person is a party, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within thirty (30) days after the occurrence thereof; *provided*, *however*, that if the default cannot by its nature be cured within the thirty (30) day period or cannot after diligent attempts by Issuer or such Subsidiary, as applicable, be cured within such thirty (30) day period, and such default is likely to be cured within a reasonable time, then Issuer shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Notes shall be made during such cure period);

8.3 Material Adverse Change. The occurrence of Material Adverse Change;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Issuer or any of its Subsidiaries or of any entity under control of Issuer or its Subsidiaries on deposit with any institution at which Issuer or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment (other than a Permitted Lien) is filed against Issuer or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) of this clause (a) are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Issuer's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Issuer or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Issuer or any of its Subsidiaries is or becomes Insolvent; (b) Issuer or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Issuer or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Notes shall be extended while Issuer or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is any default and such default continues (after the applicable grace, cure or notice period) in any agreement to which Issuer or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of One Million Dollars ($1,000,000) or that could reasonably be expected to have a Material Adverse Change;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Million Dollars ($1,000,000) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Issuer or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of thirty (30) days after the entry thereof;

8.8 Misrepresentations. Issuer or any of its Subsidiaries or any Person acting for Issuer or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Note Document or in any writing delivered to Collateral Agent and/or the Purchasers or to induce Collateral Agent and/or the Purchasers to enter this Agreement or any Note Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

8.9 Change in Control. The occurrence of a Change in Control.

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect other than as a result of a transaction permitted under this Agreement; (b) any Guarantor does not perform any obligation or covenant under any Guaranty, after any applicable grace or cure period; (c) any circumstance described in Section 8 occurs with respect to any Guarantor, beyond any applicable grace or cure period; or (d) a Material Adverse Change with respect to any Guarantor;

8.11 Governmental Approvals. (a) Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or (b) (i) the DOJ or other Governmental Authority initiates a Regulatory Action or any other enforcement action against Issuer or any of its Subsidiaries that causes Issuer or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products material to its business, even if such action is based on previously disclosed conduct; (ii) Issuer or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Issuer or any of its Subsidiaries of One Million Dollars ($1,000,000) or more; or (iii) Issuer or any of its Subsidiaries enters into a settlement agreement with the DOJ or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of One Million Dollars ($1,000,000) or more that is unsatisfied, or a Material Adverse Change, even if such settlement agreement is based on previously disclosed conduct.

8.12 Lien Priority. Except as the result of the action or inaction of the Collateral Agent or the Purchasers, any Lien created hereunder or by any other Note Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens arising as a matter of applicable law or that are permitted to have priority pursuant to this Agreement.

8.13 Cure Right. In the event that the Issuer fails to comply with the requirements of Section 7.14 (the "**Financial Covenant**") as of the last day of any calendar month as so required, then for the period beginning on the first day after the end of such fiscal month and ending on the thirtieth (30th) day after the end of such calendar month (the "**Cure Period**"), the Issuer shall be permitted to cure such failure to comply by receiving a Specified Contribution and by requesting that the Financial Covenant be recalculated by increasing Unrestricted Cash for such calendar month by an amount up to the amount of the Specified Contribution received by the Issuer during the Cure Period (the "**Cure Right**"). If, after giving effect to the foregoing recalculations, the Issuer shall then be in compliance with the requirements of the Financial Covenant, then Issuer shall be deemed to have satisfied the requirements of Sections 7.14 as of the last day of the applicable calendar month with the same effect as though there had been no failure to comply with such Financial Covenant on such date, and the applicable Default or Event of Default with respect to the Financial Covenant that had occurred shall be deemed not to have occurred for purposes of this Agreement and the other Note Documents; *provided* that (a) the Cure Right shall not be exercised more than five times during the term of this Agreement; and (b) the Cure Right shall not be exercised more than two times in any period of four consecutive fiscal quarters. After receipt by the Collateral Agent and the Purchasers of a written notice of the Issuer's intent to make a Specified Contribution prior to the date required by this Section 8.13, neither the Collateral Agent nor any Purchaser may exercise any rights or remedies under Section 9 (or under any other Note Document, including the imposition of interest at the Default Rate) on the basis of any actual or purported Event of Default arising solely as a result of a breach of the Financial Covenant until and unless the applicable Specified Contribution shall not have been made by the date required to be made under this Section 8.13.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of:

(i) an Event of Default (other than an Event of Default under Section 8.2(b)), the Required Purchasers may, without notice or demand, do any or all of the following: (x) deliver notice of the Event of Default to Issuer, or (y) by notice to Issuer declaring all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by the Purchasers); or

(ii) an Event of Default under Section 8.2(b), the Required Purchasers may, without notice or demand: (x) deliver notice of the Event of Default to Issuer, and (y) after the date that is thirty (30) days after delivery of the notice of such Event of Default pursuant to the foregoing clause (x), by notice to Issuer declare all Obligations immediately due and payable.

(b) Without limiting the rights of the Purchasers set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, the Required Purchasers may, without notice or demand, do any or all of the following:

(i) direct Collateral Agent to foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) direct Collateral Agent to make a demand for payment upon any Guarantor pursuant to the Guaranty delivered by such Guarantor;

(iii) direct Collateral Agent to apply to the Obligations any (A) balances and deposits of Issuer that Collateral Agent or any Purchaser holds or controls, (B) any amount held or controlled by Collateral Agent or any Purchaser owing to or for the credit or the account of Issuer, or (C) amounts received from any Guarantors in accordance with the respective Guaranty delivered by such Guarantor; and/or

(iv) commence and prosecute an Insolvency Proceeding or consent to Issuer commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Purchasers set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to, at the written direction of the Required Purchasers, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Issuer money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Liens in the Collateral (held for the ratable benefit of the Secured Parties). Issuer shall assemble the Collateral if Collateral Agent requests and make it available at such location as Collateral Agent reasonably designates. Collateral Agent (or its designee) may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Issuer grants Collateral Agent (or its designee) a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, any of the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Issuer's and each Guarantor's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Issuer's and each Guarantor's rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Purchasers;

(iv) place a "hold" on any Collateral Account maintained with Collateral Agent or any Purchaser or otherwise in respect of which a Control Agreement has been delivered in favor of Collateral Agent (for the ratable benefit of the Secured Parties) and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v)demand and receive possession of Issuer's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Issuer or any Guarantor; and

(vii) subject to clauses (a) and (b) of this Section 9.1, exercise all rights and remedies available to Collateral Agent and each Purchaser under the Note Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right (but not the obligation) to exercise any and all remedies referenced in this Section 9.1 without the written direction of Required Purchasers following the occurrence of an Exigent Circumstance.

9.2 Power of Attorney. Issuer hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Issuer's or any Guarantor's name on any checks or other forms of payment or security; (b) sign Issuer's or any Guarantor's name on any invoice or bill of lading for

any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts of Issuer directly with the applicable Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Issuer's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits (including by filing assignment agreements with the United States Patent and Trademark Office, United States Copyright Office or equivalent in any jurisdiction outside of the United States); and (g) in the case of any Intellectual Property, execute, deliver and have recorded any document that the Collateral Agent may request to evidence, effect, publicize or record the Collateral Agent's security interest in such Intellectual Property and the goodwill and General Intangibles of Issuer relating thereto or represented thereby. Issuer hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Issuer's or any of Guarantor's name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Purchasers are under no further obligation to purchase Notes hereunder. Collateral Agent's foregoing appointment as Issuer's or any Guarantor's attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and the Purchasers' obligation to purchase the Notes terminates.

9.3 Protective Payments. If Issuer or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Issuer or any of its Subsidiaries is obligated to pay under this Agreement or any other Note Document, Collateral Agent may (but shall not be obligated to) obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Purchasers' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Issuer with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Issuer irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent or the Purchasers from or on behalf of Issuer or any Guarantor of all or any part of the Obligations, and, as between Issuer on the one hand and Collateral Agent and Purchasers on the other, Collateral Agent and the Purchasers shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent or the Purchasers may deem advisable notwithstanding any previous application by Collateral Agent or the Purchasers, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied by the Collateral Agent: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses owed to the Collateral Agent, including without limitation, the Collateral Agent Expenses and Collateral Agent Fees; *second*, to the Purchasers' Expenses; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States

Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth*, to any other Obligations owing to Collateral Agent or any Purchaser under the Note Documents. Any balance remaining shall be delivered to Issuer or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Purchasers of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to the Purchasers' Pro Rata Shares unless expressly provided otherwise. Each Purchaser shall promptly remit to the other Purchasers such sums as may be necessary to ensure the ratable repayment of each Purchaser's Pro Rata Share of the Notes and the ratable distribution of interest, fees and reimbursements paid or made by Issuer. Notwithstanding the foregoing, a Purchaser receiving a scheduled payment shall not be responsible for determining whether the other Purchasers also received their scheduled payment on such date; *provided, however*, if it is later determined that a Purchaser received more than its Pro Rata Share of scheduled payments made on any date or dates, then such Purchaser shall remit to other the Purchasers such sums as may be necessary to ensure the ratable payment of such scheduled payments. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Purchaser in excess of its Pro Rata Share, then the portion of such payment or distribution in excess of such Purchaser's Pro Rata Share shall be received and held by such Purchaser in trust for and shall be promptly paid over to the other Purchasers (in accordance with their respective Pro Rata Shares) for application to the payments of amounts due on such other Purchasers' claims. To the extent any payment for the account of Issuer is required to be returned as a voidable transfer or otherwise, the Purchasers shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Purchaser shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for the Secured Parties for purposes of perfecting Collateral Agent's security interest therein (held for the ratable benefit of the Secured Parties).

9.5 Liability for Collateral. So long as Collateral Agent and the Purchasers comply with reasonable practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Purchasers, Collateral Agent and the Purchasers shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Issuer bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Purchaser, at any time or times, to require strict performance by Issuer of any provision of this Agreement or by Issuer or any other Note Document shall not waive, affect, or diminish any right of Collateral Agent or any Purchaser thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Purchasers and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Purchasers under this Agreement and the other Note Documents are cumulative. Collateral Agent and the Purchasers have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by

Collateral Agent or any Purchaser of one right or remedy is not an election, and any Purchaser's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Purchaser's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Issuer waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Purchaser on which Issuer or any Guarantor is liable.

9.8 Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent (at the direction of the Required Purchasers) to exercise the rights and remedies under this Section 9 after the occurrence and during the continuance of an Event of Default as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, convey, transfer or grant options to purchase any Collateral), Issuer hereby (a) grants to the Collateral Agent, for the ratable benefit of the other Secured Parties, an irrevocable, nonexclusive worldwide license (exercisable without payment of royalty or other compensation to Issuer (or applicable grantor)) ("**Collateral Agent License**"), including in such license the right to use, license, sublicense or practice any Intellectual Property now owned or hereafter acquired by Issuer (or any applicable grantor), and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof, *provided* that with respect to any licenses held by Issuer, such Collateral Agent License shall only be granted to the extent such assignment or grant is permitted under the terms of such license and if such assignment or grant is not permitted under the term of such license Issuer will or will cause the applicable guarantor to cooperate with Collateral Agent and the other Secured Parties to receive the benefits of such Collateral Agent License to the maximum extent possible and (b) irrevocably agrees that the Collateral Agent may sell any of such Issuer's Inventory directly to any person, including without limitation persons who have previously purchased Issuer's Inventory from Issuer and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Agreement, may sell Inventory which bears any Trademark owned by or licensed to Issuer and any Inventory that is covered by any Copyright owned by or licensed to Issuer and the Collateral Agent may (but shall have no obligation to) finish any work in process and affix any Trademark owned by or licensed to Issuer (or any applicable grantor) and sell such Inventory as provided herein.

9.9 Setoff and Sharing of Payments. In addition to any rights now or hereafter granted under any applicable Requirement of Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Purchaser is hereby authorized at any time or from time to time upon the direction of the Required Purchasers, without notice to Issuer or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Issuer (regardless of whether such balances are then due to Issuer) and any other properties or assets at any time held or owing by that Purchaser or that holder to or for the credit or for the account of Issuer against and on account of any of the Obligations that are not paid when due. Any Purchaser exercising a right of setoff or otherwise receiving any payment on account of the

Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Purchasers or holders shall sell) such participations in each such other Purchaser's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Purchaser to share the amount so offset or otherwise received with each other Purchaser or holder in accordance with their respective Pro Rata Shares of the Obligations. Issuer agrees, to the fullest extent permitted by law, that (a) any Purchaser may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Purchaser so purchasing a participation in the Notes made or other Obligations held by other Purchasers or holders may exercise all rights of offset, bankers' liens, counterclaims or similar rights with respect to such participation as fully as if such Purchaser or holder were a direct holder of the Notes and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Purchaser that has exercised the right of offset, the purchase of participations by that Purchaser shall be rescinded and the purchase price restored without interest.

10. NOTICES

Other than as specifically provided herein, all notices, consents, requests, approvals, demands, or other communication (collectively, "**Communications**") by any party to this Agreement or any other Note Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Purchaser or Issuer may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Issuer:	5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, California 92344 Attn: Paul Weibel Email: pweibel@5eadvancedmaterials.com
If to the Australian Obligor:	American Pacific Borates Pty Ltd (ABN 68 615 606 114) 63 Summerhill Drive, Stake Hill, Western Australia 6181, Australia Attn: Paul Weibel

	Email: pweibel@5eadvancedmaterials.com
If to Collateral Agent or Purchasers:	Alter Domus (US) LLC Address: 225 W. Washington St., 9th Floor Chicago, Illinois 60606 Attn: Legal Department, Emily Ergang Pappas and Alexa Putnam Email:legal@alterdomus.com, emily.ergangpappas@alterdomus.com, Alexa.Putnam@alterdomus.com and Cortland_Successor_Agent@alterdomus.com
with a copy (which shall not constitute notice) to:	Holland & Knight LLP 150 N. Riverside Plaza, Suite 2700 Chicago, Illinois 60606 Attn: Joshua M. Spencer Email: joshua.spencer@hklaw.com and alterdomus@hklaw.com
If to Bluescape:	BEP Special Situations IV LLC 300 Crescent Court, Suite 1860 Dallas, Texas 75201 Attn: Jonathan Siegler Email: jasiegler@bluescapegroup.com
with a copy (which shall not constitute notice) to:	Kirkland & Ellis LLP 609 Main Street Houston, Texas 77002 Attn: Andy Veit Email: andrew.veit@kirkland.com

and:

Kirkland & Ellis LLP

609 Main Street

Houston, Texas 77002

Attn: Julian Seiguer

Email: julian.seiguer@kirkland.com

If to Ascend: Ascend Global Investment Fund SPC
For and on behalf of Strategic SP

1 Kim Seng Promenade

#10-01 East Tower

Great World City

Singapore 237994

Attention:[□]

E-mail: [□]

with a copy (which shall not constitute notice) to: Latham & Watkins LLP

9 Raffles Place

#42-02 Republic Plaza

Singapore 048619

Attention:Marcus Lee

E-mail: marcus.lee@lw.com

If to Element / 5ECAP Debt: 5ECAP Debt, LLC

c/o Empire Capital
Management, LLC

6724 Perimeter Loop Road, S
145

Dublin, Ohio, 43017 Attention: David J. Richards and Ken Leachman

E-mail: djr@empirecapmgt.com and kleachman@empirecapmgt.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

11.1 Waiver of Jury Trial. EACH OF ISSUER, EACH GUARANTOR, COLLATERAL AGENT AND PURCHASERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER NOTE DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG ISSUER, COLLATERAL AGENT AND/OR PURCHASERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG ISSUER, COLLATERAL AGENT AND/OR PURCHASERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER NOTE DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION.

11.2 Governing Law and Jurisdiction. THIS AGREEMENT, THE OTHER NOTE DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, *PROVIDED, HOWEVER*, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

11.3 Submission to Jurisdiction. Any legal action or proceeding with respect to the Note Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Issuer and each Guarantor hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Purchasers shall have the right to bring any action or proceeding against Issuer (or any property of Issuer) and/or a Guarantor (or any property of any Guarantor) in the court of any other jurisdiction

Collateral Agent or Purchasers deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

11.4 Service of Process. Issuer and each Guarantor irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Note Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Issuer and/or any Guarantor specified herein (and shall be effective when such mailing shall be effective, as provided therein). Issuer and each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

11.5 Non-exclusive Jurisdiction. Nothing contained in this Section 11 shall affect the right of Collateral Agent or Purchasers to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Issuer in any other jurisdiction.

12. GENERAL PROVISIONS

12.1 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Issuer may not transfer, pledge or assign this Agreement or any rights or obligations under it without the prior written consent of the Required Purchasers (which may be granted or withheld in Required Purchasers' discretion, subject to Section 12.5). The Purchasers have the right, subject to any restrictions in the Note to the extent outstanding, without the consent of or notice to Issuer, to sell, transfer, assign, pledge or negotiate (any such sale, transfer, assignment, negotiation**,** or grant of a participation, a "**Purchaser Transfer**"), or grant participation in all or any part of, or any interest in, the Purchasers' obligations, rights, and benefits under this Agreement and the other Note Documents; *provided* that, except upon the occurrence and during the continuance of an Event of Default under Sections 8.1 or 8.5, to the extent that after giving effect to any such Purchaser Transfer, such Purchaser and/or its Affiliates shall hold fifty percent (50%) or less of the aggregate outstanding principal amount of the Notes, such Purchaser Transfer shall require the prior written consent of Issuer (not to be unreasonably withheld, delayed or conditioned); *provided further* that the Issuer shall be deemed to have consented to any such Purchaser Transfer unless it shall object thereto by written notice to the Purchaser within three (3) Business Days after having received notice thereof. Issuer and Collateral Agent shall be entitled to continue to deal solely and directly with such Purchaser in connection with the interests so assigned until the Required Purchasers shall have received and accepted an effective assignment agreement in form satisfactory to the Required Purchasers executed, delivered and fully completed by the applicable parties thereto (with a copy to the Collateral Agent), and shall have received such other information regarding such assignee as the Required Purchasers reasonably shall require. [The assignee, if it is not a Purchaser, shall deliver to the Collateral Agent all documentation and information necessary to satisfy the Collateral

Agent's "know your customer" requirements and all applicable tax forms (including, without limitation, a properly completed and duly executed IRS Form W-9 (or other applicable tax form).] Issuer shall maintain at one of its offices in the United States a register for the recordation of the names and addresses of the Purchasers and principal amounts (and stated interest) of the Notes owing to each Purchaser pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and Issuer, Collateral Agent and Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as Purchaser hereunder for all purposes of this Agreement. The Register shall be available for inspection by any Purchaser and the Collateral Agent at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding any other language to the contrary contained herein or in any other Note Documents, as of any particular date, the Collateral Agent shall be entitled to rely conclusively upon the Register as most recently delivered by the Issuer to the Collateral Agent (including without limitation in connection with any determination as to which Purchasers constitute the Required Purchasers under this Agreement). Further notwithstanding anything to the contrary contained in this Agreement or in any other Note Documents, the Notes are registered obligations, the right, title and interest of the Purchasers and their assignees in and to such Notes, as the case may be, shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Section 12.1 shall be construed so that the Notes are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code. Any agreement or instrument pursuant to which a Purchaser sells a participation shall provide that such Purchaser 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 Purchaser will not, without the consent of the participant, agree to any amendment, waiver or other modification described in the first proviso to Section 12.5 that affects such Participant. The Issuer agrees that each participant shall be entitled to the benefits of Exhibit C (subject to the requirements and limitations therein, including the requirements under Section 7 of Exhibit C (it being understood that the documentation required under Section 7 of Exhibit C shall be delivered to the Purchaser who sells the participation)) to the same extent as if it were a Purchaser and had acquired its interest by assignment this Section 12.1. Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Issuer, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Notes or other obligations under the Note Documents (the "**Participant Register**"); *provided* that no Purchaser 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 or its other obligations under any Note Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) (or, in each case, any amended or successor sections) of the United States Treasury Regulations. The entries in the Register or Participant Register shall be conclusive absent manifest error, and such Purchaser 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, Collateral Agent (in its capacity as Collateral Agent) shall have no responsibility for maintaining the Register or Participant Register.

12.2 Expense Reimbursement; Indemnification; Waivers.

(a) Expense Reimbursement. Issuer and each Guarantor, jointly and severally, agree to pay (a) all reasonable, documented, out of pocket expenses (including reasonable attorneys' fees and expenses and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for each of the Collateral Agent and the Purchasers), incurred by the Collateral Agent and the Purchasers, respectively, in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Note Documents, or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (b) all reasonable, documented, out of pocket expenses (including reasonable attorneys' fees and expenses and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for each of the Collateral Agent and the Purchasers), incurred by the Collateral Agent and the Purchasers, respectively, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Note Documents, including its rights under this Section 12, or (B) in connection with the Notes issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Notes.

(b) Indemnification by Issuer and Guarantors. Issuer and each Guarantor, jointly and severally, agree to indemnify, reimburse, defend and hold each Secured Party and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing such Secured Party (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Note Documents whether in contract, tort or otherwise; and (ii) all losses, Collateral Agent Expenses and Purchasers' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Note Documents (including reasonable attorneys' fees and expenses and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for any Indemnified Person), except, in each case, for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment. Issuer and each Guarantor hereby further agrees to indemnify, reimburse, defend and hold each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of any counsel for and, if necessary or appropriate, local counsel in each reasonably necessary and materially relevant jurisdiction for any Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Issuer, a Guarantor or any of their respective shareholders, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Purchasers) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or

willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment. This Section 12.2(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Waiver of Consequential Damages. To the fullest extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against any Indemnified Person or any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Note Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Commitment, or the use of the proceeds thereof. No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Note Documents or the transactions contemplated hereby or thereby.

12.3 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.4 Correction of Note Documents. The Required Purchasers may correct patent errors and fill in any blanks in this Agreement and the other Note Documents consistent with the agreement of the parties**.**

12.5 Amendments in Writing; Integration. (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Note Document, no approval or consent thereunder, or any consent to any departure by Issuer or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Issuer, Collateral Agent and the Required Purchasers provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing the amount outstanding under the Notes held by each Purchaser's shall be effective as to such Purchaser without such Purchaser's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Purchasers directly affected thereby, (A) reduce the principal of, rate of interest on, Redemption Price or any fees with respect to the Note or forgive any principal, Redemption Price, interest (other than default interest) or fees (other than late charges) with respect to the Note (B) postpone the date fixed for, or waive, any payment of principal of any Note or of interest on the Note (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Purchasers" or the percentage of Purchasers which shall be required for the Purchasers to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Issuer to sell or otherwise dispose of all or substantially all or any material portion of the

Collateral or release any Guarantor of all or any portion of the Obligations or its Guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Note Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5 insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Issuer of any of its rights and obligations under any Note Document or release Issuer of its payment obligations under any Note Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share or that provide for the Purchasers to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; (I) amend any of the provisions of Section 12.5; (J) make any change that adversely affects the conversion rights of any Note. It is hereby understood and agreed that all Purchasers shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

(b) Other than as expressly provided for in Section 12.5(a)(i)-(iii), the Required Purchasers may from time to time designate covenants in this Agreement less restrictive by notification to a representative of Issuer.

(c) This Agreement and the Note Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Note Documents merge into this Agreement and the Note Documents; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

12.7 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Issuer in Section 12.2(a) and (b) to reimburse and indemnify each Purchaser and Collateral Agent, the withholding provision in Section 2.5 hereof, the confidentiality provisions in Section 12.8 below and Exhibit B of this Agreement shall survive the termination of the Note Documents and the payment in full of the Obligations hereunder.

12.8 Confidentiality. In handling any confidential information of Issuer, each of the Purchasers and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms

and conditions of this Agreement, to the Purchasers' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Purchaser's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Notes (*provided, however*, the Purchasers and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) (other than disclosure of any information of the kind referred to in sections 275(1) and 275(4) of the PPSA (unless section 275(7) of the PPSA applies)) as required by law, rule, regulation, regulatory or self-regulatory authority, subpoena, or other order; (d) to Purchasers' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent or the Required Purchasers may reasonably considers appropriate in exercising remedies under the Note Documents; and (f) to third party service providers of the Purchasers and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Purchasers and/or Collateral Agent, as applicable, with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Purchasers' and/or Collateral Agent's possession when disclosed to the Purchasers and/or Collateral Agent, or becomes part of the public domain after disclosure to the Purchasers and/or Collateral Agent through no breach of this provision by the Purchasers or the Collateral Agent; or (ii) is disclosed to the Purchasers and/or Collateral Agent by a third party, if the Purchasers and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Purchasers may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis so long as the Collateral Agent and the Purchasers do not disclose the identity of Issuer or the identity of any person associated with Issuer. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8. Notwithstanding anything contained in this Section 12.8, Issuer and the initial Purchasers hereby acknowledge and agree that as of the Effective Date, after giving effect to the public announcement of the Transactions, none of Issuer nor any of its affiliates has provided such Purchasers with any material, nonpublic information.

12.9 Right of Set Off. Issuer and each Guarantor hereby grant to Collateral Agent and to each Purchaser, a Lien, security interest and right of set off as security for all Obligations to Secured Parties hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of any Secured Party or any entity under the control of such Secured Party (including a Collateral Agent Affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, any Secured Party may set off the same or any part thereof and apply the same to any liability or obligation of Issuer even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF ISSUER ARE HEREBY

KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED BY ISSUER AND EACH GUARANTOR.

12.10 Cooperation of Issuer. If necessary, Issuer agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of the Notes (or portion thereof) to an assignee in accordance with Section 12.1, (ii) make Issuer's management personnel available to meet with the Purchasers and prospective participants and assignees of the Notes or portions thereof (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist the Purchasers in the preparation of information relating to the financial affairs of Issuer as any prospective participant or assignee of the Notes (or portions thereof) reasonably may request. Subject to the provisions of Section 12.8, Issuer authorizes each Purchaser to disclose to any prospective participant or assignee of the Notes (or portions thereof), any and all information in such Purchaser's possession concerning Issuer and its financial affairs which has been delivered to such Purchaser by or on behalf of Issuer pursuant to this Agreement, or which has been delivered to such Purchaser by or on behalf of Issuer in connection with such Purchaser's credit evaluation of Issuer prior to entering into this Agreement.

12.11 Public Announcement. Issuer hereby agrees that Collateral Agent and each Purchaser, after consultation with Issuer, may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Issuer's name, tradenames and logos. Each Purchaser hereby agrees that Issuer, after consultation with the Purchasers, may make a public announcement of the transactions contemplated by this Agreement, and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Purchasers' names, tradenames and logos. Notwithstanding the foregoing, such consultation with Issuer shall not be required for any disclosures by Collateral Agent and the Purchasers may also make required disclosures to the SEC, ASX or other governmental agency and any other public disclosure with investors, other governmental agencies or other related persons.

12.12 Collateral Agent and Purchaser Agreement. Collateral Agent and the Purchasers hereby agree to the terms and conditions set forth on Exhibit B attached hereto. Issuer acknowledges and agrees to the terms and conditions set forth on Exhibit B attached hereto.

12.13 Time of Essence. Time is of the essence for the performance of Obligations under this Agreement.

12.14 Termination Prior to Maturity Date; Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Issuer has satisfied the Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement and for which no claim has been made) in accordance with the terms of this Agreement, this Agreement may be terminated prior to the Maturity Date by Issuer, effective five (5) Business Days after written notice of termination is given to the Collateral Agent and the Purchasers.

12.15 Guaranty.

(a) The Guarantors hereby jointly and severally guarantee to Collateral Agent and the Purchasers, and their successors and assigns, the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Notes, all fees and other amounts and Obligations from time to time owing to Collateral Agent and the Purchasers by Issuer and each other Guarantor under the Notes, this Agreement or under any other Note Document (for the avoidance of doubt, including any obligations of the Issuer and any Guarantor under Exhibit C), in each case strictly in accordance with the terms hereof and thereof (such obligations being herein collectively called the "**Guaranteed Obligations**"). The Guarantors hereby further jointly and severally agree that if Issuer or any other Guarantor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal. The guarantee in this Section 12.15(a) is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising. The Guarantors hereby further agree that the obligations of the Issuer as set forth on Exhibit C attached hereto apply mutatis mutandis as obligations of the Guarantors.

(b) Obligations Unconditional. The obligations of the Guarantors under Section 12.15(a) above are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Issuer and each other Guarantor under the Notes, this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 12.15(b) that the obligations of the Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Guarantors hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(iii) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(iv) any Lien or security interest granted to, or in favor of, Collateral Agent as security for any of the Guaranteed Obligations shall fail to be perfected.

(c) The Guarantors hereby expressly waive diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that Collateral Agent or any Purchaser exhaust any right, power or remedy or proceed against Issuer under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

(d) The obligations of the Guarantors under this Section 12.15 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Issuer in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Guarantors jointly and severally agree that they will indemnify and hold the Collateral Agent and the Purchasers harmless (on demand) for all reasonable costs and expenses (including fees of any counsel) incurred by such Persons in connection with such rescission or restoration, including any such 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.

(e) The Guarantors hereby jointly and severally agree that, until the payment and satisfaction in full of all Guaranteed Obligations (other than inchoate indemnity obligations), they shall not exercise any right or remedy arising by reason of any performance by them of their guarantee in Section 12.15(a), whether by subrogation or otherwise, against Issuer or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

(f) The Guarantors hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, each other Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Fair Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section 12.15(f) shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor under the other provisions of Section 12.15 and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations. For purposes of this Section 12.15(f), (i) "**Excess Funding Guarantor**" means, in respect of any Guaranteed Obligations, a Guarantor that has paid an amount in excess of its Fair Share of such Guaranteed Obligations, (ii) "**Excess Payment**" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Fair Share of such Guaranteed Obligations and (iii) "**Fair Share**" means, for any Guarantor, the ratio (expressed as a percentage) of the amount by which the aggregate present fair saleable value of all properties of such Guarantor (excluding any shares of stock of any other Guarantor) exceeds the amount of all the debts and liabilities of such Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder

and any obligations of any other Guarantor that have been guaranteed by such Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Issuer and the Guarantors hereunder and under the other Note Documents) of all of the Guarantors, determined (A) with respect to any Guarantor that is a party hereto on the Effective Date, as of the Effective Date, and (B) with respect to any other Guarantor, as of the date such Guarantor becomes a Guarantor hereunder.

(g) In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under Section 12.15(a) would otherwise, taking into account the provisions of Section 12.15(f), be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under Section 12.15(a), then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Guarantor, Collateral Agent, any Purchaser or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

12.16 Representations and Warranties of the Purchasers. Each Purchaser, severally and not jointly, represents and warrants to Issuer as of the date such Person becomes a Purchaser and as of the Restatement Date, that:

(a) Such Purchaser is duly organized, validly existing and in good standing, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such Purchaser and constitutes a legal, valid and binding obligation of such Purchaser, enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(c) This Agreement will not violate, conflict with or result in a breach of or default under (i) such Purchaser's organizational documents, (ii) any agreement or instrument to which such Purchaser is a party or by which such Purchaser or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to such Purchaser.

(d) Solely with respect to Ascend and [Element / 5ECAP Debt], each of the Notes to be received by such Purchaser hereunder will be acquired for such Purchaser's own account, and not with a view to the resale or distribution of any part thereof in violation of the Securities Act, except pursuant to sales registered or exempted under the Securities Act, and such Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same in violation of the Securities Act without prejudice, however, to such Purchaser's right at all times

to sell or otherwise dispose of all or any part of such Notes in compliance with applicable federal and state securities laws.

(e) Solely with respect to Ascend and [Element / 5ECAP Debt], such Purchaser can bear the economic risk and complete loss of its investment in the Notes and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment contemplated hereby.

(f) Solely with respect to Ascend and [Element / 5ECAP Debt], such Purchaser has had an opportunity to receive, review and understand all information related to Issuer requested by it and to ask questions of and receive answers from Issuer regarding Issuer, its Subsidiaries, its business and the terms and conditions of the offering of the Notes, and has conducted and completed its own independent due diligence.

(g) Solely with respect to Ascend and [Element / 5ECAP Debt], based on the information such Purchaser has deemed appropriate, it has independently made its own analysis and decision to enter into the Note Documents.

(h) Solely with respect to Ascend and [Element / 5ECAP Debt], such Purchaser understands that the Notes are characterized as "restricted securities" under the U.S. federal securities laws inasmuch as they are being acquired from Issuer in a transaction not involving a public offering and that under such laws and applicable regulations such securities may be resold without registration under the Securities Act only in certain limited circumstances. Such Purchaser understands that no United States federal or state agency, or similar agency of any other country, has reviewed, approved, passed upon, or made any recommendation or endorsement of Issuer or the purchase of the Notes.

(i) Solely with respect to Ascend and [Element / 5ECAP Debt], such Purchaser is (i) an "accredited investor" as defined in Regulation D promulgated under the Securities Act, (ii) an institutional account as defined in FINRA Rule 4512(c), (iii) an Eligible Investor, (iv) not acting on behalf of, or for the benefit of, any person who is not an Eligible Investor, and (v) is not acquiring the Notes (or shares of Common Stock issuable upon conversion of the Notes) with the purpose of selling or transferring, or granting, issuing, or transferring interests in, or options over, the Notes (or shares of Common Stock issuable upon conversion of the Notes) within 12 months of their purchase or issuance other than to an Eligible Investor.

(j) The Purchasers agree that the Notes and the shares of Common Stock issuable upon conversion of the Notes may not be sold or transferred unless (i) such Notes or the shares of Common Stock issuable upon conversion of the Notes are sold or transferred pursuant to an effective registration statement pursuant to the Securities Act and disclosure document pursuant to the *Corporations Act 2001* (Cth), (ii) such Notes or the shares of Common Stock issuable upon conversion of the Notes are sold or transferred in accordance with to Rule 144 or any other exemption from, or in a transaction not subject to, the registration requirements of the Securities Act or the *Corporations Act 2001* (Cth), (iii) the Issuer has received an opinion of counsel reasonably satisfactory to it that such sale or transfer may lawfully be made without registration under the Securities Act or without disclosure under the *Corporations Act 2001* (Cth), or (iv) Notes

or the shares of Common Stock issuable upon conversion of the Notes are transferred without consideration to an affiliate of such holder or a custodial nominee.

12.17 Tax Matters. For all U.S. federal and relevant state or local tax purposes, except as otherwise required by a Governmental Authority or change in applicable law, the parties hereto agree to: (1) treat the Notes as investment units within the meaning of Section 1.1273-2(h) of the United States Treasury Regulations, and accordingly, treat the Notes as having been issued on the Closing Date with an "issue price" (within the meaning of Section 1.1273-2 of the United States Treasury Regulations) equal to their initial principal amount, (2) treat the Notes as being subject to a single payment schedule that, as of the Closing Date, is significantly more likely than not to occur, and accordingly, treat the Notes as convertible debt instruments that are not "contingent payment debt instruments" under Section 1.1275-4 of the United States Treasury Regulations (or any corresponding provision of state income tax law), (3) treat the accrual of interest and original issue discount and any amounts received upon conversion, redemption or other disposition as not constituting "contingent interest" within the meaning of Sections 871(h) and 881(c) of the Internal Revenue Code (or within the meaning of a comparable exception under the "Interest" article of an applicable United States income tax treaty) (clauses (1), (2), (3), and (4), the "**Intended Tax Treatment**"), and (4) file all relevant Tax returns consistently with the Intended Tax Treatment. Notwithstanding the foregoing, if a Governmental Authority (other than as a result of a change in law after the date hereof) requires the Notes to be treated in a manner inconsistent with the Intended Tax Treatment and, as a result, amounts payable to or for the account of any Purchaser are subject to U.S. federal withholding Tax, such taxes shall be Excluded Taxes. If as a result of a change in circumstances within the meaning of Section 1.1272-1(c)(6) of the United States Treasury Regulations, payments are not made pursuant to the payment schedule described in the previous sentence, then the parties hereto agree, solely for purposes of Sections 1272 and 1273 of the Internal Revenue Code, to cooperate to make appropriate subsequent adjustments in accordance with Section 1.1272-1(c)(6) of the United States Treasury Regulations (and any corresponding provision of state income tax law). The Issuer acknowledges its obligations to file and/or publicly post (as applicable) an IRS Form 8937 if a conversion rate adjustment (or lack thereof) results in a distribution under Section 305(c) of the Internal Revenue Code and agrees to notify the Purchasers on a timely basis in the event of such an adjustment (or lack thereof) and consider, in good faith, any timely received, reasonable comments of the Purchasers in preparing such IRS Form 8937.

12.18 Amended and Restatement. Each of the parties hereto agrees as follows:

(a) this Agreement (including all Exhibits and Schedules) shall amend, restate and replace in its entirety the Original Note Purchase Agreement (including all exhibits and schedules attached thereto) on the Restatement Date;

(b) from and after the Restatement Date, all references to the "Note Purchase Agreement" contained in the Note Documents shall be deemed to refer to this Agreement and all references to any Article or Section (or subsection) of this Agreement in any other Note Document shall be amended to become references to the corresponding provisions of this Agreement;

(c) this Agreement shall not constitute a novation of the obligations and liabilities of the parties under the Original Note Purchase Agreement or the other Note Documents as in

effect prior to the Restatement Date and that remain outstanding as of the Restatement Date and all obligations under the Original Note Purchase Agreement (as such obligations may be amended, supplemented, replaced, expanded, extended or otherwise modified hereby on the Restatement Date) shall constitute obligations hereunder and shall continue to be valid, enforceable and in full force and effect and not to be impaired, in any respect, by the effectiveness of this Agreement; provided that this clause (c) is subject to the terms of the Restructuring Support Agreement; and

(d) this amendment and restatement of the Original Note Purchase Agreement shall be limited as written and not be a consent to any other amendment, restatement, supplement, waiver or other modification of any other provisions under any Note Documents, without regard to whether similar, and, except as expressly provided herein or in any other Note Document, all terms and conditions of the Note Documents remain in full force and effect unless otherwise specifically amended hereby.

12.19 PPSA Provisions.

(a) Where any Secured Party has a security interest (as defined in the PPSA) under any Note Document, to the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the PPSA: each Secured Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and sections 142 and 143 of the PPSA are excluded;

(ii) for the purposes of section 115(7) of the PPSA, each Secured Party with the benefit of the security interest need not comply with sections 132 and 137(3);

(iii) each party waives its right to receive from any Secured Party any notice required under the PPSA (including a notice of a verification statement);

(iv) if a Secured Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise. However, this Section 12.19 does not apply to a right, power or remedy which can only be exercised under the PPSA; and

(v) if the PPSA is amended to permit the parties to agree not to comply with or to exclude other provisions of the PPSA, the Collateral Agent may notify the Issuer, the Australian Obligors and the Secured Parties that any of these provisions is excluded, or that the Secured Parties need not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in any Note Document.

(b) Whenever the Collateral Agent reasonably requests the Issuer or any Australian Obligor to do anything:

(i) to ensure any Note Document (or any security interest (as defined in the PPSA) or other Lien under any Note Document) is fully effective, enforceable and perfected with the contemplated priority;

(ii) for more satisfactorily assuring or securing to the Secured Parties the property the subject of any such security interest or other Lien in a manner consistent with the Note Documents; or

(iii) for aiding the exercise of any power in any Note Document,

the Issuer or that Australian Obligor (as applicable) shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest or Lien.

12.20 Beneficial Ownership Limitation.

(a) By written notice to the Company, Bluescape may elect for the beneficial ownership limitation set forth in this Section 12.20 to apply to it. If such election is made, the Company shall not effect the conversion of Bluescape's Notes, and Bluescape shall not have the right to convert all or any portion of a Note, and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, Bluescape and its Affiliates, together with any Attribution Parties (defined below) (the "**Beneficial Owner Parties**"), would beneficially own in excess of [9.9]% (the "**Maximum Percentage**") of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Beneficial Owner Parties shall include the number of shares of Common Stock issuable upon conversion of the Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock that would be issuable upon (x) conversion of the remaining, unexercisable portion of the Note beneficially owned by Bluescape and (y) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company beneficially owned by Bluescape or any Attribution Parties (including, without limitation, any convertible notes or convertible preferred shares or warrants) subject to a limitation on conversion or exercise analogous to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this paragraph, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and "**Attribution Parties**" shall include any and all persons with whom a Beneficial Owner Party is or would be deemed to be members of a group pursuant to Rule 13d-5(b(1) promulgated under Section 13(d) of the Exchange Act. For purposes of the Note, in determining the number of outstanding shares of Common Stock, Bluescape may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC as the case may be, (2) a more recent public announcement by the Company or (3) any other notice by the Company or Continental Stock Transfer & Trust Company, as transfer agent (in such capacity, the "**Transfer Agent**"), setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written request of Bluescape, the Company shall, within two (2) Business Days, confirm orally and in writing to

Bluescape the number of shares of Common Stock then outstanding. In any case, the number of issued and outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of equity securities of the Company by Bluescape since the date as of which such number of issued and outstanding shares of Common Stock was reported. By written notice to the Company, Bluescape may from time to time increase or decrease the Maximum Percentage applicable to it to any other percentage specified in such notice; provided, however, that any such increase shall not be effective until the sixty-first (61st) day after such notice is delivered to the Company.

12.21 Purchaser Covenant. No Short Selling. From the Restatement Date to the Maturity Date, each Purchaser agrees that, so long as it holds any Notes hereunder, neither it nor any of its Affiliates shall, directly or indirectly engage in, effect, agree to effect, and/or establish, in any manner whatsoever: (a) any short sale (as defined in Rule 200 under Regulation SHO of the Exchange Act), whether or not against the box; (b) any "put equivalent position" (as defined in Rule 16a-1(h) under the Exchange Act) with respect to the Common Stock; (c) borrowing or pre-borrowing any shares of Common Stock; (d) grant any other right (including, without limitation, any put or call option) with respect to the Common Stock or with respect to any security that includes, relates to or derives any significant part of its value from the Common Stock or otherwise seek to hedge its position in the Common Stock; (e) any "net short position" of the Common Stock, (f) hedging transaction, which establishes a net short position with respect to the Common Stock; (g) loan or enable the utilization of any Common Stock or existing or contingent rights thereto for the foregoing purposes; or (h) in any way enable or facilitate any third party to do any of the foregoing.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Restatement Date.

ISSUER:

5E ADVANCED MATERIALS, INC.

By:
Name:
Title:

GUARANTORS:

AMERICAN PACIFIC BORATES PTY LTD

Executed by
American Pacific Borates Pty Ltd (ABN 68 615 606 114)
in accordance with section 127 of the Australian *Corporations Act 2001* (Cth)
by a director and director/company secretary:

Signature of director	Signature of director/ company secretary
Name of director (please print)	Name of director/ company secretary (please print)

PURCHASER:

BEP SPECIAL SITUATIONS IV LLC

By:
Name:
Title:

PURCHASER:

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SPC

By:
Name:
Title:

PURCHASER:

[5ECAP DEBT, LLC
By **Element Global, Inc** (its manager)

By:
Name:
Title:]

[ELEMENT GLOBAL, INC

By:
Name:
Title:]

COLLATERAL AGENT:

ALTER DOMUS (US) LLC

By:
Name:
Title:

EXHIBIT A

Description of Collateral

EXHIBIT B

Collateral Agent and Purchaser Terms

EXHIBIT C

Taxes; Increased Costs

EXHIBIT D

Compliance Certificate

EXHIBIT E

Form of Note

[Attached]

[FORM OF NOTE]

THE OFFER AND SALE OF NOTES REPRESENTED HEREBY OR ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION THEREOF HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH NOTES AND SHARES MAY NOT BE OFFERED, SOLD, PLEDGED, HEDGED OR OTHERWISE TRANSFERRED, EXCEPT (X) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND A CURRENT PROSPECTUS, (Y) IN ACCORDANCE WITH RULE 144 UNDER THE SECURITIES ACT OR (Z) PURSUANT TO ANOTHER APPLICABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT.

THE NOTES REPRESENTED HEREBY ARE GOVERNED BY THE PROVISIONS OF AN AMENDED AND RESTATED NOTE PURCHASE AGREEMENT, DATED AS OF [_____] (THE "AGREEMENT"), AMONG THE COMPANY, THE GUARANTORS NAMED THEREIN AND THE PURCHASERS NAMED THEREIN. BY ACCEPTING ANY NOTE REPRESENTED HEREBY, THE HOLDER THEREOF WILL BE DEEMED TO AGREE TO BE BOUND BY THE TERMS OF THE AGREEMENT AS A PURCHASER.

THE ISSUE PRICE, ISSUE DATE AND YIELD TO MATURITY WITH RESPECT TO THIS NOTE MAY BE OBTAINED BY WRITING TO THE COMPANY AT THE FOLLOWING ADDRESS: 9329 MARIPOSA ROAD, SUITE 210, HESPERIA, CA 92344; ATTENTION: PAUL WEIBEL; EMAIL: pweibel@5eadvancedmaterials.com.

Secured Promissory Note

No. [ ] U.S. $[ ]

5E Advanced Materials, Inc., a Delaware corporation (herein called the "**Company**"), which term includes any successor corporation under the Agreement referred to on the reverse hereof, for value received hereby promises to pay to [_____], or registered assigns, the principal sum of [_____] UNITED STATES DOLLARS (U.S. $[_____]) (which amount may from time to time be increased or decreased by adjustments made on the records of the Company in accordance with the below-referred Agreement) on [_____]. The Company will pay all outstanding principal of any Note and accrued and unpaid interest thereon as provided in the below-referred Agreement.

Reference is made to the further provisions of this Note set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the below-referred Agreement. In the case of any conflict between this Note and such Agreement, the provisions of such Agreement shall control.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

5E ADVANCED MATERIALS, INC.

Dated: __ By: _____

Name:
Title:

[FORM OF REVERSE OF NOTE]
5E ADVANCED MATERIALS, INC.

Secured Promissory Note

This Note is one of a duly authorized issue of Notes of the Company, designated as its Secured Promissory Notes (the "**Notes**"), initially limited in aggregate principal amount to $[__],000,000 all issued or to be issued under and pursuant to an Amended and Restated Note Purchase Agreement dated as of [_____], 2024 (the "**Agreement**") among the Company, the Guarantors named therein, the Purchasers named therein and Alter Domus (US) LLC, as Collateral Agent, to which Agreement and all agreements supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Company and the Purchasers of the Notes.

Except as provided for in the Agreement, the principal amount on this Note shall be payable, when and if due, only against surrender therefor, while payments of interest on this Note shall be made, in accordance with the Agreement.

Interest. Stated Interest will accrue on this Note at a per annum rate equal to (i) from the Closing Date to the Restatement Date, (x) 4.5% for interest paid in cash or (y) 6.00% in the case of PIK Interest, and (ii) from the Restatement Date and thereafter, (x) 4.5% for interest paid in cash or (y) 10.00% in the case of PIK Interest, which interest, in the case of each of the foregoing clauses (i) and (ii), shall be payable, in each case, as set forth in the Agreement.

Conversion. The Notes are convertible into shares of Common Stock and cash subject to the terms of the Agreement.

Redemption. The Notes will be subject to Redemption as provided in the Agreement.

Acceleration of Maturity. The Agreement contains provisions for acceleration of the maturity of the unpaid principal amount of this Note upon the happening of certain stated events upon the terms and conditions specified therein.

Denominations. The Notes are issuable only in registered form in denominations of $1,000 and any integral multiple of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof), as provided in the Agreement and subject to certain limitations therein set forth.

Transfer. This Note is assignable or transferable, in whole or in part, to the extent such assignment or transfer is permitted pursuant to the terms of the Agreement.

THIS NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

CONVERSION NOTICE

If you want to convert all or any portion (which must be $1,000 or in integral multiples of $1,000 in excess thereof (or, if any PIK Interest has been paid, $1.00 or any integral multiple of $1.00 in excess thereof)) this Note, check the box: ☆ and specify the Principal Amount to be so converted: $_____,000.

Date:

_____
(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

_____
Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Company or the transfer agent for the Company's Common Stock, as applicable, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Company or the transfer agent for the Company's Common Stock in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

EXHIBIT F

Form of Investor and Registration Rights Agreement

[Attached]

Schedule 2.2

Purchasers

Purchaser	Aggregate Principal Amount of Secured Promissory Notes
BEP SPECIAL SITUATIONS IV LLC	$[__]
ASCEND GLOBAL INVESTMENT FUND SPC, FOR AND ON BEHALF OF STRATEGIC SP	$[__]
[ELEMENT GLOBAL, INC / 5ECAP DEBT, LLC]	$[__]
Total	$[__]

Schedule 7.4

Existing Indebtedness

None.

Schedule 7.7

Existing Investments

None.

EXHIBIT H

AMENDED AND RESTATED INVESTOR AND REGISTRATION RIGHTS AGREEMENT

FORM OF AMENDED AND RESTATED
INVESTOR AND REGISTRATION RIGHTS AGREEMENT

THIS AMENDED AND RESTATED INVESTOR AND REGISTRATION RIGHTS AGREEMENT, dated as of [●], 2024 (this "***Agreement***"), has been entered into by and among **5E ADVANCED MATERIALS, INC.**, a Delaware corporation (the "***Company***") and the undersigned holders of Registrable Securities (as defined below).

BACKGROUND

In connection with the Note Purchase Agreement, dated as of August 11, 2022 (the "***Original NPA***"), by and among BEP Special Situations IV LLC (including any Affiliates (defined below) thereof and/or entities managed by or under common control therewith, "***BEP***", and together with any other persons otherwise party to the Original NPA from time to time, each a "***Purchaser***"), the Company, the guarantors from time to time party thereto and Alter Domus (US) LLC, as collateral agent, the Purchasers purchased from the Company $60,000,000.00 in aggregate principal amount of secured promissory notes (the "***Original Notes***") of the Company, and in connection therewith, the Company provided the Purchaser with certain registration rights under the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the "***Securities Act***"), and applicable state securities laws with respect to the Original Notes and the Conversion Shares (as defined below).

On [●], 2024 (the "***Closing Date***"), the Company, BEP, Ascend Global Investment Fund SPC for and on behalf of Strategic SP ("***Ascend***") and 5ECAP Debt, LLC ("***5ECAP Debt***") closed the restructuring of the Original Notes (as amended, the "***Notes***") by amending and restating the Original NPA (as amended, the "***NPA***") and the Company issued shares (the "***Purchased Shares***") of its Common Stock (as defined below) to the NEG (as defined below)[, BEP] and certain other investors in a private placement (the "***Restructuring***").

In connection with the Restructuring, the Company and the undersigned, which collectively hold a majority of the Registrable Securities outstanding, have agreed to amend and restate that certain Registration Rights Agreement, dated as of August 26, 2022, by and between the Company and the Purchasers (the "***Original RRA***").

AGREEMENT

In light of the above, the Company and the Holders hereby agree as follows:

1. Definitions.

As used in this Agreement, the following terms will have the respective meanings set forth in this Section 1:

"***5ECAP***" means 5ECAP, LLC.

"***5ECAP Group***" means 5ECAP and 5ECAP Debt.

"***5ECAP Debt***" has the meaning set forth in the preamble.

"***Additional Interest***" has the meaning set forth in Section 2(c)(iv).

"***Advice***" has the meaning set forth in Section 2(d)(iii).

"***Affiliate***" means as to any Person, any other Person who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. As used in this Agreement,

the term "control," including the correlative terms "controlling," "controlled by" and "under common control with," means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any partnership or other ownership interest, by contract or otherwise) of a Person. For the avoidance of doubt, for purposes of this Agreement, the Company, on the one hand, and a Holder, on the other hand, shall not be considered Affiliates solely by their respective entry into this Agreement.

"***Agreement***" has the meaning set forth in the preamble.

"***Ascend***" has the meaning set forth in the preamble.

"***Bankruptcy Code***" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"***BEP***" has the meaning set forth in the preamble.

"***BEP Director***" has the meaning set forth in Section 6(a).

"***Block Trade***" means a registered offering and/or sale of Registrable Securities on a coordinated or underwritten basis commonly known as a "block trade" (whether firm commitment or otherwise) requiring the involvement of the Company but not involving any "road show" or substantial marketing efforts prior to pricing, including, without limitation, a same day trade, overnight trade or similar transaction.

"***Blue Sky***" has the meaning set forth in Section 3(m).

"***Board of Directors***" has the meaning set forth in Section 2(b).

"***Business Day***" means (i) a day on which the Common Stock is traded on a Trading Market, (ii) if the Common Stock is not listed on any Trading Market, a day on which the Common Stock is quoted in the over-the-counter market as reported by the National Quotation Bureau Incorporated (or any similar organization or agency succeeding to its functions of reporting prices) or (iii) in the event that the Common Stock is not listed or quoted as set forth in (i) and (ii) hereof, any day other than a Saturday, a Sunday or a day on which banking institutions in The City of New York are authorized or required by law, regulation or executive order to remain closed.

"***Claim***" has the meaning set forth in Section 5(c).

"***Closing Date***" has the meaning set forth in the preamble.

"***Commission***" means the U.S. Securities and Exchange Commission or any successor agency.

"***Common Stock***" means the Company's common stock, par value $0.01 per share.

"***Company***" has the meaning set forth in the preamble.

"***Conversion Share***" means any share of Common Stock issued or issuable upon conversion of the Notes.

"***Demand Registration Notice***" has the meaning set forth in Section 2(e)(i).

"***Demand Registration Statement***" means each registration statement under the Securities Act that is designated by the Company for the registration, under the Securities Act, of any Demand Underwritten Offering pursuant to Section 2(e). For the avoidance of doubt, the Demand Registration Statement may, at the Company's election, be the Registration Statement filed pursuant to Section 2(a).

"***Demand Underwritten Offering***" has the meaning set forth in Section 2(e)(i).

"***Demand Underwritten Offering Majority Holders***" has the meaning set forth in Section 2(e)(iv)(1).

"***Demanding Notice Holders***" has the meaning set forth in Section 2(e)(i).

"***Discontinuance Notice***" has the meaning set forth in Section 3(d).

"***Effective Date***" means, with respect to any Registration Statement, the date on which the Commission first declares effective such Registration Statement.

"***Effectiveness Deadline***" means, with respect to a Registration Statement filed pursuant to Section 2(a), 60 calendar days after the Closing Date in the case of a filing on Form S-1 and 30 calendar days after the Closing Date in the case of a filing on Form S-3.

"***Effectiveness Period***" has the meaning set forth in Section 2(a).

"***End of Suspension Notice***" has the meaning set forth in Section 2(b).

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"***FINRA***" means the Financial Industry Regulatory Authority, Inc. or any successor organization performing similar functions.

"***Holder***" or "***Holders***" means the holder or holders, as the case may be, from time to time of Registrable Securities.

"***Indemnified Party***" has the meaning set forth in Section 5(c).

"***Indemnifying Party***" has the meaning set forth in Section 5(c).

"***Initial BEP Director***" has the meaning set forth in Section 6(a).

"***Initial NEG Director***" has the meaning set forth in Section 6(b).

"***Losses***" has the meaning set forth in Section 5(a).

"***Managing Underwriters***" means one or more registered broker-dealers that are designated in accordance with this Agreement to administer such offering.

"***Maximum Successful Underwritten Offering Size***" means, with respect to any Demand Underwritten Offering, the maximum number of securities that may be sold in such offering without adversely affecting the marketability, proposed offering price, timing, or method of distribution of the offering, as advised by the Managing Underwriters in their reasonable and good faith opinion for such offering to the Company and the applicable Demand Underwritten Offering Majority Holders.

"***NEG***" means Ascend and such other person(s) as may be nominated by Ascend.

"***NEG Director***" has the meaning set forth in Section 6(b).

"***Notes***" has the meaning set forth in the preamble.

"***NPA***" has the meaning set forth in the preamble.

"***Offering Launch Time***" means, with respect to a Demand Underwritten Offering, the earliest of (a) the first date a preliminary prospectus (or prospectus supplement) for such offering is filed with the Commission; (b) the first date such offering is publicly announced; and (c) the date a definitive agreement is entered into with the Managing Underwriters respect to such offering.

"***Opt-Out Notice***" has the meaning set forth in Section 7(l).

"***Original Notes***" has the meaning set forth in the preamble.

"***Original NPA***" has the meaning set forth in the preamble.

"***Original RRA***" has the meaning set forth in the preamble.

"***Other Investments***" has the meaning set forth in Section 7(o).

"***Permitted Transferee***" means any Person to whom a Holder sells, assigns, distributes or transfers all or a portion of its Registrable Securities (including, for the avoidance of doubt, an Affiliate of a Holder); provided that such Person executes and delivers to the Company a joinder to this Agreement under which it becomes a "Holder" under this Agreement and agrees to be bound by the provisions of this Agreement applicable to Holders.

"***Person***" or "***person***" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate "person" under this Agreement.

"***Piggy-Back Transaction***" has the meaning set forth in Section 2(f).

"***Proceeding***" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"***Prospectus***" means the prospectus included in a Registration Statement (including, without limitation, any preliminary prospectus, any free-writing prospectus and any prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by a Registration Statement, and all other amendments and supplements to such prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such prospectus.

"***Purchased Shares***" has the meaning set forth in the preamble and shall include such shares of Common Stock that have been issued to Ascend and 5ECAP as its equity placement fee in connection with the Restructuring.

"***Purchaser****"* means any of one of the Purchasers.

"***Purchasers***" has the meaning set forth in the preamble.

"***Registrable Securities***" means (i) any Conversion Shares issued or issuable upon conversion of the Notes and (ii) the Purchased Shares issued to Ascend [and][,] 5ECAP [and BEP] on the Closing Date as part of the Restructuring. "***Registrable Securities***" also includes any shares of capital stock issued or issuable with respect to the foregoing as a result of any stock split, stock dividend, recapitalization, exchange or similar event or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) the Commission has declared a Registration Statement covering such securities effective and such securities have been disposed of pursuant to such effective Registration Statement; (ii) such securities are actually sold under circumstances in which all of the applicable conditions of Rule 144 under the Securities Act are met and the legend restricting further transfer has been removed from the stock certificate or book-entry position representing such securities; or (iii) such securities are no longer outstanding.

"***Registration Default***" has the meaning set forth in Section 2(c)(iv).

"***Registration Statement***" means a registration statement filed pursuant to the terms hereof and which covers the resale by the Holders, including the Prospectus, amendments and supplements to such registration

statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference (or deemed to be incorporated by reference) therein. For the avoidance of doubt, "***Registration Statement***" means the initial registration statement described above in this paragraph and any additional registration statement or registration statements that are needed to sell additional Registrable Securities with the effect that the obligations of the Company under this Agreement also extend to such additional registration statement or registration statements, in all cases, as specified in this Agreement.

"***Renounced Business Opportunity***" has the meaning set forth in Section 7(o).

"***Restructuring***" has the meaning set forth in the preamble.

"***Restructuring Support Agreement***" has the meaning set forth in Section 7(p).

"***Rule 144***" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"***Rule 415***" means Rule 415 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"***Rule 424***" means Rule 424 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"***Securities Act***" has the meaning set forth in the preamble.

"***Subsequent Form S-3***" has the meaning set forth in Section 3(n).

"***Suspension Event***" has the meaning set forth in Section 2(b).

"***Suspension Notice***" has the meaning set forth in Section 2(b).

"***Suspension Period***" has the meaning set forth in Section 2(b).

"***Trading Market***" means whichever of the New York Stock Exchange, the Nasdaq Global Market, the Nasdaq Global Select Market or such other United States registered national securities exchange on which the Common Stock is listed or quoted for trading on the date in question.

2. Registration.

(a) **Mandatory Registration**. As soon as reasonably practicable after the Closing Date, but in any event, within five Business Days of the Closing Date, the Company shall prepare and file with the Commission a Registration Statement covering the resale of all Registrable Securities for an offering to be made on a continuous basis pursuant to Rule 415. The Registration Statement shall be on Form S-3 (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, in which case such registration shall be on Form S-1, and if for any reason the Company is not then eligible to register for resale the Registrable Securities on Form S-1, then another appropriate form for such purpose). The Company shall use its reasonable best efforts to cause the Registration Statement to be declared effective under the Securities Act as soon as possible but, in any event, no later than the Effectiveness Deadline, and shall use its reasonable best efforts to keep the Registration Statement (or a Subsequent Form S-3) continuously effective under the Securities Act until such date when all Registrable Securities covered by the Registration Statement cease to be Registrable Securities (the "***Effectiveness Period***").

(b) **Suspension Periods**. Notwithstanding Section 2(a), the Company may, at any time (x) delay the filing or delay or suspend the effectiveness of a Registration Statement or any pending or potential Demand Underwritten Offering or (y) without suspending such effectiveness, deliver a notice (a "***Suspension Notice***") that instructs any selling Holders not to sell any securities included in the Registration Statement, if any of the following events shall have occurred (each such circumstance, a "***Suspension Event***"): (i) the board of directors of the Company (the "***Board of Directors***") determines in good faith that (A) the Company intends to undertake an underwritten public offering in connection with a material transaction (provided, however, that to the extent the Company undertakes an underwritten public offering in connection with such transaction, Holders shall be entitled to the rights set forth in Section 2(f)); (B) disclosure of a material transaction that would otherwise be required to be disclosed due to such registration would have an adverse effect on the Company, including the Company's ability to consummate such a material transaction, or (C) such registration or continued registration would render the Company unable to comply with the requirements of the Securities Act or Exchange Act; or (ii) solely in the case of foregoing clause (x), the Board of Directors determines in good faith after consultation with outside legal counsel for the Company that the Company is required by law, rule or regulation to supplement or amend a Registration Statement in order to ensure that it (or the Prospectus contained therein) does not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Upon the occurrence of any Suspension Event, the Company shall use its reasonable best efforts to resolve the Suspension Event and to file the applicable Registration Statement, to cause the applicable Registration Statement to become effective and/or to permit resumed use of the Registration Statement, as applicable, as soon as reasonably practicable. If the Company exercises a suspension under this Section 2(b), then during the period of such suspension (the "***Suspension Period***"), the Company shall not engage in any transaction involving the offer, issuance, sale or purchase of Company equity securities (whether for the benefit of the Company or a third person), except (A) transactions involving the issuance or purchase of Company equity securities as contemplated by employee benefit plans or employee or director arrangements and (B) in connection with a transaction described in clause (i) of this Section 2(b). The Company shall provide such notice within three calendar days after the occurrence of a Suspension Event. A single Suspension Period shall not exceed 30 days and the total number of days subject to a Suspension Period during any consecutive 12-month period shall not exceed 45 days. The Holders may recommence effecting offers and sales of the Registrable Securities pursuant to the applicable Registration Statement following further written notice to such effect (an "***End of Suspension Notice***") from the Company, which End of Suspension Notice shall be given by the Company to the Holders promptly, and no later than three calendar days following the conclusion of any Suspension Event and its effect and, in any event, during the permitted 30-day Suspension Period. The filing of any prospectus by the Company relating to an underwritten offering of Common Stock shall be deemed an End of Suspension Notice.

(c) **Additional Interest**. The parties hereto agree that the Holders will suffer damages if the Company fails to fulfill its obligations under this Section 2 and that, in such case, it would not be feasible to ascertain the extent of such damages with precision. The parties hereto further agree that this Section 2(c) shall only apply with regard to Conversion Shares held by the applicable Holders. Accordingly, if:

(i) the Company does not file a Registration Statement on or before the date that is five Business Days after the Closing Date;

(ii) a Registration Statement is not declared effective by the Commission on or before the applicable Effectiveness Deadline;

(iii) the Company extends any Suspension Period beyond 45 days during any consecutive 12-month period; or

(iv) a Registration Statement is filed and declared effective but, during the applicable Effectiveness Period, a Registration Statement is not effective for any reason or the Prospectus contained therein is not available for use for any reason, including by reason of its withdrawal or termination pursuant to Section 3(e), or, other than by reason of a Suspension Period as provided in Section 2(b), will fail to be usable for its intended purpose without such disability being cured within 10 Business Days by an effective post-effective amendment to such Registration Statement, a supplement to the Prospectus, a report filed with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act that cures such failure or the effectiveness of a Subsequent Form S-3, and either (x) the Company fails for any reason to satisfy the

requirements of Rule 144(c)(1), including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c); or (y) the Company fails to satisfy any condition set forth in Rule 144(i)(2) as a result of which any of the Holders are unable to sell Registrable Securities without restriction under Rule 144 (including, without limitation, volume restrictions) (each such event referred to in foregoing clauses (i) through (iii) and this clause (iv), a "***Registration Default***"),

then in such event as partial relief for the damages to any Holder by reason of any such delay in or reduction of its ability to sell the Registrable Securities and not as a penalty (which remedy will not be exclusive of any other remedies available at law or equity), the Company hereby agrees to pay to each Holder, subject to Section 2(d), aggregate additional interest ("***Additional Interest***") equal to 0.50% per annum during the 90-day period immediately following the occurrence of any Registration Default and shall increase by 0.50% per annum during each subsequent 90-day period; provided that in no event shall the Additional Interest exceed 2.000% per annum, on all outstanding Notes (and all outstanding Conversion Shares to the extent Conversion Shares have been issued with respect to any Notes prior to the occurrence of the Registration Default and such Conversion Shares remain Registrable Securities); provided that the payment of Additional Interest on any such Conversion Shares will be calculated based on the principal amount of the Notes as a result of conversion of which such Conversion Shares were issued; provided further that any such Additional Interest will cease to accrue to Holders hereunder when any such Registration Default will cease, be remedied or be cured.

(d) **Holders' Information**.

(i) Information. The Company may require each applicable Holder to promptly furnish in writing to the Company such information regarding such Holder, the Registrable Securities held by it and the intended method of disposition of the Registrable Securities as the Company may from time to time reasonably request and such other information as may be legally required in connection with such registration. Notwithstanding anything in this Agreement to the contrary, if any Holder does not provide the Company with such requested information, the Company may exclude such Holder's Registrable Securities from the applicable Registration Statement or Prospectus if the Company determines, based on the advice of counsel, that such information is legally required to be included in the applicable Registration Statement or Prospectus and such Holder continues to withhold such information.

(ii) Undertakings. Such selling Holder will enter into any undertakings and take such other action relating to the conduct of the proposed offering which the Company may reasonably request as being necessary to ensure compliance with federal and state securities laws and the rules or other requirements of FINRA.

(iii) Discontinuance of Sales. Each Holder agrees by its acquisition of such Registrable Securities that, upon receipt of a Suspension Notice or a Discontinuance Notice from the Company, such Holder will forthwith discontinue any offers and sales of such Registrable Securities under the Registration Statement until such Holder's receipt of the copies of the supplemented Prospectus and/or amended Registration Statement or until it is advised in writing (the "***Advice***") by the Company that the use of the applicable Prospectus may be resumed, and, in either case, has received copies of any additional or supplemental filings that are incorporated or deemed to be incorporated by reference in such Prospectus or Registration Statement. The Company and the Holders acknowledge and agree that in no way shall this clause limit Holder's ability to sell securities without using the Registration Statement.

(e) **Demand Underwriting Registration Rights**.

(i) Right to Demand Underwriting Registration. Subject to the other provisions of this Section 2(e), Holders will have the right, exercisable by written notice satisfying the requirements of Section 2(e)(ii) (a "***Demand Registration Notice***") to the Company (such Holders, the "***Demanding Notice Holders***"), to require the Company to register, under the Securities Act, an underwritten public offering (a "***Demand Underwritten Offering***") of Registrable Securities in accordance with this Section 2(e); provided, however, that no Demand Registration Notice may be delivered, or will be effective if:

(1) a prior Demand Underwritten Offering is pending or in process, and is not withdrawn, at the time such Demand Registration Notice is delivered;

(2) the Company has already effected three Demand Underwritten Offerings (excluding, for the avoidance of doubt, Block Trades) under this Section 2(e)(i) in the immediately preceding 12 month period;

(3) it is delivered during a Suspension Period; or

(4) the aggregate market value of the Registrable Securities of such Holder(s) to be included in the requested Demand Underwritten Offering is less than $10,000,000 (unless such Registrable Securities constitute all of the Registrable Securities then outstanding).

(ii) Contents of Demand Registration Notice. Each Demand Registration Notice sent by any Demanding Notice Holder(s) must state the following:

(1) the name of, and contact information for, each such Demanding Notice Holder(s) and the number of outstanding Registrable Securities held by each such Demanding Notice Holder;

(2) the desired date of the Offering Launch Time for the requested Demand Underwritten Offering, which desired date cannot (without the Company's consent, which will not be unreasonably withheld or delayed) be earlier than 10 Business Days after the date such Demand Registration Notice is delivered to the Company; and

(3) the number of Registrable Securities that are proposed to be sold by each such Demanding Notice Holder.

(iii) Participation by Holders Other Than the Demanding Notice Holder(s). If the Company receives a Demand Registration Notice sent by one or more Demanding Notice Holders but not by all Holders, then:

(1) the Company shall, within one Business Day, send a copy of such Demand Registration Notice to each Holder other than such Demanding Notice Holders; and

(2) subject to Section 2(e)(vi), the Company shall use its reasonable best efforts to include, in the related Demand Underwritten Offering, Registrable Securities of any such Holder that has requested such Registrable Securities to be included in such Demand Underwritten Offering pursuant to a joinder notice that complies with subsection (A) below.

(A) To include any of its Registrable Securities in such Demand Underwritten Offering, a Holder must deliver to the Company, no later than the first Business Day after the date on which it receives the Demand Registration Notice pursuant to subsection (1) above, a written instrument, executed by such Holder, joining in such Demand Registration Notice, which instrument contains the information set forth in Section 2(e)(ii) with respect to such Holder.

(iv) Certain Procedures Relating to Demand Underwritten Offerings.

(1) Obligations and Rights of the Company. Subject to the other terms of this Agreement, upon its receipt of a Demand Registration Notice, the Company shall (A) designate a Demand Registration Statement, in accordance with the definition of such term and this Section 2(e), for the related Demand Underwritten Offering; and (B) use its reasonable best efforts to effect such Demand Underwritten Offering in accordance with the reasonable requests set forth in such Demand Registration Notice or the reasonable requests of the Holder(s) of a majority of the Registrable Securities included in such Demand Underwritten Offering (the "***Demand Underwritten Offering Majority Holders***"), and cooperate in good faith with the Demand

Underwritten Offering Majority Holders in connection therewith. The Company will be entitled to rely on the authority of the Demand Underwritten Offering Majority Holders of any Demand Underwritten Offering to act on behalf of all Holders that have requested any securities to be included in such Demand Underwritten Offering.

(2) Designation of the Underwriting Syndicate. The Managing Underwriters, and any other underwriter, for any Demand Underwritten Offering will be selected by the applicable Demand Underwritten Offering Majority Holders with the approval of the Company (which will not be unreasonably withheld or delayed).

(3) Authority of the Demand Underwritten Offering Majority Holders. The Demand Underwritten Offering Majority Holders for any Demand Underwritten Offering will have the following rights with respect to such Demand Underwritten Offering, which rights, if exercised, will be deemed to have been exercised on behalf of all Holders that have requested any securities to be included in such Demand Underwritten Offering:

(A) in consultation with the Managing Underwriters for such Demand Underwritten Offering, to determine the Offering Launch Time, which date must comply with limitations thereon set forth in Section 2(e)(ii)(2);

(B) to determine the structure of the offering;

(C) to negotiate any related underwriting agreement and its terms, including the amount of securities to be sold by the applicable Holders pursuant thereto and the offering price of, and underwriting discount for, such securities; *provided*, *however*, that the Company will have the right to negotiate in good faith all of its representations, warranties and covenants, and indemnification and contribution obligations, set forth in any such underwriting agreement; and

(D) withdraw such Demand Underwritten Offering by proving written notice of such withdrawal to the Company.

(4) Confidentiality. Each Holder agrees to treat as confidential information, its delivery or receipt of any Demand Registration Notice and the information contained therein, including the related Demand Underwritten Offering.

(v) Conditions Precedent to Inclusion of a Holder's Registrable Securities. Notwithstanding anything to the contrary in this Section 2(e), the right of a Holder to include any of its Registrable Securities in any Demand Underwritten Offering will be subject to the following conditions:

(1) the execution and delivery, by such Holder or its duly authorized representative or power of attorney, of any related underwriting agreement and such other agreements or instruments (including customary "lock-up" agreements, custody agreements and powers of attorney), if any, as may be reasonably requested by the Managing Underwriters for such Demand Underwritten Offering; and

(2) the provision, by such Holder no later than the Business Day immediately after the request therefor, of any information reasonably requested by the Company or such Managing Underwriters in connection with such Demand Underwritten Offering.

(vi) Reduction of Offering. If the total number of securities requested to be included in a Demand Underwritten Offering pursuant to this Section 2(e) or a Piggy-Back Transaction exceeds the Maximum Successful Underwritten Offering Size for such offering, then the number of securities to be offered shall be reduced to a number that, in the opinion of such Managing Underwriter(s) can be sold without having such an adverse effect, and such number of securities shall be allocated as follows:

(A) in the event of a Demand Underwritten Offering, the securities to be included in such Demand Underwritten Offering shall be allocated: (i) first to the Holders that have requested to participate in such Demand Underwritten Offering, pro rata based on the total number of Registrable Securities then held by them and (ii) second, to other persons (including the Company).

(B) in the event of a Piggy-Back Transaction, the securities to be included in such Piggy-Back Transaction shall be allocated: (i) first to the Company, (ii) second, and only if all of the securities referred to in clause (i) have been included, to the Holders that have requested to participate in such Piggy-Back Transaction and (iii) third, to any other securities eligible for inclusion in such Piggy-Back Transaction (it being understood that there are no such eligible securities as of the date of this Agreement).

(f) **Piggy-Back Transactions**. If the Company proposes to file with the Commission a registration statement, prospectus, or offering statement relating to an offering for its own account or the account of others under the Securities Act of any of its equity or equity-linked securities (other than on Form S-4 or Form S-8 (each as promulgated under the Securities Act) or their then equivalents relating to equity or equity-linked securities to be issued solely in connection with any acquisition of any entity or business (or a business combination subject to Rule 145 under the Securities Act) or equity or equity-linked securities issuable in connection with the Company's stock option or other employee benefit plans), or a dividend reinvestment or similar plan or rights offering (a "***Piggy-Back Transaction***"), then the Company shall deliver to each Holder a written notice of such determination and, if within 15 calendar days after the date of the delivery of such notice, any such Holder shall so request in writing, the Company shall include in such registration statement or offering statement all or any part of such Registrable Securities that such Holder requests to be registered; provided, however, the Company shall not be required to register any Registrable Securities pursuant to this Section 2(f) that are the subject of a then-effective Registration Statement. The Company may postpone or withdraw the filing or the effectiveness of a piggy-back registration at any time in its sole discretion. The Company shall not grant piggy-back registration rights to any holders of its Common Stock or securities that are convertible into its Common Stock that are senior to the rights of the Holders set forth in this Section 2(f).

3. Registration Procedures.

In connection with the Company's obligations to effect a registration pursuant to Section 2(a), the Company and, as applicable, the Holders, shall do the following:

(a) **FINRA Cooperation**. The Company and the Holders shall cooperate and assist in any filings required to be made with FINRA.

(b) **Right to Review Prior Drafts**. Not less than five Business Days prior to the filing of a Registration Statement or any related Prospectus or any amendment or supplement thereto, the Company shall furnish to each Holder drafts of the Registration Statement or any related Prospectus or any amendment or supplement thereto in the form in which the Company proposes to file them, which documents will be subject to the review of each such Holder. Each Holder will provide comments, if any, as soon as reasonably practicable after the date such materials are provided. The Company shall not file a Registration Statement, any Prospectus or any amendments or supplements thereto (i) to which such Holders shall reasonably object in writing or (ii) in which such documents differ in any material respect from the drafts previously received by such Holder. Each Holder whose Registrable Securities are to be sold pursuant to a Demand Underwritten Offering in accordance with Section 2(e) shall be afforded the same rights set forth in this Section 3(b) with respect to any Registration Statement or Prospectus or any amendment or supplement thereto which names such Holder.

(c) **Right to Copies**. The Company shall furnish to each Holder and the Managing Underwriters, if any, without charge, (i) at least one conformed copy of each Registration Statement and each amendment thereto and all exhibits to the extent requested by such Holder (excluding those previously furnished or incorporated by reference) promptly after the filing of such documents with the Commission, except if such documents are available on EDGAR; and (ii) as many copies of each Prospectus or Prospectuses (including each form of prospectus) and each amendment or supplement thereto as such Holder may reasonably request. The Company hereby consents to the use

of such Prospectus and each amendment or supplement thereto by each of the selling Holders or Managing Underwriters, as applicable, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto.

(d) **Notices**. The Company shall promptly notify each Holder of Registrable Securities: (A) when the Prospectus or any prospectus supplement or post-effective amendment has been filed, and with respect to the Registration Statement or any post-effective amendment, when the same has become effective; (B) of any request by the Commission for any amendments or supplements to the Registration Statement or the Prospectus or for additional information; (C) of the issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (D) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; (E) of the happening of any event which it believes may make any statement made in the Registration Statement, the Prospectus or any document incorporated therein by reference untrue, or of any material misstatement or omission, and which requires the making of any changes in the Registration Statement, the Prospectus or any document incorporated therein by reference in order to make the statements therein not misleading; (F) upon the occurrence of a Suspension Period (items (C) through and including (F) being a "***Discontinuance Notice***"); and (G) upon the conclusion of a Suspension Period. In addition, during the pendency of any Demand Underwritten Offering pursuant to Section 2(e), but other than during a Suspension Period, the Company shall provide notice to each Holder whose Registrable Securities are to be sold in such offering pursuant to the Registration Statement used in connection with the Demand Underwritten Offering, which Holders shall be afforded the same notice set forth in clauses (A) through (G) of this Section 3(d) relating to such Registration Statement.

(e) **Withdrawal of Suspension Orders**. The Company shall use its reasonable best efforts to respond as promptly as reasonably possible to any comments received from the Commission with respect to any Registration Statement or any amendment thereto and to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement or the suspension of the qualification of the Registrable Securities for sale in any jurisdiction, or to prevent any such suspension.

(f) **Supplements & Amendments**. Subject to Sections 2(a) and 2(e), if required, based on the advice of the Company's counsel, the Company shall prepare a supplement or post-effective amendment to a Registration Statement, the related Prospectus or any document incorporated therein by reference or file any other required document or, if necessary, renew or refile a Registration Statement prior to its expiration, so that, as thereafter delivered to the purchasers of the Registrable Securities, (A) the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (B) such Registration Statement remains continuously effective as to the applicable Registrable Securities for its applicable Effectiveness Period; (C) the related Prospectus may be supplemented by any required prospectus supplement, and as so supplemented may be filed pursuant to Rule 424 and (D) the Prospectus will be supplemented, if necessary, to update the disclosure of the number of shares that each Holder intends to sell, reflecting prior resales in accordance with guidance of the staff of the Commission (as such guidance may be substituted for, amended or supplemented by the staff of the Commission after the date of this Agreement). Furthermore, the Company shall take such actions as are required to name such Holder as a selling Holder in a Registration Statement or any supplement thereto and to include (to the extent not theretofore included) in such Registration Statement the Registrable Securities held by such Holder.

(g) **Listing**. The Company shall use its reasonable best efforts to cause all Conversion Shares and Purchased Shares that constitute Registrable Securities covered by the Registration Statement to be listed on each securities exchange on which identical securities issued by the Company are then listed and, if not so listed, to be approved for listing on the national securities exchange on which the Company's Common Stock is then listed.

(h) **Transfer Agent & Registrar**. The Company shall provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by such Registration Statement from and after a date not later than the Effective Date of such Registration Statement.

(i) **Certificates; Cooperation**. The legend on any Registrable Securities covered by this Agreement shall be removed at the Company's sole expense if (i) such Registrable Securities may be sold pursuant to Rule 144 under

the Securities Act without volume or manner-of-sale restrictions and without the requirement for the Company to be in compliance with the current public information requirement under Rule 144(c)(1) under the Securities Act, or (ii) such Registrable Securities are being sold, assigned or otherwise transferred pursuant to Rule 144 under the Securities Act; provided, that the Holder of such Registrable Securities has provided all necessary documentation and evidence as may reasonably be required by the Company to confirm that the legend may be removed under applicable securities law. The Company shall cooperate with the applicable Holder of Registrable Securities covered by this Agreement to effect removal of the legend on such shares pursuant to this Section 3(i) as soon as reasonably practicable after the delivery of notice from such Holder that the conditions to removal are satisfied, as applicable (together with any documentation required to be delivered by such Holder pursuant to the immediately preceding sentence), which may include, among other things, causing to be delivered an opinion of the Company's counsel to the Company's transfer agent in a form and substance reasonably satisfactory to the transfer agent. The Company shall bear all transfer agent fees and fees of the Company's counsel associated with the removal of a legend pursuant to this Section 3(i). Additionally, in connection with any non-marketed, non-underwritten offering taking the form of a Block Trade to a financial institution, "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) or institutional "accredited investor" (as defined in Rule 501(a) of Regulation D under the Securities Act) or other disposition of Registrable Securities by any Holder, the Company shall use its reasonable best efforts to timely furnish any information or take any actions reasonably requested by the Holders in connection with such a Block Trade, including the delivery of customary comfort letters, customary legal opinions and customary underwriter due diligence, in each case subject to receipt by the Company, its auditors and legal counsel of representation and documentation by such Persons to permit the delivery of such comfort letter and legal opinions.

(j) **CUSIPs**. The Company, if necessary, shall use its best efforts to provide a CUSIP number for the Registrable Securities, not later than the Effective Date of the Registration Statement.

(k) [**Reserved**.]

(l) **Legal Counsel**. Each of Ascend, the 5ECAP Group, and BEP, individually, shall each have the right to select one legal counsel (and any additional local counsel necessary to deliver any required legal opinions), each at the Company's expense pursuant to Section 4, to review any Registration Statement or Prospectus prepared pursuant to Section 2 or this Section 3 and to advise on other matters related to offerings conducted pursuant to this Agreement, which in each case, as applicable, will be such counsel as designated by, for counsel to each of Ascend, the 5ECAP Group and BEP, in each of its sole discretion. The Company shall reasonably cooperate with such legal counsels' reasonable requests in performing their obligations under this Agreement.

(m) **Blue Sky**. The Company shall, prior to any public offering of Registrable Securities, use its reasonable best efforts to register or qualify or cooperate with the selling Holders or Managing Underwriters, in the case of a Demand Underwritten Offering, in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or blue sky laws ("***Blue Sky***") of all jurisdictions within the United States that the selling Holders or Managing Underwriters, in the case of a Demand Underwritten Offering, request in writing be covered, to keep each such registration or qualification (or exemption therefrom) effective during the applicable Effectiveness Period and to do any and all other acts or things necessary or advisable to enable the disposition in such jurisdictions of the Registrable Securities covered by any Registration Statement, including in connection with a Demand Underwritten Offering; provided, that the Company will not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to become subject to any material tax in any such jurisdiction where it is not then so subject.

(n) **Subsequent Form S-3**. If, at the time of filing of a Registration Statement, the Company is not eligible to use Form S-3 for transactions involving secondary offerings and the Company is not otherwise eligible to incorporate by reference prospectively into such Registration Statement, then at such time as the Company becomes eligible to register transactions involving secondary offerings on Form S-3, the Company may file in accordance with the procedures outlined in this Section 3, including but not limited to all required notices to the Holders, an additional Registration Statement on Form S-3 to cover resales pursuant to Rule 415 of the Registrable Securities (a "***Subsequent Form S-3***"), and, only when such Subsequent Form S-3 has become or been declared effective by the Commission, the Company may withdraw or terminate the original Registration Statement; provided, however, that nothing in this Section 3(n) will be interpreted to limit the Company's obligations pursuant to Section 2(a).

(o) **Certain Covenants Relating to Underwritten Offerings**. The following covenants will apply, in each case to the extent applicable, in connection with any Demand Underwritten Offering:

(i) Underwriting Agreement and Related Matters. The Company shall (1) execute and deliver any customary underwriting agreement or other agreement or instrument reasonably requested by the Managing Underwriters for such offering; (2) use its reasonable best efforts to cause such customary legal opinions, comfort letters, "lock-up" agreements and officers' certificates to be delivered in connection therewith; and (3) cooperate in good faith with such Managing Underwriters in connection with the disposition of Registrable Securities pursuant to such offering.

(ii) Marketing and Roadshow Matters. The Company shall cooperate in good faith with the Managing Underwriters for such offering in connection with any marketing activities relating to such offering, including making available senior executives of the Company to participate in customary "road show" presentations that may be reasonably requested by the Managing Underwriters.

(iii) FINRA Matters. The Company shall cooperate and assist in any filings required to be made with FINRA in connection with such offering.

4. Registration Expenses.

All fees and expenses incident to the performance of or compliance with this Agreement by the Company will be borne by the Company whether or not any Registrable Securities are sold pursuant to a Registration Statement including, without limitation: (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with any Trading Market on which the Common Stock is then listed for trading, (B) related to compliance with applicable state securities or Blue Sky laws and (C) incurred in connection with the preparation or submission of any filing with FINRA); (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing Prospectuses); (iii) messenger, telephone and delivery expenses; (iv) fees and disbursements of counsel for the Company and counsel pursuant to Section 3(l); (v) Securities Act liability insurance, if the Company so desires such insurance; (vi) fees and expenses of all other persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement and (vii) all of the Company's own internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit and the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange as required hereunder; provided, however, that each selling Holder will pay (i) all underwriting discounts, commissions, fees and expenses and all transfer taxes with respect to the Registrable Securities sold by such selling Holder; (ii) any fees and expenses of legal counsel other than the counsel selected pursuant to Section 3(l) and (iii) all other expenses incurred by such selling Holder and incidental to the sale and delivery of the shares to be sold by such Holder.

5. Indemnification.

(a) **Indemnification by the Company**. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Holder, the directors, officers, partners, members and shareholders of each Holder and each person who controls any Holder (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of any such controlling persons, in each case to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, reasonable costs of preparation and reasonable attorneys' fees) and expenses (collectively, "***Losses***"), as incurred, arising solely out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact or any omission or alleged omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, except to the extent that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or

on behalf of such Holder expressly for use in a Registration Statement or Prospectus, or (2) resulted from the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that such Prospectus is outdated or defective and prior to the receipt of such notice by such Holder or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the notice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected.

(b) **Indemnification by Holders**. Each Holder shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers, partners, members and shareholders and each person who controls the Company (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the directors and officers of any such controlling persons, in each case to the fullest extent permitted by applicable law, from and against any and all Losses, as incurred, arising solely out of or based upon, in the case of the Registration Statement or in any amendments thereto, any untrue or alleged untrue statement of a material fact contained therein or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or in the case of any Prospectus or form of prospectus, or in any amendment or supplement thereto, or in any preliminary prospectus, any untrue or alleged untrue statement of a material fact or any omission or alleged omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to the extent, but only to the extent, that such untrue statements or omissions (1) are made in reliance upon and in conformity with written information furnished to the Company by or on behalf of such Holder expressly for use in a Registration Statement or Prospectus, or (2) resulted from the use by such Holder of an outdated or defective Prospectus after the Company has notified such Holder in writing that such Prospectus is outdated or defective and prior to the receipt of such notice by such Holder or an amended or supplemented Prospectus, but only if and to the extent that following the receipt of the notice or the amended or supplemented Prospectus the misstatement or omission giving rise to such Loss would have been corrected; provided, however, that the obligation to indemnify will be several and not joint and in no event will the liability of any selling Holder hereunder be greater in amount than the dollar amount of the net proceeds received by any such selling Holder upon the sale of the Registrable Securities under the Registration Statement giving rise to such indemnification obligation.

(c) **Conduct of Indemnification Proceedings**. For a Person (the "***Indemnified Party***") to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim or demand made by any Person against the Indemnified Party (a "***Claim***"), such Indemnified Party must notify the indemnifying party ("***Indemnifying Party***") in writing, and in reasonable detail, of the Claim as promptly as reasonably possible after receipt by such Indemnified Party of notice of the Claim; provided, however, that failure to give such notification on a timely basis shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court filings and related papers) received by the Indemnified Party relating to the Claim.

If a Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, if it so chooses and acknowledges its obligation in writing to indemnify the Indemnified Party therefor, to assume at its cost the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party and to settle such suit, action, Claim or proceeding in its discretion with an unconditional full release of the Indemnified Party and no admission of fault, liability, culpability or a failure to act by or on behalf of the Indemnified Party. Notwithstanding any acknowledgment made pursuant to the immediately preceding sentence, the Indemnifying Party shall continue to be entitled to assert any limitation to the amount of Losses for which the Indemnifying Party is responsible pursuant to its indemnification obligations. Should the Indemnifying Party so elect to assume the defense of a Claim, the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof unless (i) the Indemnifying Party has materially failed to defend, contest or otherwise protest in a timely manner against Claims or (ii) such Indemnified Party reasonably objects to such assumption on the grounds that there are defenses available to it which are different from or in addition to the defenses available to such Indemnifying Party and, as a result, a conflict of interest exists. Subject to the limitations in the preceding sentence, if the Indemnifying Party assumes such defense, the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the fees and expenses of counsel employed by the Indemnified Party for any period during which

the Indemnifying Party has not assumed the defense thereof. If the Indemnifying Party chooses to defend any Claim, the Indemnifying Party and the Indemnified Party shall cooperate in the defense or prosecution of such Claim. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party shall have assumed the defense of a Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Claim without the Indemnifying Party's prior written consent (which consent shall not be unreasonably withheld).

The obligations of the Company and the Holders under this Section 5 shall survive completion of any offering of Registrable Securities pursuant to a Registration Statement and the termination of this Agreement. The Indemnifying Party's liability to any such Indemnified Party hereunder shall not be extinguished solely because any other Indemnified Party is not entitled to indemnity hereunder.

(d) **Contribution**. If a claim for indemnification under Section 5(a) or 5(b) is unavailable to an Indemnified Party (by reason of public policy or otherwise), then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and Indemnified Party in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party will be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission. The amount paid or payable by a party as a result of any Losses will be deemed to include, subject to the limitations set forth in Section 5(c), any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in Section 5(a) or 5(b) was available to such party in accordance with its terms. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in this Section 5. Notwithstanding the provisions of this Section 5, no Holder will be required to contribute, in the aggregate, any amount in excess of the amount by which the proceeds actually received by such Holder from the sale of the Registrable Securities subject to the Proceeding exceeds the amount of any damages that such Holder has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(e) **Other**. The indemnity and contribution agreements contained in this Section 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties.

6. Governance Rights.

(a) **BEP Board Designation Rights**. At any time when BEP beneficially owns (as defined under Section 13 of the Exchange Act) (i) at least twenty-five percent (25%) of the outstanding principal amount of Notes as of the Closing Date (which calculation shall include any Notes that have been converted so long as BEP beneficially owns the applicable Conversion Shares and otherwise without regard to any of the limitations on convertibility in the Notes) or (ii) at least ten percent (10%) of the outstanding shares of Common Stock (including any shares of Common Stock previously issued or issuable to BEP in connection with a conversion of its Notes pursuant to the NPA and otherwise without regard to any of the limitations on convertibility in the Notes), BEP shall be entitled to designate (and the Company shall be required to appoint and/or nominate for election at any annual or special meeting of shareholders (or action by written consent) for the election of directors to the Board of Directors) one (1) individual to the Board of Directors (such individual, the "***BEP Director***"), who shall initially be Graham van't Hoff (the "***Initial BEP Director***"). A BEP Director may be removed at any time (with or without cause) upon the written request of BEP. In the event that a vacancy is created on the Board of Directors at any time due to the death, disability, retirement, resignation, or removal of a BEP Director, then BEP shall have the right to designate an

individual to fill such vacancy and the Company shall promptly appoint such person to fill such vacancy, and in any event, within no later than three (3) days of BEP's designation, and such person shall thereafter be deemed the BEP Director under this Agreement. The Company shall appoint the Initial BEP Director to the Board of Directors effective on the Closing Date and, if necessary, increase the size of the Board of Directors and/or cause a vacancy to be created on the Board of Directors such that the BEP Director may be so appointed. During the period a BEP Director is a director of the Board of Directors, the Company shall, at its own expense, provide to such BEP Director the same compensation and benefits as any other non-employee director of the Board of the Directors, including cash and non-cash compensation for director service and benefits under any applicable director and officer indemnification or insurance policy maintained by the Company.

(b) **NEG Board Designation Rights**. At any time when the NEG beneficially owns (as defined under Section 13 of the Exchange Act) (i) at least twenty-five percent (25%) of the outstanding principal amount of Notes as of the Closing Date (which calculation shall include any Notes that have been converted so long as the NEG beneficially owns the applicable Conversion Shares and otherwise without regard to any of the limitations on convertibility in the Notes) or (ii) at least ten percent (10%) of the outstanding shares of Common Stock (including any shares of Common Stock previously issued or issuable to the NEG in connection with a conversion of its Notes pursuant to the NPA and otherwise without regard to any of the limitations on convertibility in the Notes), the NEG shall be entitled to designate (and the Company shall be required to appoint and/or nominate for election at any annual or special meeting of shareholders (or action by written consent) for the election of directors to the Board of Directors) one (1) individual to the Board of Directors (such individual, the "***NEG Director***"), who shall initially be Stefan Selig (the "***Initial NEG Director***"). An NEG Director may be removed at any time (with or without cause) upon the written request of the NEG. In the event that a vacancy is created on the Board of Directors at any time due to the death, disability, retirement, resignation, or removal of an NEG Director, then the NEG shall have the right to designate an individual to fill such vacancy and the Company shall promptly appoint such person to fill such vacancy, and in any event, within no later than three (3) days of the NEG's designation, and such person shall thereafter be deemed the NEG Director under this Agreement. The Company shall appoint the Initial NEG Director to the Board of Directors effective on the Closing Date and, if necessary, increase the size of the Board of Directors and/or cause a vacancy to be created on the Board of Directors such that the NEG Director may be so appointed. During the period an NEG Director is a director of the Board of Directors, the Company shall, at its own expense, provide to such NEG Director the same compensation and benefits as any other non-employee director of the Board of the Directors, including cash and non-cash compensation for director service and benefits under any applicable director and officer indemnification or insurance policy maintained by the Company, provided always that the compensation for the Initial NEG Director shall be based on the agreement between the Initial NEG Director and the Company that has been entered into on or prior to the date of this Agreement.

(c) **Exempt Transactions**. The Company shall take all such steps as may be required to qualify for, and to maintain, exemption of any transaction between the Company, on the one hand, and BEP and the NEG, on the other hand, and their respective Affiliates, under Rule 16b-3 under the Exchange Act. The Company shall cause the Board of Directors or any appropriate committees of "non-employee directors" (as defined in Rule 16b-3 of the Exchange Act) thereof (i) to approve or pre-approve any direct or indirect acquisitions or disposition, as applicable (including, but not limited to, by issuance, redemption or other transaction with the Company), of the Notes or any other securities of the Company, and any other transactions, by BEP or the BEP Director, the NEG or the NEG director, or any of their respective Affiliates, for the express purpose of exempting such transactions from Section 16(b) under the Exchange Act pursuant to Rule 16b-3 thereunder, and (ii) to take any additional reasonable action requested by BEP or the NEG to cause to qualify any such transactions as exempt under Rule 16b-3. By including this covenant, it is the intention of the Board of Directors that all such transactions be exempt.

(d) **Chief Transformation Officer**. Until the one year anniversary of the Closing Date or such later as may be agreed to by the Company, the Company shall have a Chief Transformation Officer reasonably acceptable to each of BEP and the NEG on terms reasonably acceptable to each of BEP and the NEG, who shall, among other things, monitor operations and assist in project delivery for the Company. In the event of the death, disability, retirement, resignation, or removal of the existing Chief Transformation Officer, the NEG shall have the right to designate an individual to fill such vacancy and the Company shall promptly appoint such person to fill such vacancy. The Company shall appoint the initial Chief Transformation Officer effective on the Closing Date.

7. Miscellaneous.

(a) **Notices**. All notices or other communications hereunder shall be in writing and will be given by (i) personal delivery, (ii) courier or other delivery service which obtains a receipt evidencing delivery, (iii) registered or certified mail (postage prepaid and return receipt requested) or (iv) email, to such address as may be designated from time to time by the relevant party, and which will initially be:

(i) in the case of the Company:

5E Advanced Materials, Inc.
9329 Mariposa Road, Suite 210
Hesperia, California 92344
Attn: Paul Weibel
Email: pweibel@5eadvancedmaterials.com

With a copy (which shall not constitute notice) to:

Winston & Strawn LLP
800 Capitol Street, Suite 2400
Houston, Texas 77002
Attn: J. Eric Johnson
Email: jejohnson@winston.com

(ii) in the case of the Holders, to the address set forth below each such Holder's name on the signature page attached hereto. All notices and other communications will be deemed to have been given (i) if delivered by the United States mail, three Business Days after mailing (five Business Days if delivered to an address outside of the United States), (ii) if delivered by a courier or other delivery service, one Business Day after dispatch (two Business Days if delivered to an address outside of the United States) and (iii) if personally delivered or sent by email, upon receipt by the recipient or its agent or employee (which, in the case of a notice sent by email, will be the time and date indicated on the transmission confirmation receipt). No objection may be made by a party to the manner of delivery of any notice actually received in writing by an authorized agent of such party.

(b) **Governing Law; Jurisdiction; Jury Trial; etc**. This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in The City of New York, Borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service will constitute good and sufficient service of process and notice thereof. Nothing contained herein will be deemed to limit in any way any right to serve process in any manner permitted by law. Each party hereby irrevocably waives any right it may have, and agrees not to request, a jury trial for the adjudication of any dispute hereunder or in connection with or arising out of this Agreement or any transaction contemplated hereby.

(c) **Remedies**. In the event of a breach by the Company of its obligations under this Agreement, each Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, shall be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of any of the provisions of this Agreement and hereby waives the defense in any action for specific performance that a remedy at law would be adequate.

(d) **Complete Agreement; Modifications**. This Agreement and any documents referred to herein or executed contemporaneously herewith constitute the parties' entire agreement with respect to the subject matter hereof and supersede all agreements, representations, warranties, statements, promises and understandings, whether oral or written, with respect to the subject matter hereof. This Agreement may be amended, altered or modified only

by a writing signed by the Company, the Holders of a majority of the Registrable Securities then outstanding and BEP, if BEP is a holder of any Registrable Securities at such time.

(e) **Additional Documents**. Each party hereto agrees to execute any and all further documents and writings and to perform such other actions which may be or become necessary or expedient to effectuate and carry out this Agreement.

(f) **Third-Party Beneficiaries**. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any Person not a party hereto, and no such other Person shall have any right or cause of action hereunder, except as otherwise expressly provided herein.

(g) **No Inconsistent Agreements; Additional Rights**. The Company shall not hereafter enter into, and is not currently a party to, any agreement with respect to its securities that is inconsistent in any material respect with the rights granted to the Holders by this Agreement.

(h) **Assignment; Successors and Assigns**. Except as expressly provided in this Agreement, the rights and obligations of the Holders under this Agreement shall not be assignable by any Holder to any Person that is not a Holder without the written consent of the Company; provided, however, that such rights and obligations may be assigned by a Holder to a Permitted Transferee of such Holder's Registrable Securities; provided, that such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement. The rights and obligations of the Company under this Agreement shall not be assignable by the Company to any other Person.

(i) **Waivers Strictly Construed**. With regard to any power, remedy or right provided herein or otherwise available to any party hereunder (a) no waiver or extension of time will be effective unless expressly contained in a writing signed by the waiving party and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

(j) **Severability**. The validity, legality or enforceability of the remainder of this Agreement will not be affected even if one or more of the provisions of this Agreement will be held to be invalid, illegal or unenforceable in any respect.

(k) **Attorneys' Fees**. Should any litigation be commenced (including any proceedings in a bankruptcy court) between the parties hereto or their representatives concerning any provision of this Agreement or the rights and duties of any person or entity hereunder, the party or parties prevailing in such proceeding will be entitled, in addition to such other relief as may be granted, to the attorneys' fees and court costs incurred by reason of such litigation.

(l) **Opt-Out Notices**. Any Holder may deliver written notice (an "***Opt-Out Notice***") to the Company requesting that such Holder not receive notice from the Company of the proposed filing or withdrawal of any Registration Statement or Piggy-Back Transaction, or any event that would lead to a Suspension Event as contemplated by Section 2(b); provided, however, that such Holder may later revoke any such Opt-Out Notice in writing. Following receipt of an Opt-Out Notice from a Holder (unless subsequently revoked), the Company shall not deliver any notice to such Holder pursuant to Section 2, and such Holder shall no longer be entitled to the rights associated with any such notice. Each Holder that has delivered an Opt-Out Notice will notify the Company in writing at least two Business Days in advance of its intended use of an effective Registration Statement. If a Suspension Notice was previously delivered (or would have been delivered but for the provisions of this Section 7(l)) and the Suspension Event remains in effect, the Company shall so notify such Holder, within one Business Day of such Holder's notification to the Company, by delivering to such Holder a copy of such previous notice of such Suspension Event, and thereafter will provide such Holder with the related End of Suspension Notice immediately upon its availability.

(m) **Headings**. The Section headings in this Agreement are inserted only as a matter of convenience, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular Section.

(n) **Counterparts**. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(o) **Corporate Opportunities**. The Company, on behalf of itself and its subsidiaries, to the fullest extent permitted by applicable law, (A) acknowledges and affirms that BEP and each member of the NEG, (i) has participated (directly or indirectly) and will continue to participate (directly or indirectly) in private equity, venture capital and other direct investments in corporations, joint ventures, limited liability companies and other entities ("***Other Investments***"), including Other Investments engaged in various aspects of businesses similar to those engaged in by the Company and its subsidiaries (and related services businesses) that may, are or will be competitive with the Company's or any of its subsidiaries' businesses or that could be suitable for the Company's or any of its subsidiaries' interests, (ii) does business with clients, customers, vendors or lessors of any of the Company or its Affiliates or any other Person with which any of the Company or its Affiliates has a business relationship, (iii) has interests in, participates with, aids and maintains seats on the board of directors or similar governing bodies of, or serves as officers of, Other Investments, (iv) may develop or become aware of business opportunities for Other Investments, and (v) may or will, as a result of or arising from the matters referenced in this Section 7(o), the nature of BEP's and the NEG's businesses and other factors, have conflicts of interest or potential conflicts of interest, (B) hereby renounces and disclaims any interest or expectancy in any business opportunity (including any Other Investments or any other opportunities that may arise in connection with the circumstances described in the foregoing clauses (A)(i) through (A)(v) (each, a "***Renounced Business Opportunity***")), and (C) acknowledges and affirms that no member of BEP or the NEG or their respective Affiliates, including for the avoidance of doubt, any BEP Director or NEG Director, shall have any obligation to communicate or offer any Renounced Business Opportunity to the Company or any of its subsidiaries, and any member of BEP or the NEG may pursue a Renounced Business Opportunity. The Company agrees that in the event that BEP, the NEG, their respective Affiliates, or any member thereof, or any of their respective officers, directors, employees, partners and agents thereof acquires knowledge of a potential transaction or matter which may constitute a corporate opportunity for both (1) any member of BEP or the NEG or their respective Affiliates and (2) the Company or its subsidiaries, a member of BEP or the NEG or their respective Affiliates (or such director, officer, employee, partner or agent) shall not have any duty to offer or communicate information regarding such corporate opportunity to the Company or its subsidiaries unless such opportunity was learned, discovered or sourced solely in the course of such Person acting in such Person's capacity as a director of the Company Notwithstanding anything to the contrary in the foregoing, the Company shall not be prohibited from pursuing any Renounced Business Opportunity as a result of this Section 7(o).

(p) **Conflicts**. This Agreement supersedes all prior understandings, whether written or oral, among the parties hereto with respect to the Original RRA and sets forth the entire understanding of the parties hereto with respect thereto; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the restructuring support agreement (the "***Restructuring Support Agreement***") dated as of [●] among the Company Parties (as defined in the Restructuring Support Agreement) and the Consenting Parties (as defined in the Restructuring Support Agreement).

[Remainder of Page Intentionally Left Blank, Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investor and Registration Rights Agreement as of the date first written above.

5E ADVANCED MATERIALS, INC.

By: _____
Name: Paul Weibel
Title: Chief Financial Officer

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investor and Registration Rights Agreement as of the date first written above.

HOLDER:

BEP SPECIAL SITUATIONS IV LLC

By: _____
Name: Jonathan Siegler
Title: Managing Director and Chief Financial Officer

Holder Address for Notice:

BEP Special Situations IV LLC
300 Crescent Court, Suite 1860
Dallas, TX 75201

With a copy (which shall not constitute notice) to:

Kirkland & Ellis LLP
609 Main Street
Houston, Texas 77002
Attn: Julian J. Seiguer, P.C.
Bryan D. Flannery
Email: julian.seiguer@kirkland.com
bryan.flannery@kirkland.com

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Investor and Registration Rights Agreement as of the date first written above.

HOLDER:

ASCEND GLOBAL INVESTMENT FUND SPC FOR AND ON BEHALF OF STRATEGIC SP

By: _____
Name: [●]
Title: [●]

Holder Address for Notice:

Ascend Global Investment Fund SPC for and on behalf of Strategic SP
1 Kim Seng Promenade
#10-01 East Tower
Great World City
Singapore 237994
Attention: Mulyadi Tjandra; Michelle Tanuwidjaja
E-mail: muljadi.tjandra@ascendcapitals.com; michelle.tanuwidjaja@ascendcapitals.com

With a copy (which shall not constitute notice) to:

Latham & Watkins LLP
9 Raffles Place
#42-02 Republic Plaza
Singapore 048619
Attention: Marcus Lee
E-mail: marcus.lee@lw.com

HOLDER:

5ECAP, LLC
BY: EMPIRE CAPITAL MANAGEMENT, LLC
ITS: MANAGER

By: _____
Name: [●]
Title: [●]

Holder Address for Notice:

c/o Empire Capital Management, LLC
6724 Perimeter Loop Road, S 145
Dublin, Ohio, 43017
Attention: David J. Richards and Ken Leachman
E-mail: djr@empirecapmgt.com,
kleachman@empirecapmgt.com

With a copy (which shall not constitute notice) to:

Adam P. Richards, Esq.
Cooper & Elliott, LLC
305 W Nationwide Blvd
Columbus, OH 43215
E-mail: adamr@cooperelliott.com

HOLDER:

5ECAP DEBT, LLC
BY: ELEMENT GLOBAL, INC
ITS: MANAGER

By: _____
Name: [●]
Title: [●]

Holder Address for Notice:

c/o Empire Capital Management, LLC
6724 Perimeter Loop Road, S 145
Dublin, Ohio, 43017
Attention: David J. Richards and Ken Leachman
E-mail: djr@empirecapmgt.com, kleachman@empirecapmgt.com

With a copy (which shall not constitute notice) to:

Adam P. Richards, Esq.
Cooper & Elliott, LLC
305 W Nationwide Blvd
Columbus, OH 43215
E-mail: adamr@cooperelliott.com

EXHIBIT I

Release Agreement

MUTUAL RELEASE AND AGREEMENT

This Mutual Release and Agreement (this "**Release Agreement**") is entered into as of January [●], 2023, by and among the following parties (each of the following parties described in sub-clauses (i) through (iv) of this preamble, a "**Party**" and, collectively, the "**Parties**"):

i. 5E Advanced Materials, Inc. a company incorporated under the Laws of Delaware, and each of its affiliates listed on **Annex I** to this Release Agreement (collectively, the "**Company Parties**");

ii. the undersigned holders of, or investment advisors, sub-advisors, or managers of discretionary accounts that hold, BEP Note Claims that have executed and delivered counterpart signature pages to this Agreement (the Entities in this clause (ii), collectively, the "**BEP Noteholders**");

iii. Ascend Global Investment Fund SPC – for and on behalf of Strategic SP ("**Ascend**");

iv. Alter Domus (US) LLC ("**Alter Domus**"), as collateral agent under the Note Purchase Agreement; and

v. any other Person (as defined herein) who has executed and delivered counterpart signature pages to this Release Agreement, (together with the other entities in clause (ii) through clause (iv), the "**Consenting Parties**").

WHEREAS, the Parties have in good faith and at arm's length negotiated or been apprised of certain restructuring and recapitalization transactions (the "**Restructuring Transactions**") with respect to the Company Parties' capital structure on the terms and conditions set forth in the Restructuring Support Agreement, dated as of December [●], 2023, including all exhibits thereto (the "**Restructuring Support Agreement**");

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Restructuring Support Agreement;

WHEREAS, as an integral part of the Restructuring Transactions, the Parties have agreed to exchange mutual releases and enter into such further agreements on the terms set forth herein; and

WHEREAS, the Company Parties, the BEP Noteholders, and Ascend have executed the Restructuring Support Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, obligations, and releases set forth in this Release Agreement, and for other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. This Release Agreement shall become effective upon the Effective Date of the Out-of-Court Restructuring, and subject to the occurrence of: (a) due execution and delivery of this Release Agreement by all the Company Parties and the Consenting Parties; and (b) with respect to each member of the New Equity Group, the actual payment of such member's purchase price due to be paid to the Company at or prior to the Effective Date of the Out-of-Court Restructuring in accordance with the Subscription Agreement and the Other Subscription Agreements (as defined in the Subscription Agreement), as applicable (the "**Release Effective Date**"). In the event that any other Person becomes a Party to this Release Agreement and satisfies the preceding clause (b), to the extent applicable, this Release Agreement shall be deemed effective with respect to such Person as of the Release Effective Date. This Release Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. Counterpart signatures to this Release Agreement delivered by electronic, facsimile, copied signatures or other electronic means shall be acceptable and deemed originals.

2. For purposes of this Release Agreement, the term "**Affiliate**" shall, with respect to any Person, have the meaning set forth in section 101(2) of the Bankruptcy Code as if such entity was a debtor in a case under the Bankruptcy Code. For the purposes of this Release Agreement, the term "**Entity**" shall have the meaning set forth in section 101(15) of the Bankruptcy Code. For the purposes of this Release Agreement, the term "**Person**" shall have the meaning set forth in section 101(41) of the Bankruptcy Code. For all purposes in this Release Agreement, any entity that the Company Parties own equity interests in, whether directly or indirectly, just prior to the Release Effective Date shall be considered a subsidiary of the applicable Company Parties, and such entities and the Company Parties shall constitute Affiliates. For the purposes of this Release Agreement, the term "**Releasees**" shall mean, collectively, and in each case in its capacity as such: (a) each Party; (b) any administrative agent, collateral agent, indenture trustee, collateral trustee, or other trustee or similar entity under the Notes, including any successors thereto; (c) each current and former Affiliate of each entity in clauses (a) and (b), to the maximum extent permitted by law; and (d) each current and former director, manager, officer, committee member, member of any governing body, equity holder (regardless of whether such interests are held directly or indirectly), affiliated investment fund or investment vehicle, and managed account or fund, and each of their respective current and former equity holders, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, owners, principals, shareholders, members, managers, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an Entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees (collectively, the "**Related Parties**") of each entity in clauses (a) and (b), to the maximum extent permitted by law.

3. Each Party, on behalf of itself, its Affiliates and each of their respective former, current, or future officers, employees, directors, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds, affiliated investment vehicles, managed

accounts, managed funds, and each of their respective current and former equity holders, agents, representatives, owners, members, partners, limited partners, general partners, principals, shareholders, managers, management companies, financial advisors, legal advisors, investment advisors, fund advisors, affiliates, assigns, successors, successors in interest, predecessors and predecessors in interest, agents, trustees, consultants, accountants, attorneys (with respect to the foregoing third-party advisors, in their capacity as representatives of such Party and its Affiliates, as applicable), investment bankers, and other professionals and advisors and any such Person's respective heirs, executors, estates, and nominees (collectively, solely in each such capacity, a "**Releasor**"), hereby completely, conclusively, unconditionally, and irrevocably forever waives, releases, and discharges each Releasee from and against any and all claims, interests, damages, remedies, rights, controversies, agreements, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, derivative claims, charges, claims for relief, demands, suits, actions, proceedings, franchises or causes of action of any kind or character whatsoever, which such Releasor has, had, or may hereafter have, on any ground whatsoever, in law, equity, contract, agreement, statute, rule, regulation, tort, order, or otherwise, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereinafter arising, including any derivative claims asserted or assertable on behalf of any Party and its respective Affiliates and Related Parties ("**Causes of Action**"), against any and all of the Releasees with respect to any event, matter, claim, occurrence, damage, liability, obligation, act, omission, or injury, directly or indirectly arising out of, related to, or associated with, in any manner, in whole or in part, the Company Parties and their respective Affiliates and Related Parties, including, without limitation, the ownership, operation, management, monitoring, services, financing, assets, securities, loans, instruments, documents, agreements, filings, correspondence, negotiations, discussions, advice, properties, affairs, financial condition, results of operations, earnings, or any other aspect of any of the Company Parties, the purchase, sale, or rescission of any Security of such Entities, the business or contractual arrangements between or among any Company Party and any Consenting Party, the ownership and/or operation of the Company Parties by any Consenting Party or the distribution or transfer of any cash or other property of the Company Parties to any Consenting Party, the assertion or enforcement of rights and remedies against the Company Parties, the Note Purchase Agreement (including, without limitation, any "Default" (as defined in the Note Purchase Agreement) or "Event of Default" (as defined in the Note Purchase Agreement)), the Company Parties' in- or out-of-court restructuring efforts, intercompany transactions, the Restructuring Support Agreement and all exhibits thereto, the Definitive Documents, the Transaction Documents, or any Restructuring Transaction, contract, instrument, release, transaction or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Restructuring Support Agreement) created or entered into in connection with the Restructuring Support Agreement and all exhibits thereto, the Definitive Documents, the Transaction Documents, the administration and implementation of any Restructuring Transaction, including the issuance or distribution of Securities pursuant to the Restructuring Transactions, or the distribution of property under the Restructuring Transactions or any other related agreement, and the formulation, preparation, dissemination, or negotiation thereof, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to any of the foregoing monitoring, services, financing, assets, securities, loans, instruments, documents, agreements, filings, correspondence, negotiations, discussions, advice, properties, affairs, financial

condition, results of operations, earnings, or any other aspect of any of the Company Parties (including, without limitation, in each case, related to, or associated with, in any manner, in whole or in part, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions, the Restructuring Support Agreement, including any exhibit thereto, the Transaction Documents, the Chapter 11 Cases, the Definitive Documents, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement or this Agreement, the Definitive Documents, the Transaction Documents, the Plan, the filing of the Chapter 11 Cases, the Note Purchase Agreement (including, without limitation, any "Default" (as defined in the Note Purchase Agreement) or "Event of Default" (as defined in the Note Purchase Agreement), in accordance with the terms set forth in this Section 7), the purchase, sale, or rescission of any Security of the Company Parties or Reorganized FEAM, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the pursuit of confirmation, the pursuit of consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act, or omission, transaction, agreement, event, or other occurrence taking place), as to each, on or prior to the date hereof (all of the foregoing, collectively, the "**Released Claims**").

4. Notwithstanding anything to the contrary above, and preserving any defenses to the matters referenced in (i) through (v) of this Section 4, (i) this Release Agreement shall not release, modify, discharge, limit, impair, alter, waive, or amend (a) any of the rights or obligations granted to or imposed upon any Party or any of their respective Affiliates, Related Parties, Releasors or Releasees under the Restructuring Support Agreement, including any exhibit thereto, the Transaction Documents, the Definitive Documents, or any other document entered into in connection with the Restructuring Transactions or any claims, Causes of Action, rights or obligations with respect thereto, (b) any claim, Cause of Action, right, or obligation arising under this Release Agreement, (c) any indemnity, exculpation, payment, fee or expense reimbursement obligations of the Company Parties and/or any of their subsidiaries in favor of the Consenting Parties arising under the Restructuring Support Agreement, including any exhibits thereto, or the Note Purchase Agreement or any security or loan documents related to the foregoing, in each case that by their terms survive termination of any such agreement, (d) any claim, Cause of Action, right, or obligation first arising and accruing after the Release Effective Date out of or relating to any matters or obligations arising, any agreements entered into or delivered, any action or inaction by any Person, or any transactions consummated, after the Release Effective Date (and for the avoidance of doubt, unrelated to any matters, obligations, agreements, actions, inactions, or transactions on or prior to the Release Effective Date), or (e) any indemnity, exculpation, payment, fee or expense reimbursement obligations of the Company Parties related to the service of any board member or officer of the Company Parties (and any defenses with respect to such obligations); (ii) no employee of the Company Parties or employee of any subsidiary of the Company Parties shall be released by the Company Parties for (a) money borrowed from or owed to the Company Parties or its subsidiaries by any such employee as set forth in the Company Parties' or its subsidiary's books and records, or (b) any obligations owed by such employee to the Company Parties or any of their subsidiaries pursuant to a written agreement, including, without limitation, any employment agreement, offer letter, incentive equity award agreement, restrictive covenant agreement or other similar agreement; (iii) no employee of a Consenting Party or any Affiliate of a Consenting Party (other than the Company Parties) shall be released by such

Consenting Party or its Affiliate for (a) money borrowed from or owed to such Consenting Party or its Affiliate by any such employee as set forth in such Consenting Party's or its Affiliate's books and records, or (b) any obligations owed by such employee to such Consenting Party or its Affiliate pursuant to a written agreement; (iv) no intercompany claims (*i.e.*, claims by or among the Company Parties and/or one or more of any Company Party's wholly owned subsidiaries), except that those claims by or among the Company Parties and/or one or more of any Company Party's wholly owned subsidiaries being transferred pursuant to the Restructuring Transactions shall be released unless otherwise specifically contemplated by the Restructuring Transactions; and (v) the releases contained in this Release Agreement do not extend to ordinary course commercial relationships between or among the Company Parties and any Affiliates of any other Party that are not directly related to the Restructuring Transactions.

5. Each Releasor understands, acknowledges and agrees that this release is a full and final general release of all Released Claims, including those that could have been asserted in any legal or equitable proceeding against the Releasees. As a general release, this Release Agreement extends to Released Claims that the Releasor does not know or suspect to exist at the time of executing this Release Agreement, including those that if known by it would have materially affected this settlement with and release of the Releasees. Each Releasor (and each Party on behalf of the applicable Releasors) hereby irrevocably covenants to refrain from, directly or indirectly, asserting any Released Claim, or asserting, maintaining, prosecuting, assisting, commencing, instituting or causing to be commenced any Cause of Action of any kind against any Releasee arising out of or relating to a Released Claim. Each of the Releasors expressly acknowledges that the covenant not to sue contained in this Release Agreement is effective regardless of whether those Released Claims are presently known or unknown, suspected or unsuspected, or foreseen or unforeseen.

Each Releasor (and each Party on behalf of the applicable Releasors) further agrees that in the event such Releasor should bring a Released Claim against any Releasee, this Release Agreement shall serve as a complete defense to such claim. Notwithstanding the New York choice of law provisions in this Release Agreement, to the extent that California law is proposed to apply or is deemed to apply to the release and indemnification provisions set forth herein, the foregoing waiver is specifically intended by each Party to waive the benefits and protections of Section 1542 of the Civil Code of California, which provides that: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

6. Turnover of Subsequently Recovered Assets. In the event that any Releasor is successful in pursuing or receives, directly or indirectly, any funds, property, or other value on account of any Released Claim against any Releasee that was released pursuant to the Release Agreement, such Releasor (i) shall not commingle any such recovery with any of its other assets and (ii) agrees that it shall promptly turnover and assign any such recoveries to, and hold them in trust for, such Releasee.

7. Irrevocable Waiver of Events of Default. Upon the Effective Date of the Out-of-Court Restructuring, the Purchasers (as defined in the Note Purchase Agreement) and Alter Domus (US)

LLC, in its capacity as "Collateral Agent" under, and as defined in, the Note Purchase Agreement hereby automatically and irrevocably waive (a) any and all Defaults (as defined in the Note Purchase Agreement) and Events of Default (as defined in the Note Purchase Agreement) arising on or prior to the date of approval of the Effective Date of the Out-of-Court Restructuring, including without limitation those set forth in that certain (i) Notice of Event of Default and Reservation of Rights, dated as of September 5, 2023, by BEP to the Company and (ii) letter titled "5E's Default Under the August 11, 2022 Note Purchase Agreement", dated as of September 5, 2023, by Kirkland & Ellis LLP, counsel to BEP and delivered to the Company and (b) the imposition of, and accrual of interest at, the Default Rate (as defined in the Note Purchase Agreement) from and after the date of approval of the Stockholder Approvals by the Company's stockholders at the Special Meeting. The waiver set forth in this Section 7 is a one-time waiver.

8. This Release Agreement constitutes the entire agreement and understanding among the Parties regarding the Released Claims and supersedes and preempts any other arrangements, understandings, agreements or representations, oral or written, by or among the Parties concerning the releases set forth in the Release Agreement. In the event of a conflict between the terms of this Release Agreement and the Restructuring Support Agreement, the terms of this Release Agreement shall prevail and apply only with respect to the matters covered by the Release Agreement.

9. Any term or provision of this Release Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. Whenever possible, each provision of this Release Agreement will be interpreted in such manner as to be effective and valid under applicable law, and if any portion of this Release Agreement is held by a court of competent jurisdiction to be illegal, invalid, unenforceable, void, voidable, or violative of applicable law, in whole or in part, the remaining portions of this Release Agreement, so far as they may practicably be performed, shall remain in full force and effect and binding on the Parties hereto. Upon any such determination of invalidity, the Parties shall negotiate in good faith to modify this Release Agreement so as to effect the original intent of the Parties as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest and fullest extent possible.

10. This Release Agreement shall be binding upon and inure to the sole benefit of the Parties, the Releasors, the Releasees and their respective successors and permitted assigns. No person or entity may assign any of its rights or obligations under this Release Agreement without the prior written consent of the Parties, and then only to a Person who has agreed in writing to be bound by the provisions of this Release Agreement. Any assignment of the Release Agreement in violation of this Section 10 shall be null and void *ab initio*.

11. Nothing in this Release Agreement, whether expressed or implied, shall give or be construed to give any person, other than the Parties, the Releasors, the Releasees and their respective successors and permitted assigns, any legal or equitable rights hereunder; provided, that each of the Releasors and Releasees shall be an express third-party beneficiary of this Release Agreement entitled to enforce this Release Agreement pursuant to its terms.

12. None of the terms or provisions of this Release Agreement may be amended, supplemented, or otherwise modified except by a written instrument duly executed by each of the Parties. No waiver of any of the terms or provisions of this Release Agreement shall be binding against any Party hereto unless such waiver is in a writing signed by such Party.

13. This Release Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to principles of choice of law). Any action or proceeding arising out of or under this Release Agreement shall be brought and maintained (a) in the event of an In-Court Restructuring, in the Bankruptcy Court, or (b) in the event of the Out-of-Court Restructuring, in the state and federal courts in the State of New York, and each Party irrevocably and unconditionally (i) submits to the personal jurisdiction of those courts for purposes of, and waives any defense of venue or inconvenient forum in, any such action or proceeding in those courts; and (ii) expressly waives any requirement for the posting of a bond by a party bringing such claim, suit, action or proceeding.

14. EACH OF THE PARTIES HERETO HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS RELEASE AGREEMENT OR ANY CLAIM, COUNTERCLAIM, OR OTHER ACTION ARISING IN CONNECTION THEREWITH OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION OF ANY PARTY HERETO OR ARISING OUT OF ANY EXERCISE BY ANY PARTY HERETO OF ITS RIGHTS UNDER THIS RELEASE AGREEMENT OR IN ANY WAY RELATING TO THE RELEASED CLAIMS CONTEMPLATED HEREBY (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY ACTION TO RESCIND OR CANCEL THIS RELEASE AGREEMENT AND WITH RESPECT TO ANY CLAIM OR DEFENSE ASSERTING THAT THIS RELEASE AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER OF RIGHT TO TRIAL BY JURY IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE UNDER THIS RELEASE AGREEMENT. EACH OF THE PARTIES HERETO IS HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 14 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER. THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS RELEASE AGREEMENT.

15. The Parties have participated jointly in the negotiation and drafting of this Release Agreement. In the event an ambiguity or question of intent or interpretation arises, this Release Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Release Agreement.

16. The Parties agree that irreparable damage would occur if any provision of this Release Agreement were not performed in accordance with its terms, and each Person having any rights under any provision of this Release Agreement shall be entitled to enforce such rights

specifically (without posting a bond or other security), to recover actual out of pocket damages by reason of any breach of any provision of this Release Agreement, to seek the remedy of specific performance of one or more such breached provisions and agreements and injunctive and certain other equitable relief in addition to any other remedy or rights to which such Parties are entitled, at law or in equity. All such rights and remedies shall be cumulative and non-exclusive, and may be exercised singularly or concurrently. Notwithstanding the foregoing, in no event shall damages recoverable hereunder include consequential, special, exemplary, punitive or indirect damages.

17. The agreements and obligations of each of the Parties under this Release Agreement are, in all respects, several and not joint.

18. Nothing in this Release Agreement shall be deemed an admission of liability by any Party with respect to any of the Released Claims.

[*The remainder of this page is intentionally left blank.*]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Release Agreement on the day and year first above written.

Company Parties:

5E ADVANCED MATERIALS, INC.

By: _____
Name: [●]
Title: [●]

5E BORON AMERICAS, LLC

By: _____
Name: [●]
Title: [●]

AMERICAN PACIFIC BORATES PTY LTD.

By: _____
Name: [●]
Title: [●]

[●]

By: [●]

By: _____
Name: [●]
Title: [●]

BEP Noteholders:

BEP SPECIAL SITUATIONS IV LLC

By: _____
Name: Jonathan Siegler
Title: Managing Director and Chief Financial Officer

Ascend:

ASCEND GLOBAL INVESTMENT FUND SPC FOR AND ON BEHALF OF STRATEGIC SP

By: _____
Name:
Title:

Alter Domus:

ALTER DOMUS (US) LLC

By: _____
Name:
Title:

Annex I

Company Party	Jurisdiction
5E Boron Americas, LLC	Delaware
American Pacific Borates Pty Ltd.	Australia

EXHIBIT J

Milestones

(a) The Company shall file the Preliminary Proxy Statement with the SEC on or before the date that is one (1) Business Day following the Agreement Effective Date, file with the SEC and mail the Proxy Statement to the Company's stockholders on or before the date that is eleven (11) days following the Agreement Effective Date, and hold the Special Meeting on or before the date that is twenty (20) Business Days following the mailing of the Proxy Statement to the Company's stockholders; provided, however, that if the Preliminary Proxy Statement becomes subject to review by the SEC (A) such mailing and Special Meeting deadlines shall be extended by the lesser of (x) 45 days and (y) the number of days the Preliminary Proxy Statement continues to be subject to the review of the SEC, such period not to exceed an aggregate of 60 days, and (B) the Company shall promptly prepare and file an amendment to such proxy statement and provide the Consenting Parties and their legal counsel with a reasonable number of days prior to such filing with the SEC to review and comment on such filing, and not file any amendment or supplement thereto in a form to which such Consenting Party or its legal counsel reasonably objects; and

(b) if approval of the Stockholder Approvals by the Company's stockholders is obtained at the Special Meeting, then the Effective Date of the Out-of-Court Restructuring shall occur on or before two (2) Business Days following such approval of the Stockholder Approvals (the "**Out-of-Court Outside Date**"); or

(c) if approval of the Stockholder Approvals by the Company's stockholders is not obtained at the Special Meeting, then:

(i) the solicitation of votes on the Plan shall occur on or before one (1) business day following the Special Meeting (the "**Solicitation Deadline**");

(ii) the deadline to vote on the Plan shall be two (2) Business Days following the Solicitation Deadline (the "**Voting Deadline**");

(iii) the Petition Date shall have occurred on or before one (1) Business Day following the Voting Deadline;

(iv) the Company Parties shall have filed the First Day Pleadings and the DIP/Cash Collateral Motion, the Plan, and a motion seeking confirmation of the Plan and approval of the Disclosure Statement, on or before two (2) calendar days after the Petition Date;

(v) the Bankruptcy Court shall have entered the Final DIP/Cash Collateral Order on or before thirty (30) calendar days after the Petition Date;

(vi) the Bankruptcy Court shall have entered an order confirming the Plan and approving the Disclosure Statement on a final basis on or before forty-five (45) days after the Petition Date; and

(vii) the Plan Effective Date shall have occurred on or before seventy (70) days after the Petition Date.

EXHIBIT K

Provision for Transfer Agreement

The undersigned ("**Transferee**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of _____ (the "**Agreement**"), by and among FEAM and its affiliates and subsidiaries bound thereto and the Consenting Parties, including the transferor to the Transferee of any Company Claims/Interests (each such transferor, a "**Transferor**"), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a "Consenting Party" and a "BEP Noteholder" under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

_____
Name:
Title:
Address:
E-mail address(es):

Aggregate Amounts Beneficially Owned or Managed on Account of:	
BEP Notes	
Equity Interests	

2. Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this "Agreement") dated as of December 5, 2023, is made by and among Ascend Global Investment Fund SPC, a segregated portfolio company incorporated under the laws of the Cayman Islands, for and on behalf of Strategic SP ("Ascend"), BEP Special Situations IV LLC, a Delaware limited liability company ("BEP") and 5E Advanced Materials, Inc., a company incorporated under the laws of the State of Delaware (the "Company").

WHEREAS, this Agreement is being entered into in connection with the Restructuring Support Agreement to be entered into as of the date hereof (as amended, modified, supplemented or waived from time to time in accordance with its terms, the "Restructuring Support Agreement") among the Company Parties (as defined in the Restructuring Support Agreement) and the Consenting Parties (as defined in the Restructuring Support Agreement) and the transactions contemplated by the Out-of-Court Restructuring (as defined in the Restructuring Support Agreement) ("Transactions");

WHEREAS, Ascend is entering into the Debt Commitment Letter (as defined herein) in connection with the Restructuring Support Agreement, pursuant to which Ascend will purchase the Ascend Notes (as defined herein) on the terms and conditions set forth therein;

WHEREAS, in connection with the Committed Placement (as defined in the Restructuring Support Agreement), Ascend shall subscribe for and purchase the Ascend Subscription Shares (as defined herein) for the Ascend Purchase Price, and the Company shall issue and sell the Ascend Subscription Shares to Ascend in consideration of the payment of the Ascend Purchase Price therefor by or on behalf of Ascend to the Company, all on the terms and conditions set forth herein;

WHEREAS, the issue and sale of the Ascend Subscription Shares hereunder shall be made in reliance upon Section 4(a)(2) under the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder; and

WHEREAS, substantially concurrently with the execution of this Agreement and/or prior to the Closing, Ascend and BEP acknowledge that the Company may enter into separate subscription agreements ("Other Subscription Agreements") with certain other investors, including 5ECAP, LLC (collectively, the "Other Subscribers"), pursuant to which the Other Subscribers, severally and not jointly, have agreed or will agree to subscribe for certain shares of common stock of the Company ("Common Stock") upon Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms in this Agreement shall have the meanings given below:

"Affiliates" shall mean any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. With respect to Ascend, any investment fund or managed account that is managed and/or advised on a discretionary basis by the same investment manager or beneficial owner as Ascend will be deemed to be an Affiliate of Ascend. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"Amended and Restated Note Purchase Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Amended and Restated Investor Rights and Registration Rights Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Anti-Corruption Laws" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"Anti-Terrorism Laws" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"Ascend Purchase Price" shall mean $10,000,000 less the aggregate purchase price (if any) actually paid at or prior to the Closing by any Affiliates of Ascend pursuant to Section 2 of this Agreement and/or by 5ECAP, LLC to the Company pursuant to the Other Subscription Agreements, provided always that if the aggregate purchase price actually paid by 5ECAP, LLC pursuant to the Other Subscription Agreements is equal to or more than $5,000,000, the Ascend Purchase Price shall only be $5,000,000.

"Ascend Equity Placement Fee Shares" shall mean a number of shares of Common Stock equal to (a) 10% of the shares of Common Stock subscribed for by Ascend pursuant to this Agreement and (b) 10% of the shares of Common Stock subscribed for by any Affiliates of Ascend pursuant to Section 2 of this Agreement, rounded to the nearest whole number.

"Ascend Notes" means the aggregate principal amount of BEP Notes actually purchased from BEP by Ascend (together with any additional interest accrued and paid-in-kind between the date of this Agreement and the Closing Date) in connection with the Amended and Restated Note Purchase Agreement and the Restructuring Support Agreement.

"Ascend Shares" shall mean the Ascend Subscription Shares and the Ascend Equity Placement Fee Shares.

"Ascend Subscription Shares" shall mean the number of shares of Common Stock equal to the Ascend Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Ascend Purchase Price" shall have the meaning given to it in Section 2.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"BEP Notes" means the convertible notes of the Company issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

"Blocked Person" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"Closing Date" the date on which Closing occurs.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Debt Commitment Letter" shall have the meaning given to it in the Restructuring Support Agreement.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fort Cady Borate Project" means the Company's mining project in San Bernardino County, California, as described in the Company SEC Documents.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"Intellectual Property" means all the right, title and interest of the Company or any of its Subsidiaries in and to the following: (a) its Copyrights, Trademarks and Patents; (b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information; (c) any and all Technology, including Software; (d) any and all design rights which may be available to the Company or any of its Subsidiaries; (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and (f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's

custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Knowledge" means to the "best of" the Company's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"Law" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the United States Bankruptcy Court).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Material Adverse Effect" shall mean, with respect to any event, occurrence or condition, (a) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (b) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (c) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement (other than as arising from, or relating to, the failure by Ascend or its Affiliates to perform their obligations under this Agreement); provided, however, that the determination of whether, there has been or will be a Material Adverse Effect shall not include any event, circumstance, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any change, or proposed change in, or change in the interpretation of, any Law or accounting rules, including GAAP; (ii) events or conditions generally affecting the industries or geographic areas in which the Company operates; (iii) general economic, financial, credit, or political conditions, including changes in the credit, debt, securities, financial markets in general; (iv) any geopolitical conditions, outbreak of hostilities, civil unrest or similar disorder, acts of war (whether or not declared), sabotage, cyberterrorism, terrorism, military actions, earthquakes, volcanic activity, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires, any other natural or man-made disaster or acts of God, weather conditions, epidemics, pandemics and other force majeure events (including any escalation or general worsening thereof); (v) general changes in the price of the Company's Common Stock or other securities; (vi) any actions required or permitted by the Note Purchase Agreement, the Restructuring Support Agreement and transactions contemplated thereby, or any action taken, any failure to take action or such other changes or events, in each case, which the Company has consented to in writing, and any effect resulting therefrom; (vii) delay or failure in obtaining, or revocation of, franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority (including without limitation any delay or failure with respect to any authorization or modification to any permit with the US Environmental Protection Agency); (viii) any failure by the Company to meet any internal or published projections, forecasts, guidance, estimates, milestones, budgets or financial or operating predictions of revenue, earnings, cash flow or cash position; (ix) any effect attributable to the announcement or execution, pendency, negotiation or consummation of the Restructuring Support Agreement and the transactions contemplated thereby; or (x) any matters, facts, or disclosures set forth in the Company SEC Documents.

"Material Agreement" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; provided, however, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"Note Purchase Agreement" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP as purchaser, and Alter Domus (US) LLC as Agent, as may be amended, restated, supplemented, or otherwise modified from time to time, including pursuant to the Standstill Agreement.

"OFAC" is the U.S. Department of Treasury Office of Foreign Assets Control.

"OFAC Lists" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Per Share Purchase Price" shall mean $1.025 per share of Common Stock.

"Principal Market" shall mean the Nasdaq Stock Market (including the Capital Market, Global Market and/or the Global Select Market).

"Regulation D" shall mean the provisions of Regulation D promulgated under the Securities Act.

"Requirement of Law" shall mean as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" shall mean any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of the Company acting alone.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions, updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"Solvent" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the Transactions, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto).

"Standstill Agreement" means the standstill agreement dated November 9, 2023 by and among the Company, BEP, Alter Domus (US) LLC, Ascend and Mayfair Ventures Pte Ltd in connection with the Note Purchase Agreement.

"Stockholder Approvals" shall have the meaning given to it in the Restructuring Support Agreement.

"Subsidiary" is, with respect to any Person, any Person of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

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

"Technology" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Trademarks" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Company and each of its Subsidiaries connected with and symbolized by such trademarks.

"VAT" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

2. Subscription; Placement Fee. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to Ascend, and Ascend shall purchase the Ascend Subscription Shares from the Company, for the Ascend Purchase Price. If Ascend allocates all or a portion of its commitment to subscribe for the Ascend Subscription Shares to any of its Affiliates pursuant to any subscription agreement entered into between the Company and such Affiliate prior to the Closing: (i) the number of Ascend Subscription Shares to be subscribed for by Ascend hereunder shall be reduced by such number of shares of Common Stock subscribed for by such Affiliates of Ascend; and (ii) the Ascend Purchase Price hereunder shall be reduced by the cash purchase price paid to the Company by such Affiliates of Ascend under such subscription agreement(s) at or prior to the Closing. For the avoidance of doubt, (A) the number of Ascend Subscription Shares to be subscribed for by Ascend, and the corresponding Ascend Purchase Price, shall also be accordingly reduced if Other Subscribers subscribe and pay the cash purchase price for shares of Common Stock pursuant to the Other Subscription Agreements at or prior to the Closing and (B) notwithstanding any subscription agreement entered into by any Affiliates of Ascend or any Other Subscription Agreements, Ascend

shall remain obligated to pay the entire Ascend Purchase Price at or prior to the Closing as set forth in Section 3(a).

In consideration for and subject to Ascend's purchase of the Ascend Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to Ascend by way of the issuance of the Ascend Equity Placement Fee Shares to Ascend upon Closing.

3. Closing; Delivery of Shares. The closing of the sale and purchase of the Ascend Subscription Shares and the issuance of the Ascend Equity Placement Fee Shares (the "Closing") is contingent upon the substantially concurrent consummation of the Transactions. The Closing shall occur on the third Business Day after the Stockholder Approvals have been obtained.

(a) No later than 5.00 p.m. (Eastern time) on the Closing Date, Ascend shall pay to the Company the Ascend Purchase Price in cash in immediately available funds to the bank account notified by the Company to Ascend in writing at least three (3) Business Days prior to the Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Closing, the Company will, or will cause its transfer agent to, electronically deliver the Ascend Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of Ascend (or its nominee in accordance with its delivery instructions) or to a custodian designated by Ascend, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to Ascend of the Ascend Shares (in book entry form) on and as of the Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Closing Date).

(b) Each of the Company and Ascend shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated by this Agreement.

4. Conditions to Closing of the Company. The Company's obligations to sell and issue the Ascend Subscription Shares and the Ascend Equity Placement Fee Shares at the Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Company and BEP, on or prior to the Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Notes Purchase. Ascend's purchase of the Ascend Notes in accordance with the terms of the Restructuring Support Agreement, the Debt Commitment Letter and the Amended and Restated Note Purchase Agreement.

(c) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(d) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

5. Conditions to Closing of Ascend. Ascend's obligations to subscribe for and purchase the Ascend Subscription Shares at the Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by Ascend, on or prior to the Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Notes Purchase. Ascend's purchase of the Ascend Notes in accordance with the terms of the Restructuring Support Agreement, the Debt Commitment Letter and the Amended and Restated Note Purchase Agreement.

(c) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(d) Investor Rights and Registration Rights Agreement. The Company shall have executed and delivered counterpart signature pages to the Amended and Restated Investor Rights and Registration Rights Agreement in substantially the form set forth in the Restructuring Support Agreement.

(e) Listing of Common Stock. The shares of Common Stock to be sold by the Company pursuant to this Agreement shall have been approved for listing on the Principal Market, subject to official notice of issuance. There shall be no suspension of the qualification of the Common Stock for offering or sale or trading on the Principal Market and no initiation or threatening of any proceedings for any of such purposes or delisting, shall have occurred.

(f) Accuracy of Fundamental Representations/Warranties. The representations and warranties in Sections 6(a), 6(b)(i) and 6(d) shall be true, accurate and complete in all respects on the Closing Date. The representations and warranties in Sections 6(b)(ii) and 6(b)(iii) shall be true, accurate and complete in all respects on the Closing Date except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(g) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

6. Company Representations and Warranties. The Company represents and warrants to Ascend, as of the date hereof and as of the Closing Date, that:

(a) Due Organization. The Company and each of its Subsidiaries is duly existing and in good standing in its jurisdictions of organization or formation. The Company and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; Power and Authority. The execution, delivery and performance by the Company of this Agreement has been duly authorized, and does not (i) conflict with the organizational documents of the Company or its Subsidiaries, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which the Company and its Subsidiaries, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default or material breach under any Material Agreement to which the Company or any of its Subsidiaries, or any of their respective properties, is bound.

(c) No Default. Neither the Company nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Effect.

(d) Authorization of the Ascend Shares. The Ascend Shares under this Agreement will be, when issued and delivered against payment therefor as provided herein, duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or

other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(e) Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of the Company are duly authorized and validly issued, fully paid, nonassessable, and directly owned by the Company or its applicable Subsidiary and are free and clear of all Liens (other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

(f) No Australia Operations. Each of the Company and its Subsidiaries are not an Australian land corporation and does not carry on a national security business, as defined in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisition and Takeovers Regulation 2015 (Cth), and does not hold any mining tenements (including exploration tenements) or mining project in Australia.

(g) Litigation. Except as otherwise set forth in the Company SEC Documents, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against the Company or any of its Subsidiaries involving more than $1,000,000.

(h) No Broker's Fees. None of the Company nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or Ascend for a brokerage commission, finder's fee or like payment in connection with this Agreement and the transactions contemplated by this Agreement (other than as disclosed in this Agreement and the Other Subscription Agreements).

(i) Financial Statements; No Material Adverse Effect. All consolidated financial statements for the Company and its consolidated Subsidiaries, filed by it with the SEC fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of the Company and its consolidated Subsidiaries, and the consolidated results of operations of the Company and its consolidated Subsidiaries as of and for the dates presented. Except as otherwise set forth in the Company SEC Documents, since June 30, 2023, there has not been any Material Adverse Effect.

(j) No General Solicitation. Neither the Company nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Ascend Shares in a manner that would require registration of the Ascend Shares under the Securities Act.

(k) Accredited Investors. Neither the Company nor any of its Subsidiaries has offered or sold any of the Ascend Shares or the shares of Common Stock to be issued under the Other Subscription Agreements to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

(l) Solvency. The Company and each of its Subsidiaries, when taken as a whole, upon consummation of the transactions contemplated by this Agreement will be Solvent.

(m) No Registration Required. Assuming the accuracy of the representations and warranties of Ascend contained in Section 7(b), the issuance and sale of the Ascend Shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(n) SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by the Company under the Exchange Act or the Securities Act (all such documents, including

the exhibits thereto, collectively the "Company SEC Documents") have been filed with the SEC on a timely basis. The Company SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "Company Financial Statements"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Company Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Company Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. PWC LLP is an independent registered public accounting firm with respect to the Company and has not resigned or been dismissed as independent registered public accountants of the Company as a result of or in connection with any disagreement with the Company on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

(o) Internal Controls. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Board of Directors (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(p) Disclosure Controls and Procedures. The Company has established and maintains, and at all times since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (A) transactions are executed in accordance with the Company management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (C) access to assets is permitted only in accordance with the Company management's general or specific authorization and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, there has not been any fraud, whether or not material, that involves management or other employees of the Company or any of its Subsidiaries who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations

required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

(q) Regulatory Compliance. Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither the Company nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). The Company and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither the Company nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither the Company nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Effect. Neither the Company's nor any of its Subsidiaries' properties or assets has been used by the Company or such Subsidiary or, to the Company's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. The Company and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of the Company, any of its Subsidiaries, or any of the Company's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of the Company, any of its Subsidiaries, or to the Knowledge of the Company and any of their Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. The Company, its Subsidiaries and Affiliates, and to the Knowledge of the Company each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

(r) Investments. Neither the Company nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments (as defined in the Amended and Restated Note Purchase Agreement).

(s) Tax Returns and Payments. The Company and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and the Company and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by the Company and such Subsidiaries in an amount greater than $200,000, in all jurisdictions in which the Company or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. The Company and each of its Subsidiaries, may defer payment of any contested Taxes, provided that the Company or such Subsidiary (i) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (ii) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP. Neither the Company nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of the Company's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than $200,000 becoming due and payable by the Company or its Subsidiaries.

(t) Pension Contributions. The Company and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither the Company nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of the Company or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(u) Full Disclosure. No written representation, warranty or other statement of the Company or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to Ascend, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Ascend, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by the Company in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

(v) Title Ownership. Each of the Company and its Subsidiaries has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement. All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(w) Intellectual Property. The Company and its Subsidiaries are the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and non-exclusive licenses for off-the-shelf software that are commercially available to the public. Each employee and contractor of the Company and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to the Company or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Effect, in each case individually or in the aggregate. No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by the Company or any of its Subsidiaries or exist to which the Company or any of its Subsidiaries is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(x) Enforceability. This Agreement has been duly authorized by the Company and, upon the consummation of the transactions contemplated by this Agreement, shall constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(y) Environmental Matters. The Company and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("Environmental Laws") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("Environmental Permits"), unless the failure to do so has not resulted or would not result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Company's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under,

Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Effect. There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Company or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Effect.

(z) No Suspension of Trading in or Delisting of Common Stock. The Common Stock is quoted for trading on the Principal Market. The Company is not aware of any circumstances affecting the continued quotation of the Common Stock on the Principal Market and has not received any written notice threatening the continued quotation of the Common Stock on the Principal Market.

7. Ascend Representations and Warranties. Ascend represents and warrants to the Company, as of the date hereof and as of the Closing Date, that:

(a) Status. Ascend is an entity duly organized, validly existing and in good standing under the laws of the Cayman Islands and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement, the performance by Ascend of its obligations hereunder and the consummation by Ascend of the transactions contemplated by this Agreement and thereby have been duly authorized and require no other proceedings on the part of Ascend. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of Ascend or its shareholders. This Agreement has been duly executed and delivered by Ascend and, assuming the execution and delivery hereof and acceptance thereof by other parties, will constitute the legal, valid and binding obligations of Ascend, enforceable against Ascend in accordance with its terms.

(b) Nature of Investor.

(i) Ascend is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D. Ascend is subscribing for the Ascend Shares for its own account and not with a view to any resale or distribution thereof. Ascend agrees to furnish any additional information requested by the Company or any of its Affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Ascend Shares.

(ii) Ascend (A) is a sophisticated investor with the knowledge and experience in business and financial matters to enable Ascend to independently evaluate the merits and risks, both in general and with regard to all transactions and investment strategies involving a security or securities and (B) has exercised independent judgment in evaluating its participation in the purchase of the Ascend Shares. Further, Ascend is able to bear the economic risk and lack of liquidity of an investment in the Company and the risk of loss of its entire investment in the Company.

(iii) Ascend or its representatives have been furnished with materials relating to the business, finances and operations of the Company and relating to the offer and sale of the Ascend Shares that have been requested by Ascend. Ascend or its representatives has been afforded the opportunity to ask questions of the Company or its representatives. Neither such inquiries nor any other due diligence investigations conducted at any time by Ascend or its representatives shall modify, amend or affect Ascend's right (A) to rely on the Company's representations and warranties contained in Section 6 above or (B) to indemnification or any other remedy based on, or with respect to the accuracy or inaccuracy of, or compliance with, the representations, warranties, covenants and agreements in this Agreement. Ascend understands and acknowledges that its purchase of the Ascend Shares involves a high degree of risk and

uncertainty. Ascend has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its investment in the Ascend Shares. Ascend acknowledges that this Agreement is the result of arm's-length negotiations between the Company and Ascend.

(c) No Public Offering. Ascend understands that the Ascend Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the offer and sale of the Ascend Shares have not been registered under the Securities Act. Ascend understands that the Ascend Shares may not be resold, transferred, pledged or otherwise disposed of by Ascend absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur solely outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any book entries representing the Ascend Shares shall contain a legend to such effect. Ascend understands and agrees that the Ascend Shares will be subject to the foregoing transfer restrictions and, as a result, Ascend may not be able to readily resell the Ascend Shares and may be required to bear the financial risk of an investment in the Ascend Shares for an indefinite period of time. Ascend understands that it has been advised to consult legal counsel prior to making any offer, resale, pledge or transfer of any of the Ascend Shares.

(d) Reliance Upon such Purchaser's Representations and Warranties. Ascend understands and acknowledges that the Ascend Shares are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of Ascend set forth in this Agreement in (i) concluding that the issuance and sale of the Ascend Shares is a "private offering" and, as such, is exempt from the registration requirements of the Securities Act, and (ii) determining the applicability of such exemptions and the suitability of Ascend to purchase the Ascend Subscription Shares.

(e) Sanctions. Ascend is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, each of which is administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "OFAC Lists"), (ii) owned, directly or indirectly, or controlled by, or acting on behalf of, one or more persons that are named on the OFAC Lists; (iii) organized, incorporated, established, located, resident or born in, or a citizen, national or the government, including any political subdivision, agency or instrumentality thereof, of, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine or any other country or territory embargoed or subject to substantial trade restrictions by the United States, (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (each, a "Prohibited Investor"). Ascend agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Ascend is permitted to do so under applicable law. Ascend represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), Ascend maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. Ascend also represents that, to the extent required, it maintains policies and procedures reasonably designed to ensure compliance with OFAC-administered sanctions programs, including for the screening of its investors against the OFAC sanctions programs, including the OFAC Lists. Ascend further represents and warrants that, to the extent required by applicable law, Ascend maintains policies and procedures reasonably designed to ensure that the funds held by Ascend and used to purchase the Ascend Subscription Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor.

8. Termination. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (i) such date and time as the Restructuring Support Agreement is validly terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties hereto to terminate this Agreement, or (iii) April 30, 2024 or such later date as may be agreed between Ascend and the Company, provided that nothing herein shall be deemed to release any party from any liability for any breach under this Agreement. For the avoidance of doubt, if any valid termination of this Agreement occurs or if the Company fails to perform its obligations in Section 3(a), in each case, after the payment by Ascend of the Ascend Purchase Price for the Ascend Subscription Shares, the Company shall promptly (but not later than one Business Day thereafter) return the Ascend Purchase Price to Ascend without any deduction for or on account of any tax, withholding, charges or set-off.

9. Transferability. Neither this Agreement nor any rights that may accrue to any party hereunder (other than the Ascend Shares acquired after the Closing, subject to applicable securities laws) may be transferred or assigned by any party without the prior written consent of the other parties, and any purported transfer or assignment without such consent shall be null and void ab initio.

10. Further Assurance. Subject to the other terms of this Agreement, the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, in order to consummate the transactions contemplated by this Agreement, as applicable.

11. Complete Agreement. Except as otherwise explicitly provided herein and without limiting the Restructuring Support Agreement and the transactions contemplated thereby, this Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto.

12. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. The parties agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

13. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

15. Rules of Construction. This Agreement is the product of negotiations among the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. Each party was represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel. Furthermore, this Agreement supersedes all prior

understandings, whether written or oral, among the parties hereto with respect to the Transactions and sets forth the entire understanding of the parties hereto with respect thereto; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

16. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any party under this Agreement may not be assigned, delegated, or transferred to any other person or entity. For the avoidance of doubt, except as expressly provided herein, BEP shall not be liable or obligated under this Agreement.

17. Notices. All notices, consents, waivers and other communications hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice). Any notice given by delivery, mail, or courier shall be effective when received.

If to the Company, to:	5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, California 92344 Attention: Paul Weibel E-mail: pweibel@5eadvancedmaterials.com
With a copy (which shall not constitute notice or delivery of process) to:	Winston & Strawn LLP 800 Capitol Street, Suite 2400 Houston, Texas 77002 Attention: J. Eric Johnson E-mail: jejohnson@winston.com
If to Ascend:	Ascend Global Investment Fund SPC for and on behalf of Strategic SP 1 Kim Seng Promenade #10-01 East Tower Great World City Singapore 237994 Attention: Mulyadi Tjandra and Michelle Tanuwidjaja E-mail: muljadi.tjandra@ascendcapitals.com, michelle.tanuwidjaja@ascendcapitals.com
With a copy (which shall not constitute notice or delivery of process) to:	Latham & Watkins LLP 9 Raffles Place #42-02 Republic Plaza Singapore 048619 Attention: Marcus Lee E-mail: marcus.lee@lw.com and Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attention: Adam Goldberg and George Klidonas E-mail: adam.goldberg@lw.com; george.klidonas@lw.com
If to BEP:	BEP Special Situations IV LLC 300 Crescent Court, Suite 1860

Dallas, Texas 75201
Attention: Jonathan Siegler
E-mail: jasiegler@bluescapegroup.com

With a copy (which shall not constitute notice or delivery of process) to:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Brian E. Schartz, P.C. and Allyson B. Smith
E-mail: brian.schartz@kirkland.com;
allyson.smith@kirkland.com

and

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, IL 60654
Attention: Claire E. Stephens
E-mail: claire.stephens@kirkland.com

18. Fees and Expenses. The Company shall, and shall procure that the Company Parties shall, pay and reimburse all reasonable and documented fees and expenses when due incident to the performance of its obligations hereunder, including, but not limited to (i) the issuance and delivery of the Ascend Shares, (ii) all fees and disbursements of the Company's counsel, (iii) all fees and disbursements of Ascend's counsel, (iv) any opinions from the Company's counsel required to effect the resale of the Ascend Shares by Ascend under applicable securities laws and (v) the fees and expenses incurred in connection with the listing or qualification of the Ascend Shares for trading on the Principal Market.

19. Amendments and Waivers. This Agreement may not be amended, modified or waived except by an instrument in writing, signed by each of the parties hereto.

20. Specific Performance; Ascend and BEP Consent. () It is understood and agreed by the parties that money damages would be an insufficient remedy for any breach of this Agreement by any party, and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach. BEP is entitled to enforce the rights granted to the Company to cause Ascend to pay the Ascend Purchase Price for the Ascend Subscription Shares in accordance with Section 2 of this Agreement. BEP hereby agrees that its right to specific performance as set forth in Section 20 of this Agreement shall be its sole and exclusive remedy with respect to any breach by any other party of this Agreement and that it may not seek or accept any other form of relief that may be available for any such breach of this Agreement (including monetary, punitive, indirect, special, consequential and/or any other damages or remedies).

(b) Each of Ascend and BEP hereby expressly consents to each of the Company, Ascend and the Other Subscribers entering into Other Subscription Agreements for the purposes of such Other Subscribers' purchase of shares of Common Stock of the Company in connection with the Out-of-Court Restructuring and as contemplated in the Restructuring Support Agreement and the Restructuring Term Sheet (as defined in the Restructuring Support Agreement), subject to any requirements set forth therein or in this Agreement.

21. Indemnification. The Company shall defend, protect, indemnify and hold harmless each of Ascend and its directors, officers, employees, consultants, agents, attorneys, or any other person affiliated with or representing Ascend and such person (each, an "Indemnified Person") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable and documented expenses in connection therewith (irrespective of whether

any such Indemnified Person is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnified Person as a result of, or arising out of, or relating to any material misrepresentation or breach of any representation or warranty made by the Company in this Agreement, except for actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment.

22. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the parties under this Agreement are, in all respects, several and not joint.

23. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

24. Remedies Cumulative. Subject to Section 20, all rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such party.

25. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions that are required to be performed following the Closing shall survive in accordance with their respective terms, and if no term is specified, then for sixty (60) days following the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof).

26. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

5E ADVANCED MATERIALS, INC.

By: */s/ Paul Weibel*
Name: Paul Weibel
Title: Chief Financial Officer

BEP SPECIAL SITUATIONS IV LLC

By: */s/ Jonathan Siegler*
Name: Jonathan Siegler
Title: Managing Director and Chief Financial Officer

ASCEND GLOBAL INVESTMENT FUND SPC FOR AND ON BEHALF OF STRATEGIC SP

By: */s/ Mulyadi Tjandra*
Name: Mulyadi Tjandra
Title: Director

SUBSCRIPTION AGREEMENT

THIS SUBSCRIPTION AGREEMENT (this "Agreement") dated as of December 5, 2023, is made by and among Ascend Global Investment Fund SPC, a segregated portfolio company incorporated under the laws of the Cayman Islands, for and on behalf of Strategic SP ("Ascend"), 5ECAP, LLC, a company incorporated under the laws of the State of Ohio (the "Investor") and 5E Advanced Materials, Inc., a company incorporated under the laws of the State of Delaware (the "Company").

WHEREAS, this Agreement is being entered into in connection with the Restructuring Support Agreement to be entered into as of the date hereof (as amended, modified, supplemented or waived from time to time in accordance with its terms, the "Restructuring Support Agreement") among the Company Parties (as defined in the Restructuring Support Agreement) and the Consenting Parties (as defined in the Restructuring Support Agreement) and the transactions contemplated by the Out-of-Court Restructuring (as defined in the Restructuring Support Agreement) ("Transactions");

WHEREAS, in connection with the Placement (as defined in the Restructuring Support Agreement), the Investor shall subscribe for and purchase the Investor Subscription Shares (as defined herein) for the Investor Purchase Price (as defined herein), and the Company shall issue and sell the Investor Subscription Shares to the Investor in consideration of the payment of the Investor Purchase Price therefor by or on behalf of the Investor to the Company, all on the terms and conditions set forth herein;

WHEREAS, the issue and sale of the Investor Shares hereunder shall be made in reliance upon Section 4(a)(2) under the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), or upon such other exemption from the registration requirements of the Securities Act as may be available with respect to any or all of the transactions to be made hereunder; and

WHEREAS, substantially concurrently with the execution of this Agreement and/or prior to the Additional Closing, the Investor acknowledges that the Company may enter into separate subscription agreements ("Other Subscription Agreements") with certain other investors, including Ascend (collectively, the "Other Subscribers"), pursuant to which the Other Subscribers, severally and not jointly, have agreed or will agree to subscribe for certain shares of common stock of the Company ("Common Stock") upon the Initial Closing and/or the Additional Closing.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants, and subject to the conditions, herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms in this Agreement shall have the meanings given below:

"Additional Closing" has the meaning given to it in Section 3(b).

"Additional Closing Date" the date on which the Additional Closing occurs.

"Additional Investor Equity Placement Fee Shares" shall mean such number of shares of Common Stock, being equal to 10% of the Additional Investor Subscription Shares, rounded to the nearest whole number.

"Additional Investor Purchase Price" shall mean the aggregate purchase price (if any) actually paid at or prior to the Additional Closing by the Investor pursuant to Section 3(b) of this Agreement, provided always that Additional Investor Purchase Price shall be no higher than $14,000,000.

"Additional Investor Shares" shall mean the Additional Investor Subscription Shares and the Additional Investor Equity Placement Fee Shares.

"Additional Investor Subscription Shares" shall mean such number of shares of Common Stock equal to the Additional Investor Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Affiliates" shall mean any person or entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a person or entity, as such terms are used in and construed under Rule 144 under the Securities Act. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or partnership or other ownership interest, by contract, or otherwise.

"Amended and Restated Note Purchase Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Amended and Restated Investor Rights and Registration Rights Agreement" shall have the meaning given to it in the Restructuring Support Agreement.

"Anti-Corruption Laws" are any laws, rules, or regulations relating to bribery or corruption, including without limitation the Foreign Corrupt Practices Act and UK Bribery Act.

"Anti-Terrorism Laws" are any laws, rules, regulations or orders relating to terrorism, sanctions or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, the laws, regulations, and orders administered by OFAC and the U.S. State Department, and similar applicable laws, regulations and directives imposed or enforced by the United Nations Security Council, European Union, United Kingdom and Australia.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

"BEP" means BEP Special Situations IV LLC, a Delaware limited liability company.

"BEP Notes" means the convertible notes of the Company issued on August 26, 2022 and maturing August 15, 2027, issued in connection with the Note Purchase Agreement.

"Blocked Person" is any Person: (a) listed in the annex to, or is otherwise the subject of Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (c) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; or (e) a Person that is named on any OFAC List or other similar list.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; provided, that, to the extent that the Code is used to define any term herein and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern.

"Confidentiality Agreement" means the mutual confidentiality and non-disclosure agreement between the Company and Empire Capital Management, LLC dated November 9, 2023.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made under the Code, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fort Cady Borate Project" means the Company's mining project in San Bernardino County, California, as described in the Company SEC Documents.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank), any securities exchange and any self-regulatory organization.

"Intellectual Property" means all the right, title and interest of the Company or any of its Subsidiaries in and to the following: (a) its Copyrights, Trademarks and Patents; (b) any and all trade secrets, trade secret rights and corresponding rights in confidential information and other non-public or proprietary information (whether or not patentable), including, without limitation, any rights to unpatented inventions, know-how, operating manuals; ideas, formulas, compositions, inventor's notes, discoveries and improvements, manufacturing and production processes and techniques, testing information, research and development information, invention disclosures, unpatented blueprints, drawings, specifications, designs, plans, proposals and technical data, business and marketing plans, market surveys, market know-how and customer lists and information; (c) any and all Technology, including Software; (d) any and all design rights which may be available to the Company or any of its Subsidiaries; (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and (f) any and all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made under the Code, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Initial Closing" has the meaning given to it in Section 3(a).

"Initial Closing Date" the date on which the Initial Closing occurs.

"Initial Investor Equity Placement Fee Shares" shall such number of shares of Common Stock being equal to 10% of the Initial Investor Subscription Shares, rounded to the nearest whole number.

"Initial Investor Purchase Price" shall mean an amount of $6,000,000.

"Initial Investor Shares" shall mean the Initial Investor Subscription Shares and the Initial Investor Equity Placement Fee Shares.

"Initial Investor Subscription Shares" shall mean such number of shares of Common Stock equal to the Initial Investor Purchase Price divided by the Per Share Purchase Price, rounded to the nearest whole number.

"Investor Purchase Price" shall mean the Initial Investor Purchase Price and the Additional Investor Purchase Price.

"Investor Shares" shall mean the Initial Investor Shares and the Additional Investor Shares.

"Knowledge" means to the "best of" the Company's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

"Law" means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the United States Bankruptcy Court).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Material Adverse Effect" shall mean, with respect to any event, occurrence or condition, (a) a material adverse effect on the legality, validity or enforceability of this Agreement or the transactions contemplated by this Agreement, (b) a material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole, or (c) a material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement (other than as arising from, or relating to, the failure by the Investor or its Affiliates to perform their obligations under this Agreement); provided, however, that the determination of whether, there has been or will be a Material Adverse Effect shall not include any event, circumstance, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) any change, or proposed change in, or change in the interpretation of, any Law or accounting rules, including GAAP; (ii) events or conditions generally affecting the industries or geographic areas in which the Company operates; (iii) general economic, financial, credit, or political conditions, including changes in the credit, debt, securities, financial markets in general; (iv) any geopolitical conditions, outbreak of hostilities, civil unrest or similar disorder, acts of war (whether or not declared), sabotage, cyberterrorism, terrorism, military actions, earthquakes, volcanic activity, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires, any other natural or man-made disaster or acts of God, weather conditions, epidemics, pandemics and other force majeure events (including any escalation or general worsening thereof); (v) general changes in the price of the Company's Common Stock or other securities; (vi) any actions required or permitted by the Note Purchase Agreement, the Restructuring Support Agreement and transactions contemplated thereby, or any action taken, any failure to take action or such other changes or events, in each case, which the Company has consented to in writing, and any effect resulting therefrom; (vii) delay or failure in obtaining, or revocation of, franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Authority (including without limitation any delay or failure with respect to any authorization or modification to any permit with the US Environmental Protection Agency); (viii) any failure by the Company to meet any internal or published projections, forecasts, guidance, estimates, milestones, budgets or financial or operating predictions of revenue, earnings, cash flow or cash position; (ix) any effect attributable to the announcement or execution, pendency, negotiation or consummation of the Restructuring Support

Agreement and the transactions contemplated thereby; or (x) any matters, facts, or disclosures set forth in the Company SEC Documents.

"Material Agreement" is any license, agreement or other contractual arrangement required to be disclosed (including amendments thereto) under regulations promulgated under the Securities Act or the Exchange Act, as may be amended; provided, however, that "Material Agreements" shall exclude all real estate leases and all employee or director compensation agreements, arrangements or plans, or any amendments thereto.

"Note Purchase Agreement" means the note purchase agreement dated as of August 11, 2022 among 5E Advanced Materials, Inc. as issuer, certain subsidiaries of 5E Advanced Materials, Inc. as guarantors, BEP as purchaser, and Alter Domus (US) LLC as Agent, as may be amended, restated, supplemented, or otherwise modified from time to time, including pursuant to the Standstill Agreement.

"OFAC" is the U.S. Department of Treasury Office of Foreign Assets Control.

"OFAC Lists" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, continuations-in-part, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Per Share Purchase Price" shall mean $1.025 per share of Common Stock.

"Principal Market" shall mean the Nasdaq Stock Market (including the Capital Market, Global Market and/or the Global Select Market).

"Regulation D" shall mean the provisions of Regulation D promulgated under the Securities Act.

"Requirement of Law" shall mean as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" shall mean any of the President, Chief Executive Officer, Treasurer or Chief Financial Officer of the Company acting alone.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Software" means any and all (a) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source or object code; (b) databases and compilations in any form, including any and all data and collections of data, whether machine readable or otherwise; (c) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, including Internet web sites, web content and links, source code, object code, operating systems and specifications, data, databases, database management code, utilities, graphical user interfaces, menus, images, icons, forms, methods of processing, software engines, platforms, development tools, library functions, compilers, and data formats, all versions,

updates, corrections, enhancements and modifications thereof, and (d) all related documentation, user manuals, training materials, developer notes, comments and annotations related to any of the foregoing.

"Solvent" means, with respect to any Person, that (a) the fair salable value of such Person's consolidated assets exceeds the fair value of such Person's liabilities, (b) the fair salable value of such Person's consolidated property exceeds the fair value of such Person's liabilities, (c) such Person is not left with unreasonably small capital giving effect to the transactions contemplated by this Agreement and the Transactions, and (d) such Person is able to pay its debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance and extensions related thereto).

"Standstill Agreement" means the standstill agreement dated November 9, 2023 by and among the Company, BEP, Alter Domus (US) LLC, Ascend and Mayfair Ventures Pte Ltd in connection with the Note Purchase Agreement.

"Stockholder Approvals" shall have the meaning given to it in the Restructuring Support Agreement.

"Subsidiary" is, with respect to any Person, any Person of which more than 50% of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

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

"Technology" means, collectively, all Software, information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Trademarks" means any trademarks, service mark rights, trade names and other identifiers indicating the business or source of goods or services, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Company and each of its Subsidiaries connected with and symbolized by such trademarks.

"VAT" means: (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere, including, for the avoidance of doubt, the goods and services tax under the Australian A New Tax System (Goods and Services Tax) Act 1999.

2. Subscription; Placement Fee.

(a) Initial Closing. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to the Investor, and the Investor shall purchase the Initial Investor Subscription Shares from the Company, for the Initial Investor Purchase Price. In consideration for and subject to the Investor's purchase of the Initial Investor Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to the Investor by way of the issuance of the Initial Investor Equity Placement Fee Shares to the Investor upon Initial Closing.

(b) Additional Closing. Upon the terms, and subject to the conditions, of this Agreement, the Company shall issue and sell to the Investor, and the Investor shall purchase the Additional Investor Subscription Shares from the Company, for the Additional Investor Purchase Price. In consideration for and subject to the Investor's purchase of the Additional Investor Subscription Shares in accordance with the terms and conditions of this Agreement, the Company shall pay an equity placement fee to the Investor by way of the issuance of the Additional Investor Equity Placement Fee Shares to the Investor upon Additional Closing.

3. Closing; Delivery of Shares.

(a) Initial Closing. The closing of the sale and purchase of the Initial Investor Subscription Shares and the issuance of the Initial Investor Equity Placement Fee Shares (the "Initial Closing") shall occur on the third Business Day after the Stockholder Approvals have been obtained. No later than 5.00 p.m. (Eastern time) on the Initial Closing Date, the Investor shall pay (or cause the payment) to the Company the Initial Investor Purchase Price in cash in immediately available funds to the bank account notified by the Company to the Investor in writing at least three (3) Business Days prior to the Initial Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Initial Closing, the Company will, or will cause its transfer agent to, electronically deliver the Initial Investor Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of the Investor (or its nominee in accordance with its delivery instructions) or to a custodian designated by the Investor, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to the Investor of the Initial Investor Shares (in book entry form) on and as of the Initial Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Initial Closing Date).

(b) Additional Closing. The closing of the sale and purchase of the Additional Investor Subscription Shares and the issuance of the Additional Investor Equity Placement Fee Shares (the "Additional Closing") shall occur on the tenth Business Day after the Stockholder Approvals have been obtained. The Investor shall deliver written notice of the Additional Investor Purchase Price to the Company and Ascend on or prior to January 10, 2024. No later than 5.00 p.m. (Eastern time) on the Additional Closing Date, the Investor shall pay to the Company the Additional Investor Purchase Price in cash in immediately available funds to the bank account notified by the Company to the Investor in writing at least three (3) Business Days prior to the Additional Closing Date and transmit notification to the Company that such irrevocable funds transfer has been initiated. Substantially concurrently with the Additional Closing, the Company will, or will cause its transfer agent to, electronically deliver the Additional Investor Shares in book entry form, free and clear of any liens or other restrictions (other than those arising under state or federal securities laws), in the name of the Investor (or its nominee in accordance with its delivery instructions) or to a custodian designated by the Investor, as applicable, or by such other means of delivery as may be mutually agreed upon by the parties hereto. The Company shall deliver evidence from the Company's transfer agent of the issuance to the Investor of the Additional Investor Shares (in book entry form) on and as of the Additional Closing Date, as promptly as practicable after the Closing Date (and in any case, no later than the Business Day after the Additional Closing Date).

(c) Each of the Company and the Investor shall deliver to the other all documents, instruments and writings expressly required to be delivered by either of them pursuant to this Agreement in order to implement and effect the transactions contemplated by this Agreement.

4. Conditions to Initial Closing of the Company. The Company's obligations to sell and issue the Initial Investor Subscription Shares and the Initial Investor Equity Placement Fee Shares at the Initial Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written

waiver by the Company and Ascend, on or prior to the Initial Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(c) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

5. Conditions to Initial Closing of the Investor. The Investor's obligations to subscribe for and purchase the Initial Investor Subscription Shares at the Initial Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Investor, on or prior to the Initial Closing Date, of each of the following conditions:

(a) Stockholder Approvals. The Stockholder Approvals shall have been obtained in accordance with Nasdaq Listing Rule 5635 and ASX Listing Rule 7.1.

(b) Restructuring Support Agreement. The Restructuring Support Agreement shall have become effective and binding upon each of the parties thereto.

(c) Investor Rights and Registration Rights Agreement. The Company shall have executed and delivered counterpart signature pages to the Amended and Restated Investor Rights and Registration Rights Agreement in substantially the form set forth in the Restructuring Support Agreement.

(d) Listing of Common Stock. The shares of Common Stock to be sold by the Company pursuant to this Agreement shall have been approved for listing on the Principal Market, subject to official notice of issuance. There shall be no suspension of the qualification of the Common Stock for offering or sale or trading on the Principal Market and no initiation or threatening of any proceedings for any of such purposes or delisting, shall have occurred.

(e) Accuracy of Fundamental Representations/Warranties. The representations and warranties in Sections 8(a), 8(b)(i) and 8(d) shall be true, accurate and complete in all respects on the Initial Closing Date. The representations and warranties in Sections 8(b)(ii) and 8(b)(iii) shall be true, accurate and complete in all respects on the Initial Closing Date except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Legality. There shall not be in force any order, judgment, injunction, decree, writ, stipulation, determination or award, in each case, entered by or with any governmental authority, law, statute, rule or regulation enjoining or prohibiting the consummation of the transactions contemplated by this Agreement.

6. Conditions to Additional Closing of the Company. The Company's obligations to sell and issue the Additional Investor Subscription Shares and the Additional Investor Equity Placement Fee Shares at the Additional Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Company and Ascend, on or prior to the Additional Closing Date, of the condition in Section 4(c).

7. Conditions to Additional Closing of the Investor. The Investor's obligations to subscribe for and purchase the Additional Investor Subscription Shares at the Additional Closing are subject to the fulfilment or (to the extent permitted by any Requirement of Law) written waiver by the Investor, on or prior to the Additional Closing Date, of each of the conditions in Sections 5(d), 5(e) (except that

the reference to the Initial Closing Date in Section 5(e) shall instead refer to the Additional Closing Date) and 5(f).

8. Company Representations and Warranties. The Company represents and warrants to the Investor, as of the date hereof, as of the Initial Closing Date and as of the Additional Closing Date, that:

(a) Due Organization. The Company and each of its Subsidiaries is duly existing and in good standing in its jurisdictions of organization or formation. The Company and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be so qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Authorization; Power and Authority. The execution, delivery and performance by the Company of this Agreement has been duly authorized, and does not (i) conflict with the organizational documents of the Company or its Subsidiaries, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which the Company and its Subsidiaries, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) constitute an event of default or material breach under any Material Agreement to which the Company or any of its Subsidiaries, or any of their respective properties, is bound.

(c) No Default. Neither the Company nor any of its Subsidiaries is in default or material breach under any Material Agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Effect.

(d) Authorization of the Investor Shares. The Investor Shares under this Agreement will be, when issued and delivered against payment therefor as provided herein, duly and validly authorized and issued and fully paid and non-assessable, free and clear of any pledge, lien, encumbrance, security interest or other claim, including any statutory or contractual preemptive rights, resale rights, rights of first refusal or other similar rights.

(e) Subsidiaries' Equity Interests. All of the issued ownership interests of each of the Subsidiaries of the Company are duly authorized and validly issued, fully paid, nonassessable, and directly owned by the Company or its applicable Subsidiary and are free and clear of all Liens (other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and not subject to any preemptive rights, rights of first refusal, option, warrant, call, subscription, and similar rights, other than as required by law.

(f) No Australia Operations. Each of the Company and its Subsidiaries are not an Australian land corporation and does not carry on a national security business, as defined in the Foreign Acquisitions and Takeovers Act 1975 (Cth) and Foreign Acquisition and Takeovers Regulation 2015 (Cth), and does not hold any mining tenements (including exploration tenements) or mining project in Australia.

(g) Litigation. Except as otherwise set forth in the Company SEC Documents, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against the Company or any of its Subsidiaries involving more than $1,000,000.

(h) No Broker's Fees. None of the Company nor any of its Subsidiaries are party to any contract, agreement or understanding with any Person that would give rise to a valid claim against them or the Investor for a brokerage commission, finder's fee or like payment in connection with this Agreement

and the transactions contemplated by this Agreement (other than as disclosed in this Agreement and the Other Subscription Agreements).

(i) Financial Statements; No Material Adverse Effect. All consolidated financial statements for the Company and its consolidated Subsidiaries, filed by it with the SEC fairly present, in conformity with GAAP, and in all material respects the consolidated financial condition of the Company and its consolidated Subsidiaries, and the consolidated results of operations of the Company and its consolidated Subsidiaries as of and for the dates presented. Except as otherwise set forth in the Company SEC Documents, since June 30, 2023, there has not been any Material Adverse Effect.

(j) No General Solicitation. Neither the Company nor any of its Subsidiaries or any of their affiliates (as defined in Rule 501(b) of Regulation D) or any person or entity acting on its or their behalf has, directly or indirectly, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Investor Shares in a manner that would require registration of the Investor Shares under the Securities Act.

(k) Accredited Investors. Neither the Company nor any of its Subsidiaries has offered or sold any of the Investor Shares or the shares of Common Stock to be issued under the Other Subscription Agreements to any person or entity whom it does not reasonably believe is an "accredited investor" (as defined in Rule 501(a) of Regulation D).

(l) Solvency. The Company and each of its Subsidiaries, when taken as a whole, upon consummation of the transactions contemplated by this Agreement will be Solvent.

(m) No Registration Required. Assuming the accuracy of the representations and warranties of the Investor contained in Section 9(b), the issuance and sale of the Investor Shares pursuant to this Agreement is exempt from the registration requirements of the Securities Act, and neither the Company nor, to the knowledge of the Company, any authorized representative or other agent acting on its behalf has taken or will take any action hereafter that would cause the loss of such exemption.

(n) SEC Reports. All forms, registration statements, reports, schedules and statements required to be filed by the Company under the Exchange Act or the Securities Act (all such documents, including the exhibits thereto, collectively the "Company SEC Documents") have been filed with the SEC on a timely basis. The Company SEC Documents, including, without limitation, any audited or unaudited financial statements and any notes thereto or schedules included therein (the "Company Financial Statements"), at the time filed (or in the case of registration statements, solely on the dates of effectiveness) (i) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, (ii) complied as to form in all material respects with the applicable requirements of the Exchange Act and/or the Securities Act, as the case may be, (iii) complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, (iv) with respect to the Company Financial Statements, were prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Regulation S-X), and (v) with respect to the Company Financial Statements, fairly present (subject in the case of unaudited statements to normal and recurring audit adjustments) in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as of the dates thereof and the consolidated results of its operations and cash flows for the periods then ended. PWC LLP is an independent registered public accounting firm with respect to the Company and has not resigned or been dismissed as independent registered public accountants of the Company as a result of or in connection with any disagreement with the Company on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedures.

(o) Internal Controls. The Company has disclosed, based on its most recent evaluation prior to the date hereof, to the Company's outside auditors and the audit committee of the Board of Directors

(i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(p) Disclosure Controls and Procedures. The Company has established and maintains, and at all times since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, has maintained, disclosure controls and procedures and a system of internal controls over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) that are (i) designed to provide reasonable assurance that material information relating to the Company, including its Subsidiaries, that is required to be disclosed by the Company in the reports that it furnishes or files under the Exchange Act is reported within the time periods specified in the rules and forms of the SEC and that such material information is communicated to the Company's management to allow timely decisions regarding required disclosure and (ii) sufficient to provide reasonable assurance that (A) transactions are executed in accordance with the Company management's general or specific authorization, (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP, consistently applied, and to maintain accountability for assets, (C) access to assets is permitted only in accordance with the Company management's general or specific authorization and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no "significant deficiencies" or "material weaknesses" (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company's internal controls over, and procedures relating to, financial reporting which would reasonably be expected to adversely affect in any material respect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. Since March 15, 2022, except as disclosed in the Company SEC Documents as of the date hereof, there has not been any fraud, whether or not material, that involves management or other employees of the Company or any of its Subsidiaries who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

(q) Regulatory Compliance. Neither the Company nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither the Company nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). The Company and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither the Company nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither the Company nor any of its Subsidiaries has violated any laws, order, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Effect. Neither the Company's nor any of its Subsidiaries' properties or assets has been used by the Company or such Subsidiary or, to the Company's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with material applicable laws. The Company and each of its Subsidiaries has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of the Company, any of its Subsidiaries, or any of the Company's or its Subsidiaries' Affiliates or any of their respective directors, officers, employees, or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law or Anti-Corruption Law, (ii) engaging in or conspiring to engage in any transaction

that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Anti-Corruption Law, or (iii) is a Blocked Person. None of the Company, any of its Subsidiaries, or to the Knowledge of the Company and any of their Affiliates, any of their respective directors, officers, employees, or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. The Company, its Subsidiaries and Affiliates, and to the Knowledge of the Company each of their respective directors, officers, employees, or agents are and have been in compliance with all applicable Anti-Terrorism Laws and Anti-Corruption Laws.

(r) Investments. Neither the Company nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments (as defined in the Amended and Restated Note Purchase Agreement).

(s) Tax Returns and Payments. The Company and each of its Subsidiaries have timely filed all required material tax returns and reports (or extensions thereof), and the Company and each of its Subsidiaries, have timely paid all material foreign, federal, state, and local Taxes, assessments, deposits and contributions owed by the Company and such Subsidiaries in an amount greater than $200,000, in all jurisdictions in which the Company or any such Subsidiary is subject to Taxes, including the United States and Australia, unless such Taxes are being contested in accordance with the next sentence. The Company and each of its Subsidiaries, may defer payment of any contested Taxes, provided that the Company or such Subsidiary (i) in good faith contests its obligation to pay the Taxes by appropriate proceedings promptly and diligently instituted and conducted; (ii) maintains adequate reserves or other appropriate provisions on its books in accordance with GAAP. Neither the Company nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of the Company's or such Subsidiary's, prior Tax years which could result in additional Taxes in an amount greater than $200,000 becoming due and payable by the Company or its Subsidiaries.

(t) Pension Contributions. The Company and each of its Subsidiaries have paid all material amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither the Company nor any of its Subsidiaries has, withdrawn from participation in, has permitted partial or complete termination of, or has permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of the Company or its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

(u) Full Disclosure. No written representation, warranty or other statement of the Company or any of its Subsidiaries in any certificate or written statement, when taken as a whole, given to the Investor, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to the Investor, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by the Company in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

(v) Title Ownership. Each of the Company and its Subsidiaries has good and marketable title to, or valid leasehold interest in, all of its real and personal property material to the operation of its business (including for the avoidance of doubt, all surface properties and associated mineral rights for the Fort Cady Borate Project), free and clear of Liens prohibited by this Agreement. All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(w) Intellectual Property. The Company and its Subsidiaries are the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens (as defined in the Amended and Restated Note Purchase Agreement) and non-exclusive licenses for off-the-shelf software that are commercially available to the public. Each employee and contractor of the Company and its Subsidiaries involved in development or creation of any material Intellectual Property has assigned any and all inventions and ideas of such Person in and to such Intellectual Property to the Company or such Subsidiary, except where failure to do so could not reasonably be expected to have a Material Adverse Effect, in each case individually or in the aggregate. No settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by the Company or any of its Subsidiaries or exist to which the Company or any of its Subsidiaries is bound that adversely affect its rights to own or use any Intellectual Property except as could not be reasonably expected to result in a Material Adverse Effect, in each case individually or in the aggregate.

(x) Enforceability. This Agreement has been duly authorized by the Company and, upon the consummation of the transactions contemplated by this Agreement, shall constitute the legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with the terms of this Agreement, except as such enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, transfer, moratorium, and other laws relating to or affecting creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(y) Environmental Matters. The Company and its Subsidiaries are and have been in compliance with all laws (including common law), statutes, rules, regulations, ordinances, judgements, orders, or decrees relating to public or worker health and safety (to the extent relating to exposure to any toxic or hazardous substances, materials, or wastes), pollution or protection of the environment or natural resources ("Environmental Laws") and all permits, licenses, certificates, authorizations, and other approvals required under Environmental Laws ("Environmental Permits"), unless the failure to do so has not resulted or would not result in a Material Adverse Effect. Neither the Company nor any of its Subsidiaries have received any written notice of any violation of, or liability under, any Environmental Law, the subject of which is unresolved, and there are no pending, or to the Company's knowledge, threatened actions suits, investigations, or proceedings relating to a violation of, or liability under, Environmental Laws that has resulted or, if adversely determined, would, individually or in the aggregate, result in a Material Adverse Effect. There has been no release, treatment, storage, disposal of, exposure of any Person to, or ownership or operation of any contaminated by, any toxic or hazardous materials, substances, or wastes, in each case as has given or would give rise to liability of the Company or its Subsidiaries under Environmental Law, in each case that has resulted or would, individually or in the aggregate, result in a Material Adverse Effect.

(z) No Suspension of Trading in or Delisting of Common Stock. The Common Stock is quoted for trading on the Principal Market. The Company is not aware of any circumstances affecting the continued quotation of the Common Stock on the Principal Market and has not received any written notice threatening the continued quotation of the Common Stock on the Principal Market.

9. Investor Representations and Warranties. The Investor represents and warrants to the Company, as of the date hereof, as of the Initial Closing Date and as of the Additional Closing Date, that:

(a) Status. The Investor is an entity duly organized, validly existing and in good standing under the laws of Ohio and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement. The execution and delivery of this Agreement, the performance by the Investor of its obligations hereunder and the consummation by the Investor of the transactions contemplated by this Agreement and thereby have been duly authorized and require no other proceedings on the part of the Investor. The undersigned has the right, power and authority to execute and deliver this Agreement and all other instruments on behalf of the Investor or its shareholders. This Agreement has been duly executed and delivered by the Investor and, assuming the execution and delivery hereof and acceptance

thereof by other parties, will constitute the legal, valid and binding obligations of the Investor, enforceable against the Investor in accordance with its terms.

(b) Nature of Investor.

(i) The Investor is an "accredited investor" as that term is defined in Rule 501(a)(3) of Regulation D. The Investor is subscribing for the Investor Shares for its own account and not with a view to any resale or distribution thereof. The Investor agrees to furnish any additional information requested by the Company or any of its Affiliates to assure compliance with applicable U.S. federal and state securities laws in connection with the purchase and sale of the Investor Shares.

(ii) The Investor (A) is a sophisticated investor with the knowledge and experience in business and financial matters to enable the Investor to independently evaluate the merits and risks, both in general and with regard to all transactions and investment strategies involving a security or securities and (B) has exercised independent judgment in evaluating its participation in the purchase of the Investor Shares. Further, the Investor is able to bear the economic risk and lack of liquidity of an investment in the Company and the risk of loss of its entire investment in the Company.

(iii) The Investor or its representatives have been furnished with materials relating to the business, finances and operations of the Company and relating to the offer and sale of the Investor Shares that have been requested by the Investor. The Investor or its representatives has been afforded the opportunity to ask questions of the Company or its representatives. Neither such inquiries nor any other due diligence investigations conducted at any time by the Investor or its representatives shall modify, amend or affect the Investor's right (A) to rely on the Company's representations and warranties contained in Section 8 above or (B) to indemnification or any other remedy based on, or with respect to the accuracy or inaccuracy of, or compliance with, the representations, warranties, covenants and agreements in this Agreement. The Investor understands and acknowledges that its purchase of the Investor Shares involves a high degree of risk and uncertainty. The Investor has sought such accounting, legal and tax advice as it has considered necessary to make an informed investment decision with respect to its investment in the Investor Shares. The Investor acknowledges that this Agreement is the result of arm's-length negotiations between the Company and the Investor.

(c) No Public Offering. The Investor understands that the Investor Shares are being offered in a transaction not involving any public offering within the meaning of the Securities Act and that the offer and sale of the Investor Shares have not been registered under the Securities Act. The Investor understands that the Investor Shares may not be resold, transferred, pledged or otherwise disposed of by the Investor absent an effective registration statement under the Securities Act, except (i) to the Company or a subsidiary thereof, (ii) to non-U.S. persons pursuant to offers and sales that occur solely outside the United States within the meaning of Regulation S under the Securities Act or (iii) pursuant to another applicable exemption from the registration requirements of the Securities Act, and in each of cases (i) and (iii), in accordance with any applicable securities laws of the states and other jurisdictions of the United States, and that any book entries representing the Investor Shares shall contain a legend to such effect. The Investor understands and agrees that the Investor Shares will be subject to the foregoing transfer restrictions and, as a result, the Investor may not be able to readily resell the Investor Shares and may be required to bear the financial risk of an investment in the Investor Shares for an indefinite period of time. The Investor understands that it has been advised to consult legal counsel prior to making any offer, resale, pledge or transfer of any of the Investor Shares.

(d) Reliance Upon such Purchaser's Representations and Warranties. The Investor understands and acknowledges that the Investor Shares are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth in this Agreement in (i) concluding that the issuance and sale of the Investor Shares is a "private offering" and, as such, is exempt from the registration requirements of the Securities Act, and (ii) determining the applicability of such exemptions and the suitability of the Investor to purchase the Investor Shares.

(e) Sanctions. The Investor is not (i) a person or entity named on the List of Specially Designated Nationals and Blocked Persons, the Executive Order 13599 List, the Foreign Sanctions Evaders List, or the Sectoral Sanctions Identification List, each of which is administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "OFAC Lists"), (ii) owned, directly or indirectly, or controlled by, or acting on behalf of, one or more persons that are named on the OFAC Lists; (iii) organized, incorporated, established, located, resident or born in, or a citizen, national or the government, including any political subdivision, agency or instrumentality thereof, of, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine or any other country or territory embargoed or subject to substantial trade restrictions by the United States, (iv) a Designated National as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (v) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank (each, a "Prohibited Investor"). The Investor agrees to provide law enforcement agencies, if requested thereby, such records as required by applicable law, provided that Investor is permitted to do so under applicable law. The Investor represents that if it is a financial institution subject to the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) (the "BSA"), as amended by the USA PATRIOT Act of 2001 (the "PATRIOT Act"), and its implementing regulations (collectively, the "BSA/PATRIOT Act"), the Investor maintains policies and procedures reasonably designed to comply with applicable obligations under the BSA/PATRIOT Act. The Investor also represents that, to the extent required, it maintains policies and procedures reasonably designed to ensure compliance with OFAC-administered sanctions programs, including for the screening of its investors against the OFAC sanctions programs, including the OFAC Lists. The Investor further represents and warrants that, to the extent required by applicable law, the Investor maintains policies and procedures reasonably designed to ensure that the funds held by the Investor and used to purchase the Investor Subscription Shares were legally derived and were not obtained, directly or indirectly, from a Prohibited Investor.

10. Termination. This Agreement shall terminate and be void and of no further force and effect, and all rights and obligations of the parties hereunder shall terminate without any further liability on the part of any party in respect thereof, upon the earliest to occur of (i) such date and time as the Restructuring Support Agreement is validly terminated in accordance with its terms, (ii) upon the mutual written agreement of each of the parties hereto to terminate this Agreement, or (iii) April 30, 2024 or such later date as may be agreed between the Investor, Ascend and the Company, provided that nothing herein shall be deemed to release any party from any liability for any breach under this Agreement. The Company shall promptly notify the Investor of the termination of the Restructuring Support Agreement after the termination of such agreement. For the avoidance of doubt, if any valid termination of this Agreement occurs or if the Company fails to perform its obligations in Section 3(a), in each case, after the payment by the Investor of the Investor Purchase Price for the Investor Subscription Shares, the Company shall promptly (but not later than one Business Day thereafter) return the Investor Purchase Price to the Investor without any deduction for or on account of any tax, withholding, charges or set-off.

11. Transferability. Neither this Agreement nor any rights that may accrue to any party hereunder (other than the Investor Shares acquired after the Additional Closing, subject to applicable securities laws) may be transferred or assigned by any party without the prior written consent of the

other parties, and any purported transfer or assignment without such consent shall be null and void *ab initio*.

12. Further Assurance. Subject to the other terms of this Agreement, the parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, from time to time, in order to consummate the transactions contemplated by this Agreement, as applicable.

13. Complete Agreement. Except as otherwise explicitly provided herein and without limiting the Restructuring Support Agreement and the transactions contemplated thereby, this Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than the Confidentiality Agreement and any commitment letters signed between Ascend and the Investor.

14. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. The parties agree that any action between them shall be heard in New York County, New York, and expressly consent to the jurisdiction and venue of the Supreme Court of New York, sitting in New York County, New York and the United States District Court of the Southern District of New York, sitting in New York, New York, for the adjudication of any civil action asserted pursuant to this Agreement.

15. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

16. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

17. Rules of Construction. This Agreement is the product of negotiations among the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. Each party was represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel. Furthermore, this Agreement supersedes all prior understandings, whether written or oral, among the parties hereto with respect to the Transactions and sets forth the entire understanding of the parties hereto with respect thereto; provided, however, that this Agreement shall not supersede any other documents or agreements relating to the transactions contemplated by the Restructuring Support Agreement.

18. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of the parties and their respective successors and permitted assigns, as applicable. There are no third party beneficiaries under this Agreement, and the rights or obligations of any party under this Agreement may not be assigned, delegated, or transferred to any other person or entity. For the avoidance of doubt, except as expressly provided herein, Ascend shall not be liable or obligated under this Agreement.

19. Notices. All notices, consents, waivers and other communications hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail

(return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice). Any notice given by delivery, mail, or courier shall be effective when received.

If to the Company, to:	5E Advanced Materials, Inc. 9329 Mariposa Road, Suite 210 Hesperia, California 92344 Attention: Paul Weibel E-mail: pweibel@5eadvancedmaterials.com
With a copy (which shall not constitute notice or delivery of process) to:	Winston & Strawn LLP 800 Capitol Street, Suite 2400 Houston, Texas 77002 Attention: J. Eric Johnson E-mail: jejohnson@winston.com
If to Ascend:	Ascend Global Investment Fund SPC for and on behalf of Strategic SP 1 Kim Seng Promenade #10-01 East Tower Great World City Singapore 237994 Attention: Mulyadi Tjandra and Michelle Tanuwidjaja E-mail: muljadi.tjandra@ascendcapitals.com, michelle.tanuwidjaja@ascendcapitals.com
With a copy (which shall not constitute notice or delivery of process) to:	Latham & Watkins LLP 9 Raffles Place #42-02 Republic Plaza Singapore 048619 Attention: Marcus Lee E-mail: marcus.lee@lw.com and Latham & Watkins LLP 1271 Avenue of the Americas New York, NY 10020 Attention: Adam Goldberg and George Klidonas E-mail: adam.goldberg@lw.com; george.klidonas@lw.com
If to the Investor:	5ECAP, LLC c/o Empire Capital Management, LLC 6724 Perimeter Loop Road, S 145 Dublin, Ohio, 43017 Attention: David J. Richards and Ken Leachman E-mail: djr@empirecapmgt.com, kleachman@empirecapmgt.com
With a copy (which shall not constitute notice or delivery of process) to:	Adam P. Richards, Esq. Cooper & Elliott, LLC 305 W Nationwide Blvd Columbus, OH 43215 E-mail: adamr@cooperelliott.com

20. Fees and Expenses. The Company shall, and shall procure that the Company Parties shall, pay and reimburse all reasonable and documented fees and expenses when due incident to the performance of its obligations hereunder, including, but not limited to (i) the issuance and delivery of the Investor Shares, (ii) all fees and disbursements of the Company's counsel, (iii) all fees and disbursements of the Investor's counsel, subject to a cap of $75,000; (iv) any opinions from the Company's counsel required to effect the resale of the Investor Shares by the Investor under applicable securities laws and (v) the fees and expenses incurred in connection with the listing or qualification of the Investor Shares for trading on the Principal Market.

21. Amendments and Waivers. This Agreement may not be amended, modified or waived except by an instrument in writing, signed by each of the parties hereto.

22. Specific Performance. It is understood and agreed by the parties that money damages would be an insufficient remedy for any breach of this Agreement by any party, and each non-breaching party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach. Ascend is entitled to enforce the rights granted to the Company to cause the Investor to pay the Investor Purchase Price for the Investor Subscription Shares in accordance with Section 2 of this Agreement.

23. Indemnification. The Company shall defend, protect, indemnify and hold harmless each of the Investor and its directors, officers, employees, consultants, agents, attorneys, or any other person affiliated with or representing the Investor and such person (each, an "Indemnified Person") from and against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages, and reasonable and documented expenses in connection therewith (irrespective of whether any such Indemnified Person is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Indemnified Liabilities"), incurred by any Indemnified Person as a result of, or arising out of, or relating to any material misrepresentation or breach of any representation or warranty made by the Company in this Agreement, except for actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages and expenses directly caused by such Indemnified Person's gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction by final and non-appealable judgment.

24. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the parties under this Agreement are, in all respects, several and not joint.

25. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

26. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such party.

27. Survival. Notwithstanding anything in this Agreement to the contrary, the provisions that are required to be performed following the Additional Closing shall survive in accordance with their respective terms, and if no term is specified, then for sixty (60) days following the expiration of the applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof).

28. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic

mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by the undersigned, thereunto duly authorized, as of the date first set forth above.

5E ADVANCED MATERIALS, INC.

By: */s/ Paul Weibel*
Name: Paul Weibel
Title: Chief Financial Officer

ASCEND GLOBAL INVESTMENT FUND SPC
FOR AND ON BEHALF OF STRATEGIC SP

By: */s/ Mulyadi Tjandra*
Name: Mulyadi Tjandra
Title: Director

5ECAP, LLC
BY: EMPIRE CAPITAL MANAGEMENT, LLC
ITS: MANAGER

By: */s/ David J. Richard*
Name: David J. Richard
Title: Manager

5E Advanced Materials, Inc.
9329 Mariposa Road, Ste 210, Hesperia, CA 92344
December 5, 2023

Dear Mr. Stefan Selig:

On behalf of 5E Advanced Materials, Inc., a Delaware corporation (the "Company"), I am pleased to invite you to become a Disinterested Director (as defined below) of the Company and, as requested, any of the Company's affiliates.

Effective upon December 5, 2023, you will serve as a disinterested director (a "Disinterested Director") for the Company, as such term has been construed in accordance with Delaware law. By signing this letter agreement, you confirm that you do not possess material business, close personal relationships, or other affiliations, or any history of any such material business, close personal relationships, or other affiliations, with the Company or any of its major debtholders or its controlling equity holders that would cause you to be unable to (a) exercise independent judgment based on the best interests of each Company or (b) make decisions and carry out your responsibilities as a Disinterested Director in accordance with the terms of the Company's organizational documents and applicable law.

As a Disinterested Director for the Company, you will receive cash compensation equal to a monthly fee of $35,000, payable monthly in advance, for a term of six months *(i.e.,* $210,000, the "Total Fee") unless extended by mutual written agreement of you and the Company (determined by an affirmative vote of all other then-serving members of the Board) or termination of this letter agreement as set forth below. Such payments will be prorated to reflect your actual term of service, based on the date of your appointment as a Disinterested Director, and continuing until such date as you cease to serve as a Disinterested Director. For the avoidance of doubt, you shall not be entitled to receive duplicate compensation for your service as a disinterested director of the Company's affiliates, if applicable.

In addition, you will be reimbursed for all reasonable and documented out-of-pocket business expenses incurred by you in connection with your service to the Company as a Disinterested Director. You will also be covered by the Company's directors' and officers' insurance policy, in an amount and on terms as reasonably determined by the Company. No part of your compensation will be subject to withholding by the Company for the payment of any social security, federal, state, foreign or any other employee payroll taxes. The Company will make such filings or other reports as deemed necessary or appropriate by the Company under applicable laws.

Our expectation is that, as a Disinterested Director, you will meet at least monthly, but likely with greater frequency. We ask that you make yourself available to participate in those meetings either in person or telephonically as may be appropriate.

As a Disinterested Director, you may voluntarily resign or be involuntarily removed by the Company's shareholders, in which event this letter agreement shall terminate as of the date of such resignation (or removal), subject to the survival of the limitations on use of Confidential Information set forth below. This letter agreement shall also terminate upon your death or incapacitation. In the event of the termination of this agreement and your removal as a

Disinterested Director of the Company without cause, you shall be entitled to payment of any unpaid portion of the Total Fee. To the extent that you are removed as a Disinterested Director of the Company for cause or you voluntarily resign and terminate this letter agreement, you shall not be entitled to any portion of the Total Fee not yet due or owing and you shall be entitled solely to any earned but unpaid fees and pre-approved expenses previously incurred in connection with the performance of the services.

Your service as a Disinterested Director will be in accordance with, and subject to, the organizational documents of the Company and applicable law concerning the service of directors in the state of Delaware, as the same may be further amended from time to time. In accepting this offer, you are representing to us that you do not know of any conflict or legal prohibition that would restrict you from becoming, or could reasonably be expected to preclude you from remaining, a Disinterested Director, including Section 8 of the Clayton Act and other similar provisions.

You and the Company each acknowledge that for you to perform your duties as a Disinterested Director, you shall necessarily be obtaining access to certain confidential information concerning the Company and its affiliates, including, but not limited to, business methods, financial data, and strategic plans which are unique assets of the Company or its affiliates (collectively, the "Confidential Information"). You covenant that you shall not, either directly or indirectly, in any manner, utilize or disclose to any person, firm, corporation, association, or other entity any Confidential Information, except (i) as required by law, (ii) pursuant to a subpoena or order issued by a court, governmental body, agency, or official, or (iii) to the extent such information (A) is generally known to the public, (B) was known to you prior to its disclosure to you by the Company, (C) was obtained by you from a third party which, to your knowledge, was not prohibited from disclosing such information to you pursuant to any contractual, legal, or fiduciary obligation, or (D) was independently derived by you without any use of Confidential Information. You shall provide notice to the Company as soon as is reasonably practicable prior to any disclosure under (i) or (ii) above and shall cooperate with the Company to limit disclosure of Confidential Information to the extent reasonably practicable. This paragraph shall continue in effect after you have ceased acting as a Disinterested Director of the Company.

You and the Company acknowledge that this letter agreement is governed by and shall be construed in accordance with laws of the state of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdictions other than the state of Delaware.

This letter sets forth the terms of your service with the Company and supersedes any prior representations or agreements, whether written or oral. This letter may be executed in one or more counterparts and must be accepted within five business days of the date set forth above, and it may not be modified or amended except by a written agreement, signed by a duly authorized representative of the Company and you.

We look forward to working with you.

[*Signature page follows*]

Sincerely,

/s/ David Salisbury
Name: David Salisbury
Title: Chairman of the Board

ACCEPTED AND AGREED:

I accept and consent to be designated as a Disinterested Director and agree to so serve, subject to the terms and conditions set forth herein.

December 5, 2023	/s/ Stefan Selig
Date	Stefan Selig

5E Boron Americas, LLC
9329 Mariposa Road
Ste 210
Hesperia, CA 92344

December 1, 2023

Dear Susan,

5E Boron Americas, LLC ("5E" or the "Company"), through its board of directors, has implemented a Key Employee Retention Plan (the "Plan") with the intent to focus management and key employees on the restructuring of the Company's parent company senior secured convertible notes. The Plan is effective as of December 6, 2023 (the "Effective Date").

Your role has been identified as critical to the process. We consider your continued service and dedication to the Company essential and anticipate your employment continuing until the end of the Retention Period (as defined below). To incentivize you to remain employed with the Company during this time, we are pleased to offer you a retention bonus under the Plan, as described in this agreement (the "Retention Bonus"). The aggregate amount of the Retention Bonus that you are eligible to receive under this agreement depends on whether the Company undergoes an out-of-court restructuring (Scenario 1) or an in-court restructuring (Scenario 2), as described below.

To reward your dedication to 5E as well as your contributions during this phase of the business, the Company is offering you a Retention Bonus, subject to the terms and conditions below. In exchange you agree to support the Company and continue to be employed in good standing at all times from the Effective Date through the end of your retention period on December 31, 2024 (such period, the "Retention Period").

Scenario 1: Retention Bonus Calculation – Out-of-court restructuring

In the event of an out-of-court restructuring, your Retention Bonus amount is $412,500.00 in the aggregate, which will be payable in three installments.

i. Installment one - The first installment will be paid on December 6, 2023 as a partial advance of your Retention Bonus in the amount of $156,300.00.
ii. Installment two - The second installment will be paid on January 19, 2024 as a second partial advance of your Retention Bonus in the amount of $100,000.00.
iii. Installment three – The third and final installment will be paid 90 days after (and subject to) a successful special shareholder vote to approve an equity private placement and an adjustment to our senior convertible notes in the amount of $156,200.00.

Scenario 2: Retention Bonus Calculation – In-court restructuring

In the event of an in-court restructuring, your Retention Bonus amount is $381,300.00 in the aggregate, which will be payable in two installments.

i. Installment one - The first installment will be paid as a partial advance of your Retention Bonus, paid on December 6, 2023 in the amount of $156,300.00.
ii. Installment two - The second installment will be paid immediately prior to a Chapter 11 filing in the amount of $225,000 (less any amount of the second installment paid under Scenario 1, if applicable).

Terms of the Plan

Your entitlement to any Retention Bonus installment is subject to the following terms and conditions:

i. You must be actively employed with the Company through the end of the Retention Period and not have given notice of your intent to resign from your position during the Retention Period;

ii. You must remain employed by the Company through the end of the Retention Period (December 31, 2024);

iii. You must meet your performance expectations during the Retention Period and remain in good standing through the Retention Period (in each case, as reasonably determined by the Company's Board of Directors);

iv. However, if you resign from your position before December 31, 2024 or your employment is terminated other than due to an involuntary termination by the Company without cause, then you agree to repay to the Company all installments of the Retention Bonus previously paid to you after deduction of state and federal withholding tax, social security, FICA, and all other employment taxes and authorized payroll deductions, within 30 days of your termination date with the Company.

v. During the Retention Period, if you are laid off by the Company without cause, then, subject to your execution and non-revocation of a general release of claims (the "Release") in a form customarily used by the Company, you will be entitled to receive any unpaid installments of the Retention Bonus assuming the Company is in an out-of-court restructuring as described under Scenario 1, unless the facts and circumstances as of the date of termination indicate that a Chapter 11 filing is inevitable (as determined by the Company's Board of Directors in its reasonable discretion), in which case you would be entitled to receive only any unpaid installment payable under Scenario 2. Any such installment(s) of the Retention Bonus that become payable to you following termination of your employment by the Company without cause will be paid to you on the Company's first payroll date following the date on which the Release becomes effective and irrevocable.

All forms of compensation referred to in this agreement are subject to reduction to reflect applicable withholding, payroll, and other taxes and deductions required by law. You are encouraged to obtain your own tax advice regarding your compensation. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company, or its Board of Directors related to tax liabilities arising from your compensation.

You acknowledge that payment of the Retention Bonus is not part of your normal or expected compensation for purposes of calculating any severance, resignation, redundancy, or end-of-service payments, bonuses, awards, benefits, or other similar payments.

This agreement does not otherwise alter the terms of your employment with the Company. You acknowledge and agree that your employment with the Company and its subsidiaries is and will remain "at-will" and may be terminated at any time and for any reason (or no reason) by the Company, with or without notice. Nothing in this Agreement will confer upon you any right to continued employment with the Company or to interfere in any way with the right of the Company or its subsidiaries to terminate your employment at any time.

Your base compensation remains the same and you will continue to be paid in accordance with the Company's regular payroll procedures. Compensation adjustments unrelated to this retention agreement may still occur including merit increases, equity grants, salary reductions, and other changes.

This Agreement embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties, whether written or oral, with respect to the subject matter hereof (excluding any employment agreement and any written restrictive covenant agreements between you and the Company). This Agreement may be amended or modified only by written agreement signed by each of the parties.

The Agreement will be governed by the laws of the State of California, without giving effect to any conflicts of law principles thereof. Each party hereby irrevocably waives their right to a jury for any action, proceeding or counterclaim arising from or relating to this Agreement, to the fullest extent permitted by applicable law.

You may not assign, delegate, or otherwise transfer any of your rights or obligations under this Agreement without the prior written consent of the Company. The Company may transfer or assign, in whole or from time to time in part, to one or more of its affiliates, or to any successor to one or more of its businesses, its rights or obligations under this Agreement without your consent.

Payments under this Agreement are intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code ("Section 409A"). This Agreement will be construed and interpreted in accordance with such intent. If any provision of this Agreement needs to be revised to satisfy the requirements of Section 409A, then such provision or this Agreement will be modified or restricted to the extent and in the manner necessary to be in compliance with such requirements of Section 409A.

We appreciate your dedication to 5E and value you as a member of our team. We hope that this arrangement encourages your continued commitment to 5E. Please acknowledge your agreement to the terms of this letter by countersigning it in the space below.

Sincerely,

/s/ Graham van't Hoff
Graham van't Hoff
Chairman of the Compensation Committee

Susan Brennan

/s/ Susan Brennan

December 5, 2023

5E Boron Americas, LLC
9329 Mariposa Road
Ste 210
Hesperia, CA 92344

December 1, 2023

Dear Paul,

5E Boron Americas, LLC ("5E" or the "Company"), through its board of directors, has implemented a Key Employee Retention Plan (the "Plan") with the intent to focus management and key employees on the restructuring of the Company's parent company senior secured convertible notes. The Plan is effective as of December 6, 2023 (the "Effective Date").

Your role has been identified as critical to the process. We consider your continued service and dedication to the Company essential and anticipate your employment continuing until the end of the Retention Period (as defined below). To incentivize you to remain employed with the Company during this time, we are pleased to offer you a retention bonus under the Plan, as described in this agreement (the "Retention Bonus"). The aggregate amount of the Retention Bonus that you are eligible to receive under this agreement depends on whether the Company undergoes an out-of-court restructuring (Scenario 1) or an in-court restructuring (Scenario 2), as described below.

To reward your dedication to 5E as well as your contributions during this phase of the business, the Company is offering you a Retention Bonus, subject to the terms and conditions below. In exchange you agree to support the Company and continue to be employed in good standing at all times from the Effective Date through the end of your retention period on December 31, 2024 (such period, the "Retention Period").

Scenario 1: Retention Bonus Calculation – Out-of-court restructuring

In the event of an out-of-court restructuring, your Retention Bonus amount is $287,500.00 in the aggregate, which will be payable in three installments.

i. Installment one - The first installment will be paid on December 6, 2023 as a partial advance of your Retention Bonus in the amount of $93,800.00.
ii. Installment two - The second installment will be paid on January 19, 2024 as a second partial advance of your Retention Bonus in the amount of $100,000.00.
iii. Installment three – The third and final installment will be paid 90 days after (and subject to) a successful special shareholder vote to approve an equity private placement and an adjustment to our senior convertible notes in the amount of $93,700.00.

Scenario 2: Retention Bonus Calculation – In-court restructuring

In the event of an in-court restructuring, your Retention Bonus amount is $268,800.00 in the aggregate, which will be payable in two installments.

i. Installment one - The first installment will be paid as a partial advance of your Retention Bonus, paid on December 6, 2023 in the amount of $93,800.00.
ii. Installment two - The second installment will be paid immediately prior to a Chapter 11 filing in the amount of $175,000 (less any amount of the second installment paid under Scenario 1, if applicable).

Terms of the Plan

Your entitlement to any Retention Bonus installment is subject to the following terms and conditions:

i. You must be actively employed with the Company through the end of the Retention Period and not have given notice of your intent to resign from your position during the Retention Period;

ii. You must remain employed by the Company through the end of the Retention Period (December 31, 2024);

iii. You must meet your performance expectations during the Retention Period and remain in good standing through the Retention Period (in each case, as reasonably determined by the Company's Board of Directors);

iv. However, if you resign from your position before December 31, 2024 or your employment is terminated other than due to an involuntary termination by the Company without cause, then you agree to repay to the Company all installments of the Retention Bonus previously paid to you after deduction of state and federal withholding tax, social security, FICA, and all other employment taxes and authorized payroll deductions, within 30 days of your termination date with the Company.

v. During the Retention Period, if you are laid off by the Company without cause, then, subject to your execution and non-revocation of a general release of claims (the "Release") in a form customarily used by the Company, you will be entitled to receive any unpaid installments of the Retention Bonus assuming the Company is in an out-of-court restructuring as described under Scenario 1, unless the facts and circumstances as of the date of termination indicate that a Chapter 11 filing is inevitable (as determined by the Company's Board of Directors in its reasonable discretion), in which case you would be entitled to receive only any unpaid installment payable under Scenario 2. Any such installment(s) of the Retention Bonus that become payable to you following termination of your employment by the Company without cause will be paid to you on the Company's first payroll date following the date on which the Release becomes effective and irrevocable.

All forms of compensation referred to in this agreement are subject to reduction to reflect applicable withholding, payroll, and other taxes and deductions required by law. You are encouraged to obtain your own tax advice regarding your compensation. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company, or its Board of Directors related to tax liabilities arising from your compensation.

You acknowledge that payment of the Retention Bonus is not part of your normal or expected compensation for purposes of calculating any severance, resignation, redundancy, or end-of-service payments, bonuses, awards, benefits, or other similar payments.

This agreement does not otherwise alter the terms of your employment with the Company. You acknowledge and agree that your employment with the Company and its subsidiaries is and will remain "at-will" and may be terminated at any time and for any reason (or no reason) by the Company, with or without notice. Nothing in this Agreement will confer upon you any right to continued employment with the Company or to interfere in any way with the right of the Company or its subsidiaries to terminate your employment at any time.

Your base compensation remains the same and you will continue to be paid in accordance with the Company's regular payroll procedures. Compensation adjustments unrelated to this retention agreement may still occur including merit increases, equity grants, salary reductions, and other changes.

This Agreement embodies the entire agreement and understanding of the parties in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties, whether written or oral, with respect to the subject matter hereof (excluding any employment agreement and any written restrictive covenant agreements between you and the Company). This Agreement may be amended or modified only by written agreement signed by each of the parties.

The Agreement will be governed by the laws of the State of California, without giving effect to any conflicts of law principles thereof. Each party hereby irrevocably waives their right to a jury for any action, proceeding or counterclaim arising from or relating to this Agreement, to the fullest extent permitted by applicable law.

You may not assign, delegate, or otherwise transfer any of your rights or obligations under this Agreement without the prior written consent of the Company. The Company may transfer or assign, in whole or from time to time in part, to one or more of its affiliates, or to any successor to one or more of its businesses, its rights or obligations under this Agreement without your consent.

Payments under this Agreement are intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code ("Section 409A"). This Agreement will be construed and interpreted in accordance with such intent. If any provision of this Agreement needs to be revised to satisfy the requirements of Section 409A, then such provision or this Agreement will be modified or restricted to the extent and in the manner necessary to be in compliance with such requirements of Section 409A.

We appreciate your dedication to 5E and value you as a member of our team. We hope that this arrangement encourages your continued commitment to 5E. Please acknowledge your agreement to the terms of this letter by countersigning it in the space below.

Sincerely,

/s/ Graham van't Hoff
Graham van't Hoff
Chairman of the Compensation Committee

Paul Weibel

/s/ Paul Weibel

December 5, 2023

Exhibit 99.1

PRESS RELEASE
December 3rd 2023

5E ADVANCED MATERIALS ANNOUNCES AN EXTENSION TO STANDSTILL AGREEMENT

Agreement with Lender to extend timeline of the on-going Standstill Agreement until December 5, 2023, at 5PM PST

HESPERIA, CA., December 03, 2023 (GLOBE NEWSWIRE) – 5E Advanced Materials, Inc. (Nasdaq: FEAM) (ASX: 5EA) ("5E" or the "Company"), a boron and lithium company with U.S. government Critical Infrastructure designation for its 5E Boron Americas (Fort Cady) Complex, today announced that it has extended its existing Standstill Agreement (see release dated November 9, 2023) with BEP Special Situations IV, LLC ("Lender"), its primary lender and the holder of the Company's senior secured convertible notes until December 5, 2023 at 5pm PST.

About 5E Advanced Materials, Inc.

5E Advanced Materials, Inc. (Nasdaq: FEAM) (ASX: 5EA) is focused on becoming a vertically integrated global leader and supplier of boron specialty and advanced materials, complemented by lithium co-product production. The Company's mission is to become a supplier of these critical materials to industries addressing global decarbonization, food and domestic security. Boron and lithium products will target applications in the fields of electric transportation, clean energy infrastructure, such as solar and wind power, fertilizers, and domestic security. The business strategy and objectives are to develop capabilities ranging from upstream extraction and product sales of boric acid, lithium carbonate and potentially other co-products, to downstream boron advanced material processing and development. The business is based on our large domestic boron and lithium resource, which is located in Southern California and designated as Critical Infrastructure by the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency.

Forward Looking Statements and Disclosures

This press release includes "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, as amended. All statements other than statements of historical fact included in this press release regarding our business strategy, plans, goal, and objectives are forward-looking statements. When used in this press release, the words "believe," "project," "expect," "anticipate," "estimate," "intend," "budget," "target," "aim," "strategy," "estimate," "plan," "guidance," "outlook," "intent," "may," "should," "could," "will," "would," "will be," "will continue," "will likely result," and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. These forward-looking statements are based on 5E's current expectations and assumptions about future events and are based on currently available information as to the outcome and timing of future events. We caution you that these forward-looking statements are subject to all of the risks and uncertainties, most of which are difficult to predict and many of which are beyond our control, incident to the extraction of the critical materials we intend to produce and advanced materials production and development. These risks include, but are not limited to: our limited operating history in the borates and lithium industries and no revenue from our proposed extraction operations at our properties; our need for substantial additional financing to execute our business plan and our ability to access capital and the financial markets; our status as an exploration stage company dependant on a single project with no known Regulation S-K 1300 mineral reserves and the inherent uncertainty in estimates of mineral resources; our lack of history in mineral production and the significant risks associated with achieving our business strategies, including our downstream processing ambitions; our incurrence of significant net operating losses to date and plans to incur continued losses for the foreseeable future; risks and uncertainties relating to the development of the

Fort Cady project, including our ability to timely and successfully complete our Small Scale Boron Facility; our ability to obtain, maintain and renew required governmental permits for our development activities, including satisfying all mandated conditions to any such permits; our ability to timely and successfully implement a recapitalization plan; and other risks. Should one or more of these risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. No representation or warranty (express or implied) is made as to, and no reliance should be place on, any information, including projections, estimates, targets, and opinions contained herein, and no liability whatsoever is accepted as to any errors, omissions, or misstatements contained herein. You are cautioned not to place undue reliance on any forward-looking statements, which speak only as to the date of this press release.

For additional information regarding these various factors, you should carefully review the risk factors and other disclosures in the Company's Form 10-K filed on August 30, 2023. Additional risks are also disclosed by 5E in its filings with the U.S. Securities and Exchange Commission throughout the year, including its Form 10-K, Form 10-Qs and Form 8-Ks, as well as in its filings under the Australian Securities Exchange. Any forward-looking statements are given only as of the date hereof. Except as required by law, 5E expressly disclaims any obligation to update or revise any such forward-looking statements. Additionally, 5E undertakes no obligation to comment on third party analyses or statements regarding 5E's actual or expected financial or operating results or its securities.

For further information contact:

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J.T. Starzecki
Chief Marketing Officer
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Ph: +1 (612) 719-5076

Exhibit 99.2

PRESS RELEASE
December 6th 2023

5E ADVANCED MATERIALS ANNOUNCES RESTRUCTURING SUPPORT AGREEMENT AND NEW EQUITY CAPITAL

Agreement strengthens capital structure and balance sheet, bringing in up to $35 million of new equity capital, helping to fund the next stage of mining and small-scale facility for boric acid and lithium production

HESPERIA, CA., December 6, 2023 (GLOBE NEWSWIRE) – 5E Advanced Materials, Inc. (Nasdaq: FEAM) (ASX: 5EA) ("5E" or the "Company"), a boron and lithium company with U.S. government Critical Infrastructure designation for its 5E Boron Americas Complex, today announced that it has entered into a Restructuring Support Agreement ("RSA") with its primary lender and the holder of the Company's senior secured convertible notes, BEP Special Situations IV, LLC ("Lender"), along with new strategic investors ("New Investors"), to restructure the Company's capital and secure new capital (the "Transaction") that will enable the commencement of initial mining operations and production of boric acid and lithium.

Agreement Highlights

The Company has agreed to a funding package with its Lender and the New Investors for the following:

- The New Investors to commit up to $25m USD under the Transaction and the terms of the Company's existing senior secured convertible notes to be amended to reduce the conversion rate, extend the maturity date by one year and increase the paid-in-kind interest rate to ten percent (10%).
- Bluescape Special Situations IV, LLC provided an option to invest an additional $10M USD under the Transaction.
- The New Investors to acquire 50% of the outstanding principal amount of the convertible notes from the Lender under the RSA.
- Pursuant to the previously announced Standstill Agreement, the Lender has agreed to reduce the minimum required cash covenant in the notes to zero until June 28, 2024. Upon the closing of the Transaction, the Notes will be amended to provide for a minimum required cash covenant of $7.5M USD beginning June 28, 2024.

The Transaction will further secure the Company's pathway to operations and the extraction of boric acid and lithium at its 5E Boron Americas complex. This comes on the heels of 5E's recent authorization from the Environmental Protection Agency (EPA), to begin In-Situ mining operations, helping facilitate the Company's mission of becoming the leading domestic supplier and producer of critical materials boron and lithium.

The Board of Directors have added Stefan Selig to the board, effective December 5, 2023. Mr. Selig brings valuable experience through his tenure as executive vice chairman of global corporate and investment banking at Bank of America Merrill Lynch and as President Obama's Under Secretary for International Trade at the Department of Commerce, experience that the Company will look to utilize as it engages more deeply in discussions with government entities and advance additional financing conversations.

The Transaction is supported unanimously by the Board of Directors. The closing of the Transaction remains subject to the satisfaction of all remaining closing conditions, including the 5E stockholder vote, to be held at the upcoming special stockholder meeting.

"We are pleased to finalize the Agreement with our existing Lender and New Strategic Investors to strengthen our balance sheet and enable the move to commence initial mining operations of boric acid and lithium in the new year," said Susan Brennan, Chief Executive Officer of 5E Advanced Materials. "With the recent receipt of authorization from the EPA allowing 5E to begin in-situ mining, 2024 looks to be a transformational year for the Company and the Transaction helps to secure our immediate future, providing 5E with capital support while expanding our opportunities for additional commercial and financing discussions."

The Company's legal advisors are Winston & Strawn LLP and Pachulski, Stang, Ziehl and Jones LLP. The Company's financial advisor is Province. The New Investors legal advisors are Latham & Watkins LLP. The Lender's legal advisors are Kirkland & Ellis, LLP.

Special Meeting of Stockholders

5E intends to file a preliminary proxy statement for a special meeting of stockholders seeking approval of the Transaction. The Transaction is crucial to strengthening the Company's balance sheet, funding the Company's next phase of development, and commencing mining operations for boric acid and lithium.

The Board of Directors view the Transaction as being in the best interest of the Company and stockholders as a whole, and recommend that all stockholders vote in favor of the Transaction at the company's upcoming Special Meeting.

Contingency Considerations

The Company expects to implement the Transaction and restructuring through an out-of-court restructuring. If the conditions precedent to the out-of-court restructuring cannot be timely satisfied, including approval by the Company's stockholders of certain proposals , the Company expects to implement the restructuring through bankruptcy in a pre-packaged Chapter 11 plan. The Company believes that completing the out-of-court restructuring will allow it to avoid possible disruptions of the business, preserve valuable capital and avoid additional expenses, and other uncertainties that would result from commencing the bankruptcy cases to effectuate the pre-packaged Chapter 11 plan.

No Offer or Solicitation

This document is for information purposes only, and is not intended to and does not constitute an offer to sell or the solicitation of an offer to subscribe for or buy or an invitation to purchase or subscribe for any securities or the solicitation of a proxy, consent, or authorization in any jurisdiction or any vote or approval in any jurisdiction pursuant to the Transaction or otherwise, nor shall there be any sale, issuance or transfer of securities in any jurisdiction in contravention of applicable law. No offering of securities shall be made except by means of a prospectus in accordance with the requirements of Section 10 of the Securities Act of 1933, as amended or an exemption therefrom.

Additional Information and Where to Find It

This communication may be deemed to be solicitation material in respect of the Transactions and certain stockholder approvals required thereby. In connection with the Transaction, the Company expects to file a preliminary proxy statement on Schedule 14A with the Securities and Exchange Commission (the "SEC") and intends to file other relevant materials with the SEC, including a proxy statement in definitive form. Following the filing of the definitive proxy statement with the SEC, the Company will mail the definitive proxy statement and a proxy card to each stockholder entitled to vote at the special meeting relating to the Transaction. INVESTORS AND SECURITY HOLDERS OF THE COMPANY ARE URGED TO READ CAREFULLY AND IN THEIR ENTIRITY ALL RELEVANT DOCUMENTS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) FILED WITH THE SEC, INCLUDING THE COMPANY'S PROXY STATEMENT, WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE COMPANY AND THE TRANSACTION. Copies of the proxy statement and other relevant materials and any other documents filed

by the Company with the SEC may be obtained free of charge at the SEC's website, at www.sec.gov. In addition, stockholders may obtain free copies of the proxy statement and other relevant materials by directing a request to: 5E Advanced Materials, Inc., 9329 Mariposa Road, Suite 210, Hesperia, CA 92344.

Participants in Proxy Solicitation

The Company and its directors and executive officers and other members of management and employees may be deemed to be participants in the solicitation of proxies from the Company's stockholders in respect of the Transactions. Information about the directors and executive officers of the Company is set forth in its Annual Report on Form 10-K/A filed with the SEC on October 27, 2023 and the Preliminary Proxy Statement expected to be filed with the SEC in connection with the Transaction. Other information regarding the persons who may be deemed participants in the proxy solicitations in connection with the Transaction, and a description of any interests that they have in the Transaction, by security holdings or otherwise, will be contained in the definitive proxy statement and other relevant materials to be filed with the SEC regarding the Transaction when they become available. Stockholders, potential investors, and other interested person should read the definitive proxy statement carefully when it becomes available before making any voting or investment decisions. You may obtain free copies of these documents from the sources indicated above.

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Forward-Looking Statements

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on a timely manner or at all; the implementation of and expected benefits from certain reduced spending measures, and other risks and uncertainties set forth in our filings with the U.S. Securities and Exchange Commission from time to time. Should one or more of these risks or uncertainties occur, or should underlying assumptions prove incorrect, our actual results and plans could differ materially from those expressed in any forward-looking statements. No representation or warranty (express or implied) is made as to, and no reliance should be place on, any information, including projections, estimates, targets, and opinions contained herein, and no liability whatsoever is accepted as to any errors, omissions, or misstatements contained herein. You are cautioned not to place undue reliance on any forward-looking statements, which speak only as to the date of this press release.

For additional information regarding these various factors, you should carefully review the risk factors and other disclosures in the Company's Form 10-K filed on August 30, 2023. Additional risks are also disclosed by 5E in its filings with the U.S. Securities and Exchange Commission throughout the year, including its Form 10-K, Form 10-Qs and Form 8-Ks, as well as in its filings under the Australian Securities Exchange. Any forward-looking statements are given only as of the date hereof. Except as required by law, 5E expressly disclaims any obligation to update or revise any such forward-looking statements. Additionally, 5E undertakes no obligation to comment on third party analyses or statements regarding 5E's actual or expected financial or operating results or its securities.

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