UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

☑ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarter ended June 30, 2021

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____to _____

Commission File Number 001-38598

BLOOM ENERGY CORPORATION
(Exact name of registrant as specified in its charter)

Delaware	**77-0565408**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
4353 North First Street, San Jose, California	**95134**
(Address of principal executive offices)	(Zip Code)

(408) 543-1500
(Registrant's telephone number, including area code)

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

Title of Each Class[1]	**Trading Symbol**	**Name of each exchange on which registered**
Class A Common Stock, $0.0001 par value	BE	New York Stock Exchange

[1] Our Class B Common Stock is not registered but is convertible into shares of Class A Common Stock at the election of the holder.

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

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

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

Large accelerated filer ☑ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

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

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

The number of shares of the registrant's common stock outstanding as of July 27, 2021 was as follows:

Class A Common Stock, $0.0001 par value 145,819,844 shares

Class B Common Stock, $0.0001 par value 27,766,429 shares

Bloom Energy Corporation

Quarterly Report on Form 10-Q for the Three and Six Months Ended June 30, 2021

Table of Contents

Unless the context otherwise requires, the terms "we," "us," "our," and "Bloom Energy," each refer to Bloom Energy Corporation and all of its subsidiaries.

Part I

ITEM 1 - FINANCIAL STATEMENTS

Bloom Energy Corporation
Condensed Consolidated Balance Sheets
(in thousands, except share and par value)
(unaudited)

	June 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents[1]	$ 203,956	$ 246,947
Restricted cash[1]	60,584	52,470
Accounts receivable[1]	54,468	96,186
Contract assets	18,638	3,327
Inventories	163,317	142,059
Deferred cost of revenue	36,273	41,469
Customer financing receivable[1]	5,603	5,428
Prepaid expenses and other current assets[1]	23,061	30,718
Total current assets	565,900	618,604
Property, plant and equipment, net[1]	611,371	600,628
Operating lease right-of-use assets	69,708	35,621
Customer financing receivable, non-current[1]	42,457	45,268
Restricted cash, non-current[1]	135,988	117,293
Deferred cost of revenue, non-current	2,683	2,462
Other long-term assets[1]	35,921	34,511
Total assets	$ 1,464,028	$ 1,454,387
Liabilities, Redeemable Noncontrolling Interest, Stockholders' (Deficit) Equity and Noncontrolling Interest		
Current liabilities:		
Accounts payable	$ 87,132	$ 58,334
Accrued warranty	7,697	10,263
Accrued expenses and other current liabilities[1]	96,051	112,004
Deferred revenue and customer deposits[1]	79,262	114,286
Operating lease liabilities	5,375	7,899
Financing obligations	13,819	12,745
Recourse debt	2,020	—
Non-recourse debt[1]	117,690	120,846
Total current liabilities	409,046	436,377
Deferred revenue and customer deposits, non-current[1]	79,059	87,463
Operating lease liabilities, non-current	78,441	41,849
Financing obligations, non-current	459,887	459,981
Recourse debt, non-current	288,650	168,008
Non-recourse debt, non-current[1]	98,093	102,045
Other long-term liabilities	20,904	17,268
Total liabilities	1,434,080	1,312,991
Commitments and contingencies (Note 13)		
Redeemable noncontrolling interest	334	377
Stockholders' (deficit) equity:		
Preferred stock: 10,000,000 shares authorized and no shares issued and outstanding at June 30, 2021 and December 31, 2020.	—	—
Common stock: $0.0001 par value; Class A shares - 600,000,000 shares authorized and 145,632,567 shares and 140,094,633 shares issued and outstanding and Class B shares - 600,000,000 shares authorized and 27,769,593 shares and 27,908,093 shares issued and outstanding at June 30, 2021 and December 31, 2020, respectively.	17	17
Additional paid-in capital	3,155,917	3,182,753
Accumulated other comprehensive loss	(124)	(9)
Accumulated deficit	(3,177,381)	(3,103,937)
Total stockholders' (deficit) equity	(21,571)	78,824
Noncontrolling interest	51,185	62,195
Total liabilities, redeemable noncontrolling interest, stockholders' (deficit) equity and noncontrolling interest	$ 1,464,028	$ 1,454,387

[1]We have variable interest entities, which represent a portion of the consolidated balances recorded within these financial statement line items in the condensed consolidated balance sheets (see Note 11 - *Portfolio Financings*).

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

Bloom Energy Corporation
Condensed Consolidated Statements of Operations
(in thousands, except per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenue:				
Product	$ 146,867	$ 116,197	$ 284,797	$ 215,756
Installation	28,879	29,839	31,538	46,457
Service	35,707	26,208	72,124	51,355
Electricity	17,017	15,612	34,018	30,987
Total revenue	228,470	187,856	422,477	344,555
Cost of revenue:				
Product	108,891	83,127	196,185	155,616
Installation	36,515	38,287	41,140	59,066
Service	35,565	28,652	71,683	59,622
Electricity	10,155	11,541	21,474	24,071
Total cost of revenue	191,126	161,607	330,482	298,375
Gross profit	37,344	26,249	91,995	46,180
Operating expenses:				
Research and development	25,673	19,377	48,968	42,656
Sales and marketing	22,727	11,427	42,679	25,376
General and administrative	31,655	24,945	57,456	54,043
Total operating expenses	80,055	55,749	149,103	122,075
Loss from operations	(42,711)	(29,500)	(57,108)	(75,895)
Interest income	76	332	150	1,151
Interest expense	(14,553)	(14,374)	(29,284)	(35,128)
Interest expense - related parties	—	(794)	—	(2,160)
Other income (expense), net	22	(3,913)	(63)	(3,921)
Loss on extinguishment of debt	—	—	—	(14,098)
(Loss) gain on revaluation of embedded derivatives	(942)	412	(1,460)	696
Loss before income taxes	(58,108)	(47,837)	(87,765)	(129,355)
Income tax provision	313	141	437	265
Net loss	(58,421)	(47,978)	(88,202)	(129,620)
Less: Net loss attributable to noncontrolling interest and redeemable noncontrolling interest	(4,558)	(5,466)	(9,450)	(11,159)
Net loss attributable to Class A and Class B common stockholders	$ (53,863)	$ (42,512)	$ (78,752)	$ (118,461)
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.31)	$ (0.34)	$ (0.46)	$ (0.95)
Weighted average shares used to compute net loss per share available to Class A and Class B common stockholders, basic and diluted	172,749	125,928	171,753	124,823

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

Bloom Energy Corporation
Condensed Consolidated Statements of Comprehensive Loss
(in thousands)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Net loss	$ (58,421)	$ (47,978)	$ (88,202)	$ (129,620)
Other comprehensive loss, net of taxes:				
Unrealized loss on available-for-sale securities	—	(23)	—	(23)
Change in derivative instruments designated and qualifying as cash flow hedges	1,385	(503)	(3,268)	(8,717)
Foreign currency translation adjustment	4	—	(224)	—
Other comprehensive income (loss), net of taxes	1,389	(526)	(3,492)	(8,740)
Comprehensive loss	(57,032)	(48,504)	(91,694)	(138,360)
Less: Comprehensive loss attributable to noncontrolling interest and redeemable noncontrolling interest	(5,941)	(5,968)	(6,291)	(19,870)
Comprehensive loss attributable to Class A and Class B stockholders	$ (51,091)	$ (42,536)	$ (85,403)	$ (118,490)

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

Bloom Energy Corporation
Condensed Consolidated Statements of Redeemable Noncontrolling Interest, Stockholders' (Deficit) Equity and Noncontrolling Interest
(in thousands, except share data) (unaudited)

	Three Months Ended June 30, 2021								
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Noncontrolling Interest
		Shares	Amount					
Balances at March 31, 2021	$ 356	172,099,453	$ 17	$ 3,129,687	$ (126)	$ (3,123,518)	$ 6,060	$ 57,986
Issuance of restricted stock awards	—	811,162	—	—	—	—	—	—
Exercise of stock options	—	491,545	—	7,715	—	—	7,715	—
Stock-based compensation	—	—	—	18,515	—	—	18,515	—
Change in effective portion of interest rate swap agreement	—	—	—	—	—	—	—	(1,385)
Distributions to noncontrolling interests	—	—	—	—	—	—	—	(882)
Foreign currency translation adjustment	—	—	—	—	2	—	2	2
Net loss	(22)	—	—	—	—	(53,863)	(53,863)	(4,536)
Balances at June 30, 2021	$ 334	173,402,160	$ 17	$ 3,155,917	$ (124)	$ (3,177,381)	$ (21,571)	$ 51,185

	Three Months Ended June 30, 2020							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Gain (Loss)	Accumulated Deficit	Total Stockholders' Deficit	Noncontrolling Interest
		Shares	Amount					
Balances at March 31, 2020	$ 67	125,150,690	$ 12	$ 2,689,208	$ 14	$ (3,022,333)	$ (333,099)	$ 73,867
Conversion of Notes	—	4,718,128	1	41,129	—	—	41,130	—
Issuance of restricted stock awards	—	309,547	—	—	—	—	—	—
Exercise of stock options	—	59,924	—	341	—	—	341	—
Stock-based compensation	—	—	—	17,212	—	—	17,212	—
Unrealized loss on available for sale securities	—	—	—	—	(23)	—	(23)	—
Change in effective portion of interest rate swap agreement	—	—	—	—	—	—	—	(503)
Distributions to noncontrolling interests	(16)	—	—	—	—	—	—	(1,530)
Net income (loss)	67	—	—	—	—	(42,512)	(42,512)	(5,532)
Balances at June 30, 2020	$ 118	130,238,289	$ 13	$ 2,747,890	$ (9)	$ (3,064,845)	$ (316,951)	$ 66,302

	Six Months Ended June 30, 2021							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)	Noncontrolling Interest
		Shares	Amount					
Balances at December 31, 2020	$ 377	168,002,726	$ 17	$ 3,182,753	$ (9)	$ (3,103,937)	$ 78,824	$ 62,195
Cumulative effect upon adoption of Accounting Standards Update 2020-06 (Note 2)	—	—	—	(126,799)	—	5,308	(121,491)	—
Issuance of restricted stock awards	—	1,951,664	—	—	—	—	—	—
ESPP purchase	—	977,508	—	4,726	—	—	4,726	—
Exercise of stock options	—	2,470,262	—	60,942	—	—	60,942	—
Stock-based compensation	—	—	—	34,295	—	—	34,295	—
Change in effective portion of interest rate swap agreement	—	—	—	—	—	—	—	3,268
Distributions to noncontrolling interests	(17)	—	—	—	—	—	—	(4,745)
Foreign currency translation adjustment	—	—	—	—	(115)	—	(115)	(109)
Net loss	(26)	—	—	—	—	(78,752)	(78,752)	(9,424)
Balances at June 30, 2021	$ 334	173,402,160	$ 17	$ 3,155,917	$ (124)	$ (3,177,381)	$ (21,571)	$ 51,185

	Six Months Ended June 30, 2020							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Gain (Loss)	Accumulated Deficit	Total Stockholders' Deficit	Noncontrolling Interest
		Shares	Amount					
Balances at December 31, 2019	$ 443	121,036,289	$ 12	$ 2,686,759	$ 19	$ (2,946,384)	$ (259,594)	$ 91,291
Conversion of Notes	—	4,718,128	1	41,129	—	—	41,130	—
Adjustment of embedded derivative for debt modification	—	—	—	(24,071)	—	—	(24,071)	—
Issuance of restricted stock awards	—	3,320,153	—	—	—	—	—	—
ESPP purchase	—	992,846	—	4,177	—	—	4,177	—
Exercise of stock options	—	170,873	—	1,008	—	—	1,008	—
Stock-based compensation	—	—	—	38,888	—	—	38,888	—
Unrealized loss on available for sale securities	—	—	—	—	(23)	—	(23)	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(5)	—	(5)	(8,712)
Distributions to noncontrolling interests	(17)	—	—	—	—	—	—	(5,427)
Net loss	(308)	—	—	—	—	(118,461)	(118,461)	(10,850)
Balances at June 30, 2020	$ 118	130,238,289	$ 13	$ 2,747,890	$ (9)	$ (3,064,845)	$ (316,951)	$ 66,302

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

Bloom Energy Corporation
Condensed Consolidated Statements of Cash Flows
(in thousands)
(unaudited)

	Six Months Ended June 30,	
	2021	**2020**
Cash flows from operating activities:		
Net loss	$ (88,202)	$ (129,620)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	26,808	25,852
Non-cash lease expense	4,520	2,759
Impairment of equity method investment	—	4,236
Revaluation of derivative contracts	462	(72)
Stock-based compensation expense	36,343	41,652
Loss on extinguishment of debt	—	14,098
Amortization of debt issuance costs and premium, net	1,900	(470)
Changes in operating assets and liabilities:		
Accounts receivable	41,718	(11,531)
Contract assets	(15,311)	(256)
Inventories	(21,026)	(3,532)
Deferred cost of revenue	4,984	(9,995)
Customer financing receivable	2,636	2,490
Prepaid expenses and other current assets	7,656	7,314
Other long-term assets	(1,410)	(3,574)
Accounts payable	29,449	8,831
Accrued warranty	(2,565)	(159)
Accrued expenses and other current liabilities	(16,225)	13,509
Operating lease right-of-use assets and operating lease liabilities	(5,140)	(2,973)
Deferred revenue and customer deposits	(43,428)	2,907
Other long-term liabilities	1,529	(1,701)
Net cash used in operating activities	(35,302)	(40,235)
Cash flows from investing activities:		
Purchase of property, plant and equipment	(34,461)	(19,560)
Net cash used in investing activities	(34,461)	(19,560)
Cash flows from financing activities:		
Proceeds from issuance of debt	—	70,000
Proceeds from issuance of debt to related parties	—	30,000
Repayment of debt	(7,838)	(82,248)
Repayment of debt - related parties	—	(2,105)
Debt issuance costs	—	(3,371)
Proceeds from financing obligations	7,123	—
Repayment of financing obligations	(6,387)	(5,111)
Distributions to noncontrolling interests and redeemable noncontrolling interests	(4,762)	(5,815)
Proceeds from issuance of common stock	65,668	5,186
Net cash provided by financing activities	53,804	6,536
Effect of exchange rate changes on cash, cash equivalent and restricted cash	(223)	—
Net decrease in cash, cash equivalents, and restricted cash	(16,182)	(53,259)
Cash, cash equivalents, and restricted cash:		
Beginning of period	416,710	377,388
End of period	$ 400,528	$ 324,129
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	$ 27,219	$ 34,487
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	6,132	4,482
Operating cash flows from financing leases	259	20
Cash paid during the period for income taxes	185	224
Non-cash investing and financing activities:		
Increase in recourse debt, non-current upon adoption of ASU 2020-06, net (Note 2)	$ 121,491	$ —
Liabilities recorded for property, plant and equipment	11	494
Operating lease liabilities arising from obtaining right-of-use assets upon adoption of new lease guidance	—	39,775
Recognition of operating lease right-of-use asset during the year-to-date period	40,762	3,333
Recognition of financing lease right-of-use asset during the year-to-date period	1,335	251
Conversion of 5% debt financing into additional paid-in capital	—	41,130
Accrued distributions to equity investors	—	2
Accrued debt issuance costs	—	1,220
Adjustment of embedded derivative related to debt extinguishment	—	24,071

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

1. Nature of Business, Liquidity and Basis of Presentation

Nature of Business

We design, manufacture, sell and, in certain cases, install solid-oxide fuel cell systems ("Energy Servers") for on-site power generation. Our Energy Servers utilize an innovative fuel cell technology and provide efficient energy generation with reduced operating costs and lower greenhouse gas emissions as compared to conventional fossil fuel generation. By generating power where it is consumed, our energy producing systems offer increased electrical reliability and improved energy security while providing a path to energy independence.

We continue to monitor and adjust as appropriate our operations in response to the COVID-19 pandemic There have been a number of supply chain disruptions throughout the global supply chain as countries are in various stages of opening up and demand for certain components increases. Although we were able to find alternatives for many component shortages, we experienced some delays and cost increases with respect to logistics and container shortages.

Liquidity

We have generally incurred operating losses and negative cash flows from operations since our inception. With the series of new debt offerings, debt extensions and conversions to equity that we completed during 2020, we had $290.7 million of total outstanding recourse debt as of June 30, 2021, $288.6 million of which is classified as long-term debt. Our recourse debt scheduled repayments will commence in June 2022.

Our future capital requirements will depend on many factors, including our rate of revenue growth, the timing and extent of spending on research and development efforts and other business initiatives, the rate of growth in the volume of system builds and the need for additional manufacturing space, the expansion of sales and marketing activities both in domestic and international markets, market acceptance of our product, our ability to secure financing for customer use of our Energy Servers, the timing of installations, and overall economic conditions including the impact of COVID-19 on our ongoing and future operations.

In the opinion of management, the combination of our existing cash and cash equivalents and operating cash flows is expected to be sufficient to meet our operational and capital cash flow requirements and other cash flow needs for the next 12 months from the date of issuance of this Quarterly Report on Form 10-Q.

Basis of Presentation

We have prepared the condensed consolidated financial statements included herein pursuant to the rules and regulations of the U.S. Securities and Exchange Commission ("SEC"), and as permitted by those rules, including all disclosures required by generally accepted accounting principles as applied in the United States (“U.S. GAAP”). All intercompany transactions and balances have been eliminated upon consolidation. Certain prior period amounts have been reclassified to conform to the current period presentation.

As disclosed in the 2020 Annual Report on Form 10-K, effective on December 31, 2020, we lost our emerging growth company ("EGC") status which accelerated the adoption of Accounting Standards Codification ("ASC") 842, *Leases* ("ASC 842"). As a result, we adjusted our previously reported condensed consolidated financial statements effective January 1, 2020.

Principles of Consolidation

These condensed consolidated financial statements reflect our accounts and operations and those of our subsidiaries in which we have a controlling financial interest. We use a qualitative approach in assessing the consolidation requirement for each of our variable interest entities ("VIEs"), which we refer to as a tax equity partnership (each such VIE, also referred to as our power purchase agreement entities ("PPA Entities")). This approach focuses on determining whether we have the power to direct those activities of the PPA Entities that most significantly affect their economic performance and whether we have the obligation to absorb losses, or the right to receive benefits, that could potentially be significant to the PPA Entities. For all periods presented, we have determined that we are the primary beneficiary in all of our operational PPA Entities, as discussed in Note 11 - *Portfolio Financings*. We evaluate our relationships with the PPA Entities on an ongoing basis to ensure that we continue to be the primary beneficiary. All intercompany transactions and balances have been eliminated upon consolidation.

The sale of an operating company with a portfolio of PPAs in which we do not have an equity interest is called a “Third-Party PPA.” We have determined that, although these entities are VIEs, we do not have the power to direct those activities of the Third-Party PPAs that most significantly affect their economic performance. We also do not have the obligation to absorb losses, or the right to receive benefits, that could potentially be significant to the Third-Party PPAs. Because we are not the primary beneficiary of these activities, we do not consolidate Third-Party PPAs.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in the condensed consolidated financial statements and the accompanying notes. The most significant estimates include the determination of the stand-alone selling price, including material rights estimates, inventory valuation, specifically excess and obsolescence provisions for obsolete or unsellable inventory and, in relation to property, plant and equipment (specifically Energy Servers), assumptions relating to economic useful lives and impairment assessments.

Other accounting estimates include variable consideration relating to product performance guaranties, lease and non-lease components and related financing obligations such as incremental borrowing rates, estimated output, efficiency and residual value of the Energy Servers, product performance warranties and guaranties and extended maintenance, derivative valuations, estimates for recapture of the U.S. investment tax credit ("ITC") and similar federal tax benefits, estimates relating to contractual indemnities provisions, estimates for income taxes and deferred tax asset valuation allowances, and stock-based compensation expense. In addition, because the duration and severity of the COVID-19 pandemic is uncertain, certain of such estimates could require further judgment or modification and therefore carry a higher degree of variability and volatility. Actual results could differ materially from these estimates under different assumptions and conditions.

Concentration of Risk

Geographic Risk - The majority of our revenue and long-lived assets are attributable to operations in the United States for all periods presented. Additionally, we sell our Energy Servers in Japan, India and the Republic of Korea (collectively, the "Asia Pacific region"). In the three and six months ended June 30, 2021, total revenue in the Asia Pacific region was 34% and 39%, respectively, of our total revenue. In the three and six months ended June 30, 2020, total revenue in the Asia Pacific region was 30% and 33%, respectively, of our total revenue.

Credit Risk - At June 30, 2021 and December 31, 2020, SK Engineering and Construction Co., Ltd. ("SK E&C"), accounted for approximately 47% and 56% of accounts receivable, respectively. At June 30, 2021 RAD Bloom Project Holdco LLC, accounted for approximately 29% of accounts receivable and none at December 31, 2020. To date, we have not experienced any credit losses.

Customer Risk - During the three months ended June 30, 2021, three customers represented 31%, 26% and 12%, respectively, of our total revenue. During the six months ended June 30, 2021, two customers represented 36% and 14% of our total revenue, respectively.

2. Summary of Significant Accounting Policies

Please refer to the accounting policies described in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

Revenue Recognition

We primarily earn product and installation revenue from the sale and installation of our Energy Servers, service revenue by providing services under operations and maintenance services contracts, and electricity revenue by selling electricity to customers under PPAs. We offer our customers several ways to finance their use of a Bloom Energy Server. Customers, including some of our international channel providers and Third Party PPAs, may choose to purchase our Energy Servers outright. Customers may also enter into service contracts with us for the purchase of electricity generated by our Energy Servers (a "Managed Services Arrangement"), which is then financed through one of our financing partners ("Managed Services Financing"), or as a traditional lease. Finally, customers may purchase electricity through our PPA Entities ("Portfolio Financings").

Revenue Recognition Under ASC 606 Revenue from Contracts with Customers

In applying Accounting Standards Codification 606, *Revenue from Contracts with Customers* ("ASC 606"), revenue is recognized by following a five-step process:

Identify the contract(s) with a customer. Evidence of a contract generally consists of a purchase order issued pursuant to the terms and conditions of a distributor, reseller, purchase, use and maintenance agreement, maintenance services agreements or energy supply agreement.

Identify the performance obligations in the contract. Performance obligations are identified in our contracts and include transferring control of an Energy Server, installation of Energy Servers, providing maintenance services and maintenance services renewal options which, in certain situations, provide customers with material rights.

Determine the transaction price. The purchase price stated in an agreed-upon purchase order or contract is generally representative of the transaction price. When determining the transaction price, we consider the effects of any variable consideration, which include performance guarantees that may be payable to our customers.

Allocate the transaction price to the performance obligations in the contract. The transaction price in a contract is allocated based upon the relative standalone selling price of each distinct performance obligation identified in the contract.

Recognize revenue when (or as) we satisfy a performance obligation. We satisfy performance obligations either over time or at a point in time as discussed in further detail below. Revenue is recognized at the time the related performance obligation is satisfied by transferring control of the promised products or services to a customer.

We frequently combine contracts governing the sale and installation of an Energy Server with the related maintenance services contracts and account for them as a single contract at contract inception to the extent the contracts are with the same customer. These contracts are not combined when the customer for the sale and installation of the Energy Server is different to the maintenance services contract customer. We also assess whether any contract terms including default provisions, put or call options result in components of our contracts being accounted for as financing or leasing transactions outside of the scope of ASC 606.

Most of our contracts contain performance obligations with a combination of our Energy Server product, installation and maintenance services. For these performance obligations, we allocate the total transaction price to each performance obligation based on the relative standalone selling price. Our maintenance services contracts are typically subject to renewal by customers on an annual basis. We assess these maintenance services renewal options at contract inception to determine whether they provide customers with material rights that give rise to separate performance obligations.

The total transaction price is determined based on the total consideration specified in the contract, including variable consideration in the form of a performance guaranty payment that represents potential amounts payable to customers. The expected value method is generally used when estimating variable consideration, which typically reduces the total transaction price due to the nature of the performance obligations to which the variable consideration relates. These estimates reflect our historical experience and current contractual requirements which cap the maximum amount that may be paid. The expected value method requires judgment and considers multiple factors that may vary over time depending upon the unique facts and circumstances related to each performance obligation. Depending on the facts and circumstances, a change in variable consideration estimate will either be accounted for at the contract level or using the portfolio method.

We exclude from the transaction price all taxes assessed by governmental authorities that are both (i) imposed on and concurrent with a specific revenue-producing transaction and (ii) collected from customers. Accordingly, such tax amounts are not included as a component of net sales or cost of sales. These tax amounts are recorded in cost of electricity revenue, cost of service revenue, and general and administrative operating expense.

We allocate the transaction price to each distinct performance obligation based on relative standalone selling prices. Given that we typically sell an Energy Server with a maintenance services agreement and have not provided maintenance services to a customer who does not have use of an Energy Server, standalone selling prices are estimated using a cost-plus approach. Costs relating to Energy Servers include all direct and indirect manufacturing costs, applicable overhead costs and costs for normal production inefficiencies (i.e., variances). We then apply a margin to the Energy Servers, which may vary with the size of the customer, geographic region and the scale of the Energy Server deployment. As our business offerings and eligibility for the Investment Tax Credit ("ITC") evolve over time, we may be required to modify the expected margin in subsequent periods and our revenue could be adversely affected. Costs relating to installation include all direct and indirect

installation costs. The margin we apply reflects our profit objectives relating to installation. Costs for maintenance services arrangements are estimated over the life of the maintenance contracts and include estimated future service costs and future material costs. Material costs over the period of the service arrangement are impacted significantly by the longevity of the fuel cells themselves. After considering the total service costs, we apply a lower margin to our service costs than to our Energy Servers as it best reflects our long-term service margin expectations and comparable historical industry service margins. As a result, our estimate of our selling price is driven primarily by our expected margin on both the Energy Server and the maintenance services agreements based on their respective costs or, in the case of maintenance services agreements, the estimated costs to be incurred.

We recognize product and installation revenue at the point in time that the customer obtains control of the Energy Server. We recognize maintenance services revenue, including revenue associated with any related customer material rights, over time as we perform service maintenance activities.

Amounts billed to customers for shipping and handling activities are considered contract fulfillment activities and not a separate performance obligation of the contract. Shipping and handling costs are recorded within cost of revenue.

The following is a description of the principal activities from which we generate revenue. Our four revenue streams are classified as follows:

Product Revenue - All of our product revenue is generated from the sale of our Energy Servers to direct purchase customers, including financing partners on Third-Party PPAs, international channel providers and traditional lease customers. We generally recognize product revenue from contracts with customers at the point that control is transferred to the customers. This occurs when we achieve customer acceptance, which typically occurs upon transfer of control to our customers, which depending on the contract terms is when the system is shipped and delivered to our customers, when the system is shipped and delivered and is physically ready for startup and commissioning, or when the system is shipped and delivered and is turned on and producing power.

Under our traditional lease financing option, we sell our Energy Servers through a direct sale to a financing partner who, in turn, leases the Energy Servers to the customer under a lease agreement. With our sales to our international channel providers, our international channel providers typically sell the Energy Servers to, or sometimes provide a PPA to, an end customer. In both traditional lease and international channel providers transactions, we contract directly with the end customer to provide extended maintenance services after the end of the standard warranty period. As a result, since the customer that purchases the server is a different and unrelated party to the customer that purchases extended warranty services, the product and maintenance services contract are not combined.

Installation Revenue - Nearly all of our installation revenue relates to the installation of Energy Servers sold to customers as part of a direct purchase and to financing parties as part of a traditional lease, Managed Services Financing or Portfolio Financing. Generally, we recognize installation revenue when the system has been installed and is running at full power.

Payments received from customers are recorded within deferred revenue and customer deposits in the condensed consolidated balance sheets until control is transferred. The related cost of such product and installation is also deferred as a component of deferred cost of revenue in the condensed consolidated balance sheets until control is transferred.

Service Revenue - Service revenue is generated from maintenance services agreements. As part of our initial contract with customers for the sale and installation of our Energy Servers, we typically provide a standard one-year warranty which covers defects in materials and workmanship and manufacturing or performance conditions under normal use and service for the first year following acceptance. As part of this standard first-year warranty, we also monitor the operations of the underlying systems and provide output and efficiency guaranties. We have determined that this standard first-year warranty is a distinct performance obligation - being a promise to stand-ready to maintain the Energy Servers when and if required during the first year following installation. We also sell to our customers extended annual maintenance services that effectively extend the standard first-year warranty coverage at the customer’s option. These customers generally have an option to renew or cancel the extended maintenance services on an annual basis and nearly every customer has renewed historically. Similar to the standard first-year warranty, the optional extended annual maintenance services are considered a distinct performance obligation – being a promise to stand-ready to maintain the Energy Servers when and if required during the renewal service year.

Service revenue is recognized ratably over the term of the first or renewed one-year service period.

Given our customers' renewal history, we anticipate that most of them will continue to renew their maintenance services agreements each year for the period of their expected use of the Energy Server. The contractual renewal price may be less than

the standalone selling price of the maintenance services and consequently the contract renewal option may provide the customer with a material right. We estimate the standalone selling price for customer renewal options that give rise to material rights using the practical alternative by reference to optional maintenance services renewal periods expected to be provided and the corresponding expected consideration for these services. This reflects the fact that our additional performance obligations in any contractual renewal period are consistent with the services provided under the standard first-year warranty. Where we have determined that a customer has a material right as a result of their contract renewal option, we recognize that portion of the transaction price allocated to the material right over the period in which such rights are exercised.

Payments from customers for the extended maintenance contracts are received at the beginning of each service year. Accordingly, the customer payment received is recorded as a customer deposit and revenue is recognized over the related service period as the services are performed.

Electricity Revenue - We sell electricity produced by our Energy Servers owned directly by us or by our consolidated PPA Entities. Our PPA Entities purchase Energy Servers from us and sell electricity produced by these systems to customers through long-term PPAs. Customers are required to purchase all of the electricity produced by those Energy Servers at agreed-upon rates over the course of the PPAs' contractual term.

In addition, in certain Managed Services Financings pursuant to which we are party to a Managed Services Agreement with a customer in a sale-leaseback-sublease arrangement we may recognize electricity revenue. We first determine whether the Energy Servers under the sale-leaseback arrangement of a Managed Services Financing were “integral equipment." As the Energy Servers were determined not to be integral equipment, we determine if the leaseback was classified as a financing lease or an operating lease.

Under ASC 840, *Leases* ("ASC 840"), our Managed Services Agreements with the financiers were classified as capital leases and were accordingly recorded as financing transactions, while the sub-lease arrangements with the end customer were classified as operating leases. We have determined that the financiers are our customers in our Managed Services Agreements. In these Managed Services Financings, we enter into an agreement with a customer for a certain term. In exchange for the use of the Energy Server and its generated electricity, the customer makes a monthly payment. The customer's monthly payment includes a fixed monthly capacity-based payment, and in some cases also includes a performance-based payment based on the performance of the Energy Server. The fixed capacity-based payments made by the customer are applied toward our obligation to pay down the financing obligation with the financier. The performance-based payment is transferred to us as compensation for operations and maintenance services and is recognized as electricity revenue. We allocate the total payments received based on the relative standalone selling prices to electricity revenue and to service revenue. Electricity revenue relating to PPAs was typically accounted for in accordance with ASC 840, and service revenue in accordance with ASC 606.

We adopted ASC 842 with effect from January 1, 2020. Under ASC 842, our Managed Services Agreements with the financier continue to be accounted for as financing transactions because the repurchase options in these agreements prevent the transfer of control of the systems to the financier. We also determined that the sub-lease arrangements with the customer are not within the scope of ASC 842 because the customer does not have the right to control the use of the underlying assets (i.e., the Energy Servers). Accordingly, for transactions entered into on or after January 1, 2020 such arrangements with customers are accounted for under ASC 606. Under ASC 606, we recognize revenue for the electricity generated as electricity revenue.

Transactions entered into with customers prior to January 1, 2020 carried over their classification as operating leases and continue to be accounted for consistent with prior years as described in the paragraph above.

We recognize revenue from the satisfaction of performance obligations under our PPAs and Managed Services Financings as the electricity is provided over the term of the agreement in the amount invoiced, which reflects the amount of consideration to which we have the right to invoice and which corresponds to the value transferred under such arrangements.

Contract Modifications

Contract modifications are accounted for as separate contracts if the additional products and services are distinct and priced at standalone selling prices. If the additional products and services are distinct, but not priced at standalone selling prices, the modification is treated as a termination of the existing contract and the creation of a new contract. If the additional products and services are not distinct within the context of the contract, the modification is combined with the original contract and either an increase or decrease in revenue is recognized on the modification date.

Deferred Revenue

We recognize a contract liability (referred to as deferred revenue in our condensed consolidated financial statements) when we have an obligation to transfer products or services to a customer in advance of us satisfying a performance obligation and the contract liability is reduced as performance obligations are satisfied and revenue is recognized. The related cost of such product is deferred as a component of deferred cost of revenue in the condensed consolidated balance sheets. Prior to shipment of the product or the commencement of performance of maintenance services, any prepayment made by the customer is recorded as a customer deposit. Deferred revenue related to material rights for options to renew are recognized in revenue over the maintenance services period.

A description of the principal activities from which we recognize cost of revenues associated with each of our revenue streams are classified as follows:

Cost of Product Revenue - Cost of product revenue consists of costs of our Energy Servers that we sell to direct purchase, including financing partners on Third-Party PPAs, international channel providers and traditional lease customers. It includes costs paid to our materials suppliers, direct labor, manufacturing and other overhead costs, shipping costs, provisions for excess and obsolete inventory and the depreciation costs of our equipment. For Energy Servers sold to customers pending for installation, we provide warranty reserves as a part of product costs for the period from transfer of controls of Energy Servers to commencement of operations.

Cost of Installation Revenue - Cost of installation revenue primarily consists of the costs to install our Energy Servers that we sell to direct purchase, including financing partners on Third-Party PPAs and traditional lease customers. It includes costs paid to our materials and service providers, personnel costs, shipping costs and allocated costs.

Cost of Service Revenue - Cost of service revenue consists of costs incurred under maintenance service contracts for all customers. It includes personnel costs for our customer support organization, certain allocated costs, and extended maintenance-related product repair and replacement costs.

Cost of Electricity Revenue - Cost of electricity revenue primarily consists of the depreciation of the cost of the Energy Servers owned by us or the consolidated PPA Entities and the cost of gas purchased in connection with our first PPA Entity. The cost of electricity revenue is generally recognized over the term of the Managed Services Agreement or customer’s PPA contract. The cost of depreciation of the Energy Servers is reduced by the amortization of any U.S. Treasury Department grant payment in lieu of the energy investment tax credit associated with these systems.

Revenue Recognized from Portfolio Financings Through PPA Entities *(See Note 11 - Portfolio Financings)*

In 2010, we began selling our Energy Servers to tax equity partnerships in which we held an equity interest as a managing member, or a PPA Entity. This program was financed by the sale of an Operating Company counter-party to a portfolio of PPAs to a PPA Entity. The investors in a PPA Entity contribute cash to the PPA Entity in exchange for an equity interest, which then allows the PPA Entity to purchase the Operating Company and the Energy Servers contemplated by the portfolio of PPAs owned by such Operating Company.

The cash contributions held are classified as short-term or long-term restricted cash according to the terms of each PPA Entity's governing documents. As we identified customers, the Operating Company entered into a PPA with the customer pursuant to which the customer agreed to purchase the power generated by one or more Energy Servers at a specified rate per kilowatt hour for a specified term, which can range from 10 to 21 years. The Operating Company, wholly owned by the PPA Entity, typically entered into a maintenance services agreement with us following the first year of service to extend the standard one-year performance warranties and guaranties. This intercompany arrangement is eliminated on consolidation. Those PPAs that qualify as leases are classified as either sales-type leases or operating leases and those that do not qualify as leases are classified as tariff agreements or revenue arrangements with customers. For arrangements classified as operating leases, tariff agreements, or revenue arrangements with customers, income is recognized as contractual amounts are due when the electricity is generated and presented within electricity revenue on the condensed consolidated statements of operations.

Sales-type Leases - Certain Portfolio Financings with PPA Entities entered into prior to our adoption of ASC 842 qualified as sales-type leases in accordance with ASC 840. The classification for such arrangements were carried over and accounted for as sales-type leases under ASC 842. We are responsible for the installation, operation and maintenance of the Energy Servers at the customers' sites, including running the Energy Servers during the term of the PPA which ranges from 10 to 15 years. Based on the terms of the PPAs, we may also be obligated to supply fuel for the Energy Servers. The amount billed

for the delivery of electricity to customers primarily consists of returns on the amounts financed including interest revenue, service revenue and fuel revenue for certain arrangements.

As the Portfolio Financings through PPA Entities entered into prior to our adoption of ASC 842 contain a lease, the consideration received is allocated between the lease elements (lease of property and related executory costs) and non-lease elements (other products and services, excluding any derivatives) based on relative fair value. Lease elements include the leased system and the related executory costs (i.e. installation of the system, electricity generated by the system, maintenance costs). Non-lease elements include service, fuel and interest related to the leased systems.

Service revenue and fuel revenue are recognized over the term of the PPA as electricity is generated. For those transactions that contain a lease, the interest component related to the leased system is recognized as interest revenue over the life of the lease term. The customer has the option to purchase the Energy Servers at the then fair market value at the end of the PPA contract term.

Service revenue related to sales-type leases of $2.3 million, $2.9 million and $3.4 million for the years ended December 31, 2020, 2019 and 2018, respectively, is included in electricity revenue in the consolidated statements of operations. We have not entered into any new Portfolio Financing arrangements through PPA Entities during the last three years. Accordingly, there was no product revenue for such arrangements during the years ended December 31, 2020, 2019 or 2018.

Operating Leases - Certain Portfolio Financings with PPA Entities entered into prior to the adoption of ASC 842 that were deemed leases in substance, but did not meet the criteria of sales-type leases or direct financing leases in accordance with ASC 840, were accounted for as operating leases. The classification for such arrangements were carried over and accounted for as operating leases under ASC 842. Revenue under these arrangements is recognized as electricity sales and service revenue and is provided to the customer at rates specified under the PPAs. During the years ended December 31, 2020, 2019, and 2018, revenue from electricity sales from these Portfolio Financings with PPA Entities amounted to $27.7 million, $29.7 million and $30.9 million, respectively. During the years ended December 31, 2020, 2019, and 2018, service revenue amounted to $13.8 million, $14.6 million and $15.2 million, respectively.

Foreign Currency Transactions

The functional currencies of most of our foreign subsidiaries are the U.S. dollar since the subsidiaries are considered financially and operationally integrated with their domestic parent. For these subsidiaries, the foreign currency monetary assets and liabilities are remeasured into U.S. dollars at end-of-period exchange rates. Any currency transaction gains and losses are included as a component of other expense in our condensed consolidated statements of operations.

The functional currency of our joint venture in the Republic of Korea is the local currency, the South Korean won ("KRW"), since the joint venture is financially independent of its U.S. parent and the KRW is the currency in which the joint venture generates and expends cash. Assets and liabilities of this entity are translated at the rate of exchange at the balance sheet date. Revenue and expenses are translated at the weighted average rate of exchange during the period. For this entity, translation adjustments resulting from the process of translating the KRW financial statements into U.S dollars are included in other comprehensive loss. Translation adjustments attributable to noncontrolling interests are allocated to and reported as part of the noncontrolling interests in the condensed consolidated financial statements.

Recent Accounting Pronouncements

Other than the adoption of the accounting guidance mentioned below, there have been no other significant changes in our reported financial position or results of operations and cash flows resulting from the adoption of new accounting pronouncements.

Accounting Guidance Implemented in 2021

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, *Debt - Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity (Subtopic 815-40)* ("ASU 2020-06"). The new standard simplifies the accounting for convertible instruments by eliminating the conversion option separation model for convertible debt that can be settled in cash and by eliminating the measurement model for beneficial conversion features. The guidance is effective for fiscal years beginning after December 15, 2021, with early adoption permitted as early as fiscal years (including interim periods) beginning after December 15, 2020. Consequently, a convertible debt instrument will be accounted for as a single liability measured at its amortized cost, as long as no other features require bifurcation and recognition as derivatives. There will no longer be a debt discount

representing the difference between the carrying value, excluding issuance costs, and the principal of the convertible debt instrument and, as a result, there will no longer be interest expense from the amortization of the debt discount over the term of the convertible debt instrument. The amendments in this update also require the if-converted method to be applied for all convertible instruments when calculating diluted earnings per share.

We elected to early adopt ASU 2020-06 as of January 1, 2021 using the modified retrospective transition method, which resulted in a cumulative-effect adjustment to the opening balance of accumulated deficit on the date of adoption. Prior period condensed consolidated financial statements were not restated upon adoption.

Upon adoption of ASU 2020-06, we combined the previously separated equity component with the liability component of our 2.5% Green Convertible Senior Notes due August 2025. These components are now together classified as recourse debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity was reclassified to debt and will be amortized as interest expense. Accordingly, we recorded a decrease to accumulated deficit of $5.3 million, a decrease to additional paid-in capital of $126.8 million, and an increase to recourse debt, non-current of approximately $121.5 million.

There is no deferred tax impact related to the adoption of ASU 2020-06 due to our full valuation allowance.

Accounting Guidance Not Yet Adopted

Cessation of LIBOR - In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848) Facilitation of the Effects of Reference Rate Reform on Financial Reporting* ("ASU 2020-04"), which provides optional expedients for a limited period of time for accounting for contracts, hedging relationships, and other transactions affected by the London Interbank Offered Rate ("LIBOR") or other reference rate expected to be discontinued. ASU 2020-04 is effective immediately and may be applied prospectively to contract modifications made and hedging relationships entered into or evaluated on or before December 31, 2022. We are currently evaluating the impact of the adoption of ASU 2020-04 on our consolidated financial statements.

3. Revenue Recognition

Contract Balances

The following table provides information about contract balances from contracts with customers (in thousands):

	June 30, 2021	December 31, 2020
Accounts receivable	$ 54,468	$ 96,186
Contract assets	18,638	3,327
Customer deposits	42,066	66,171
Deferred revenue	116,255	135,578

Contract assets relate to contracts for which revenue is recognized upon transfer of control of performance obligations, however billing milestones have not been reached. Customer deposits and deferred revenue are payments received from customers or invoiced amounts prior to transfer of controls of performance obligations. Customer deposits are refundable fees until certain milestones are met.

Contract Assets

During the three months ended June 30, 2021, contract assets increased from $5.0 million to $18.6 million. Contract assets of $14.2 million were recognized during this period as the related performance obligations were satisfied but the billing milestones had not been met. During this period, we billed $0.6 million that was included in the contract assets balance as of March 31, 2021.

During the six months ended June 30, 2021, contract assets increased from $3.3 million to $18.6 million. Contract assets of $15.3 million were recognized during this period as the related performance obligations were satisfied but the billing milestones had not been met. During this period, we did not bill any amounts that were included in the contract assets balance as of December 31, 2020.

Deferred Revenue

Deferred revenue activity, including deferred incentive revenue activity, during the three and six months ended June 30, 2021 and 2020 consists of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Beginning balance	$ 120,643	$ 177,266	$ 135,578	$ 175,455
Additions	195,324	159,244	350,785	297,631
Revenue recognized	(199,712)	(167,257)	(370,108)	(303,833)
Ending balance	$ 116,255	$ 169,253	$ 116,255	$ 169,253

Disaggregated Revenue

We disaggregate revenue from contracts with customers into four revenue categories: (i) product, (ii) installation, (iii) services and (iv) electricity (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Revenue from contracts with customers:				
Product revenue	$ 146,867	$ 116,197	$ 284,797	$ 215,756
Installation revenue	28,879	29,839	31,538	46,457
Services revenue	35,707	26,208	72,124	51,355
Electricity revenue	707	72	1,302	144
Total revenue from contract with customers	212,160	172,316	389,761	313,712
Revenue from contracts accounted for as leases:				
Electricity revenue	16,310	15,540	32,716	30,843
Total revenue	$ 228,470	$ 187,856	$ 422,477	$ 344,555

4. Financial Instruments

Cash, Cash Equivalents and Restricted Cash

The carrying values of cash, cash equivalents and restricted cash approximate fair values and are as follows (in thousands):

	June 30, 2021	December 31, 2020
As Held:		
Cash	$ 242,377	$ 180,808
Money market funds	158,151	235,902
	$ 400,528	$ 416,710
As Reported:		
Cash and cash equivalents	$ 203,956	$ 246,947
Restricted cash	196,572	169,763
	$ 400,528	$ 416,710

Restricted cash consisted of the following (in thousands):

	June 30, 2021	December 31, 2020
Current:		
Restricted cash	$ 59,288	$ 26,706
Restricted cash related to PPA Entities[1]	1,296	25,764
Restricted cash, current	60,584	52,470
Non-current:		
Restricted cash	120,780	286
Restricted cash related to PPA Entities[1]	15,208	117,007
Restricted cash, non-current	135,988	117,293
	$ 196,572	$ 169,763

[1] We have VIEs that represent a portion of the condensed consolidated balances recorded within the "restricted cash" and other financial statement line items in the condensed consolidated balance sheets (see Note 11 - *Portfolio Financings*). In addition, the restricted cash held in the PPA II and PPA IIIb entities as of June 30, 2021, includes $34.6 million and $1.2 million of current restricted cash, respectively, and $72.8 million and $13.3 million of non-current restricted cash, respectively. The restricted cash held in the PPA II and PPA IIIb entities as of December 31, 2020, includes $20.3 million and $0.7 million of current restricted cash, respectively, and $88.4 million and $13.3 million of non-current restricted cash, respectively. These entities are not considered VIEs.

Factoring Arrangements

We sell certain customer trade receivables on a non-recourse basis under factoring arrangements with designated financial institutions. These transactions are accounted for as sales and cash proceeds are included in cash used in operating activities. We derecognized $49.9 million and $49.3 million of accounts receivable as of June 30, 2021 and December 31, 2020, respectively, under these factoring arrangements. The costs of factoring such accounts receivable on our condensed consolidated statements of operations for the three and six months ended June 30, 2021 and 2020 were not material.

5. Fair Value

Our accounting policy for the fair value measurement of cash equivalents, natural gas fixed price forward contracts, embedded Escalation Protection Plan ("EPP") derivatives and interest rate swap agreements have not changed from the policies described in our Annual Report on Form 10-K for the year ended December 31, 2020.

Financial Assets and Liabilities Measured at Fair Value on a Recurring Basis

The tables below set forth, by level, our financial assets that are accounted for at fair value for the respective periods. The table does not include assets and liabilities that are measured at historical cost or any basis other than fair value (in thousands):

	Fair Value Measured at Reporting Date Using			
June 30, 2021	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 158,151	$ —	$ —	$ 158,151
	$ 158,151	$ —	$ —	$ 158,151
Liabilities				
Derivatives:				
Natural gas fixed price forward contracts	$ —	$ 226	$ —	$ 226
Embedded EPP derivatives	—	—	7,002	7,002
Interest rate swap agreements	—	12,651	—	12,651
	$ —	$ 12,877	$ 7,002	$ 19,879

	Fair Value Measured at Reporting Date Using			
December 31, 2020	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 235,902	$ —	$ —	$ 235,902
	$ 235,902	$ —	$ —	$ 235,902
Liabilities				
Derivatives:				
Natural gas fixed price forward contracts	$ —	$ —	$ 2,574	$ 2,574
Embedded EPP derivatives	—	—	5,541	5,541
Interest rate swap agreements	—	15,989	—	15,989
	$ —	$ 15,989	$ 8,115	$ 24,104

Money Market Funds - Money market funds are valued using quoted market prices for identical securities and are therefore classified as Level 1 financial assets.

Natural Gas Fixed Price Forward Contracts - As of June 30,2021, natural gas fixed price forward contracts were valued using a combination of factors including the counterparty's credit rating and estimates of future natural gas prices. The leveling of each financial instrument is reassessed at the end of each period and is based on pricing information received from third-party pricing sources. During 2021, we transferred natural gas forward contracts from Level 3 to Level 2. Transfers between these hierarchy levels were based on the availability of sufficient observable inputs to meet Level 2 versus Level 3 criteria.

For the three months ended June 30, 2021 and 2020, we recognized an unrealized gain of $0.7 million and an unrealized loss of $0.1 million, respectively, as a result of a change in the fair value of our natural gas fixed price forward contracts during

these periods. We realized gains of $0.7 million and $1.5 million for the three months ended June 30, 2021 and 2020, respectively, on the settlement of these contracts in cost of revenue on our condensed consolidated statements of operations.

For the six months ended June 30, 2021 and 2020, we recognized an unrealized gain of $0.9 million and an unrealized loss of $0.7 million, respectively, as a result of a change in the fair value of our natural gas fixed price forward contracts during these periods. We realized gains of $1.4 million and $2.5 million for the six months ended June 30, 2021 and 2020, respectively, on the settlement of these contracts in cost of revenue on our condensed consolidated statements of operations.

Embedded Escalation Protection Plan Derivative Liability in Sales Contracts - We estimate the fair value of the embedded EPP derivatives in certain sales contracts using a Monte Carlo simulation model, which considers various potential electricity price curves over the sales contracts' terms. We use historical grid prices and available forecasts of future electricity prices to estimate future electricity prices. We have classified these derivatives as a Level 3 financial liability.

For the three months ended June 30, 2021 and 2020, we recorded the fair value of the embedded EPP derivatives and recognized an unrealized loss of $0.9 million and an unrealized gain of $0.4 million, respectively, in (loss) gain on revaluation of embedded derivatives on our condensed consolidated statements of operations.

For the six months ended June 30, 2021 and 2020, we recorded the fair value of the embedded EPP derivatives and recognized an unrealized loss of $1.5 million and an unrealized gain of $0.7 million, respectively, in (loss) gain on revaluation of embedded derivatives on our condensed consolidated statements of operations.

The changes in the Level 3 financial liabilities during the six months ended June 30, 2021 were as follows (in thousands):

	Natural Gas Fixed Price Forward Contracts	Embedded EPP Derivative Liability	Total
Liabilities at December 31, 2019	$ 6,968	$ 6,176	$ 1
Settlement of natural gas fixed price forward contracts	(4,503)	—	(
Changes in fair value	109	(635)	
Liabilities at December 31, 2020	2,574	5,541	
Settlement of natural gas fixed price forward contracts	(1,420)	—	(
Changes in fair value	(928)	1,461	
Transfer from Level 3 to Level 2 in fair value hierarchy	(226)	—	
Liabilities at June 30, 2021	$ —	$ 7,002	$

Interest Rate Swap Agreements - Interest rate swap agreements are valued using quoted prices for similar contracts and are therefore classified as Level 2 financial assets. Interest rate swaps are designed as hedging instruments and are recognized at fair value on our condensed consolidated balance sheets. As of June 30, 2021, we expect $1.7 million of the loss on the interest rate swaps accumulated in other comprehensive loss to be reclassified into earnings in the next 12 months.

Financial Assets and Liabilities Not Measured at Fair Value on a Recurring Basis

Customer Receivables and Debt Instruments - The fair value for customer financing receivables is based on a discounted cash flow model, whereby the fair value approximates the present value of the receivables (Level 3). The senior secured notes, term loans and convertible notes are based on rates currently offered for instruments with similar maturities and terms (Level 3). The following table presents the estimated fair values and carrying values of customer receivables and debt instruments (in thousands):

	June 30, 2021		December 31, 2020	
	Net Carrying Value	Fair Value	Net Carrying Value	Fair Value
Customer receivables				
Customer financing receivables	$ 48,060	$ 40,469	$ 50,746	$ 42,679
Debt instruments				
Recourse:				
10.25% Senior Secured Notes due March 2027	66,771	74,680	68,614	71,831
2.5% Green Convertible Senior Notes due August 2025	221,879	411,698	99,394	426,229
Non-recourse:				
7.5% Term Loan due September 2028	30,316	37,256	31,746	37,658
6.07% Senior Secured Notes due March 2030	75,194	86,413	77,007	89,654
LIBOR + 2.5% Term Loan due December 2021	110,273	111,340	114,138	116,113

6. Balance Sheet Components

Inventories

The components of inventory consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Raw materials	$ 77,871	$ 79,090
Work-in-progress	45,140	29,063
Finished goods	40,306	33,906
	$ 163,317	$ 142,059

The inventory reserves were $14.4 million and $14.0 million as of June 30, 2021 and December 31, 2020, respectively.

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Prepaid hardware and software maintenance	3,390	5,227
Receivables from employees	5,584	5,160
Other prepaid expenses and other current assets	14,087	20,331
	$ 23,061	$ 30,718

Property, Plant and Equipment, Net

Property, plant and equipment, net, consists of the following (in thousands):

	June 30, 2021	December 31, 2020
Energy Servers	$ 674,247	$ 669,422
Computers, software and hardware	20,640	20,432
Machinery and equipment	110,463	106,644
Furniture and fixtures	8,508	8,455
Leasehold improvements	38,109	37,497
Building	46,730	46,730
Construction-in-progress	49,033	21,118
	947,730	910,298
Less: accumulated depreciation	(336,359)	(309,670)
	$ 611,371	$ 600,628

Depreciation expense related to property, plant and equipment was $13.4 million and $12.8 million for the three months ended June 30, 2021 and 2020, respectively. Depreciation expense related to property, plant and equipment was $26.8 million and $25.9 million for the six months ended June 30, 2021 and 2020, respectively.

Property, plant and equipment under operating leases by the PPA Entities was $368.0 million and $368.0 million and accumulated depreciation for these assets was $127.6 million and $115.9 million as of June 30, 2021 and December 31, 2020, respectively. Depreciation expense for these assets was $5.9 million and $5.9 million for the three months ended June 30, 2021 and 2020, respectively. Depreciation expense for these assets was $11.7 million and $12.1 million for the six months ended June 30, 2021 and 2020, respectively.

Other Long-Term Assets

Other long-term assets consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Prepaid insurance	$ 10,657	$ 11,792
Prepaid and other long-term assets	10,725	8,992
Long-term lease receivable	7,517	6,995
Deferred commissions	7,022	6,732
	$ 35,921	$ 34,511

Accrued Warranty

Accrued warranty liabilities consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Product warranty	$ 1,127	$ 1,549
Product performance	6,492	8,605
Maintenance services contracts	78	109
	$ 7,697	$ 10,263

Changes in the product warranty and product performance liabilities were as follows (in thousands):

Balances at December 31, 2020	10,154
Accrued warranty, net	3,990
Warranty expenditures during the year-to-date period	(6,525)
Balances at June 30, 2021	$ 7,619

Accrued Expenses and Other Current Liabilities

Accrued expenses and other current liabilities consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Compensation and benefits	$ 30,461	$ 28,343
Current portion of derivative liabilities	13,344	19,116
Sales-related liabilities	5,635	14,479
Accrued installation	10,202	16,468
Sales tax liabilities	2,596	2,732
Interest payable	2,156	2,224
Other	31,657	28,642
	$ 96,051	$ 112,004

Other Long-Term Liabilities

Other long-term liabilities consist of the following (in thousands):

	June 30, 2021	December 31, 2020
Delaware grant	$ 9,431	$ 9,212
Other	11,473	8,056
	$ 20,904	$ 17,268

We have recorded a long-term liability for the potential future repayment of the incentive grant received from the Delaware Economic Development Authority of $9.4 million and $9.2 million as of June 30, 2021 and December 31, 2020, respectively. See Note 13 - *Commitments and Contingencies* for a full description of the grant.

7. Outstanding Loans and Security Agreements

The following is a summary of our debt as of June 30, 2021 (in thousands, except percentage data):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity	Interest Rate	Maturity Dates	Entity	Recourse
		Current	Long-Term	Total					
10.25% Senior Secured Notes due March 2027	$ 70,000	$ 2,020	$ 66,771	$ 68,791	$ —	10.25%	March 2027	Company	Yes
2.5% Green Convertible Senior Notes due August 2025	230,000	—	221,879	221,879	—	2.5%	August 2025	Company	Yes
Total recourse debt	300,000	2,020	288,650	290,670	—				
7.5% Term Loan due September 2028	32,683	3,149	27,167	30,316	—	7.5%	September 2028	PPA IIIa	No
6.07% Senior Secured Notes due March 2030	75,954	4,268	70,926	75,194	—	6.07%	March 2030	PPA IV	No
LIBOR + 2.5% Term Loan due December 2021	110,578	110,273	—	110,273	—	LIBOR plus margin	December 2021	PPA V	No
Letters of Credit due December 2021	—	—	—	—	759	2.25%	December 2021	PPA V	No
Total non-recourse debt	219,215	117,690	98,093	215,783	759				
Total debt	$ 519,215	$ 119,710	$ 386,743	$ 506,453	$ 759				

The following is a summary of our debt as of December 31, 2020 (in thousands, except percentage data):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity	Interest Rate	Maturity Dates	Entity	Rec
		Current	Long-Term	Total					
10.25% Senior Secured Notes due March 2027	$ 70,000	$ —	$ 68,614	$ 68,614	$ —	10.25%	March 2027	Company	Y
2.5% Green Convertible Senior Notes due August 2025	230,000	—	99,394	99,394	—	2.5%	August 2025	Company	Y
Total recourse debt	300,000	—	168,008	168,008	—				
7.5% Term Loan due September 2028	34,456	2,826	28,920	31,746	—	7.5%	September 2028	PPA IIIa	I
6.07% Senior Secured Notes due March 2030	77,837	3,882	73,125	77,007	—	6.07%	March 2030	PPA IV	I
LIBOR + 2.5% Term Loan due December 2021	114,761	114,138	—	114,138	—	LIBOR plus margin	December 2021	PPA V	I
Letters of Credit due December 2021	—	—	—	—	968	2.25%	December 2021	PPA V	I
Total non-recourse debt	227,054	120,846	102,045	222,891	968				
Total debt	$ 527,054	$ 120,846	$ 270,053	$ 390,899	$ 968				

Recourse debt refers to debt that we have an obligation to pay. Non-recourse debt refers to debt that is recourse to only our subsidiaries. The differences between the unpaid principal balances and the net carrying values apply to deferred financing costs. We and all of our subsidiaries were in compliance with all financial covenants as of June 30, 2021 and December 31, 2020.

Recourse Debt Facilities

10.25% Senior Secured Notes due March 2027 - On May 1, 2020, we issued $70.0 million of 10.25% Senior Secured Notes in a private placement ("10.25% Senior Secured Notes"). The 10.25% Senior Secured Notes are governed by an indenture (the “Senior Secured Notes Indenture”) entered into among us, the guarantor party thereto and U.S. Bank National Association, in its capacity as trustee and collateral agent. The 10.25% Senior Secured Notes are secured by certain of our operations and maintenance agreements that previously were part of the security for the 6% Convertible Notes. The 10.25% Senior Secured Notes are supported by a $150.0 million indenture between us and U.S. Bank National Association, which contains an accordion feature for an additional $80.0 million of notes that can be issued on or prior to September 27, 2021.

Interest on the 10.25% Senior Secured Notes is payable quarterly, commencing June 30, 2020. The 10.25% Senior Secured Notes Indenture contains customary events of default and covenants relating to, among other things, the incurrence of new debt, affiliate transactions, liens and restricted payments. On or after March 27, 2022, we may redeem all of the 10.25% Senior Secured Notes at a price equal to 108% of the principal amount of the 10.25% Senior Secured Notes plus accrued and unpaid interest, with such optional redemption prices decreasing to 104% on and after March 27, 2023, 102% on and after March 27, 2024 and 100% on and after March 27, 2026. Before March 27, 2022, we may redeem the 10.25% Senior Secured Notes upon repayment of a make-whole premium. If we experience a change of control, we must offer to purchase for cash all or any part of each holder's 10.25% Senior Secured Notes at a purchase price equal to 101% of the principal amount of the 10.25% Senior Secured Notes, plus accrued and unpaid interest. The non-current balance of the outstanding unpaid principal of the 10.25% Senior Secured Notes was $68.0 million as of June 30, 2021. The current balance of the outstanding unpaid principal of the 10.25% Senior Secured Notes was $2.0 million as of June 30, 2021.

2.5% Green Convertible Senior Notes due August 2025 - In August 2020, we issued $230.0 million aggregate principal amount of our 2.5% Green Convertible Senior Notes due August 2025, unless earlier repurchased, redeemed or converted ("Green Notes"). The principal amount of the Green Notes are $230.0 million, less initial purchaser's discount of $6.9 million and other issuance costs of $3.0 million resulting in net proceeds of $220.1 million.

The Green Notes are senior, unsecured obligations accruing interest at a rate of 2.5% per annum, payable semi-annually in arrears on February 15 and August 15 of each year, beginning on February 15, 2021.

We may not redeem the Green Notes prior to August 21, 2023. We may elect to redeem, at face value, all or any portion of the Green Notes at any time on or after August 21, 2023 and on or before the twenty-sixth trading day immediately before the maturity date, provided certain conditions are met.

Before May 15, 2025, the noteholders have the right to convert their Green Notes only upon the occurrence of certain events, including a conversion upon satisfaction of a condition relating to the closing price of our common stock ("the Closing Price Condition"). If the Closing Price Condition is met on at least 20 of the last 30 consecutive trading days in any quarter, the noteholders may convert their Green Notes at any time during the immediately following quarter. The Closing Price Condition was met during the three months ended June 30, 2021 and accordingly, the noteholders may convert their Green Notes at any time during the quarter ending September 30, 2021. From and after May 15, 2025, the noteholders may convert their Green Notes at any time at their election until the close of business on the second trading day immediately before the maturity date. Should the noteholders elect to convert their Green Notes, we may elect to settle the conversion by paying or delivering, as applicable, cash, shares of our Class A common stock or a combination thereof.

The initial conversion rate is 61.6808 shares of Class A common stock per $1,000 principal amount of notes, which represents an initial conversion price of approximately $16.21 per share of Class A common stock. The conversion rate and conversion price are subject to customary adjustments upon the occurrence of certain events. In addition, if certain corporate events that constitute a "Make-Whole Fundamental Change" as defined occur, the conversion rate will, in certain circumstances, be increased for a specified period of time.

We adopted ASU 2020-06 as of January 1, 2021 using the modified retrospective transition method. Upon adoption, we combined the previously separated equity component of the Green Notes with the liability component, which is now together classified as debt, thereby eliminating the subsequent amortization of the debt discount as interest expense. Similarly, the portion of issuance costs previously allocated to equity was reclassified to debt and amortized as interest expense. Accordingly, we recorded a net decrease to Accumulated deficit of $5.3 million, a decrease to Additional paid-in capital of $126.8 million, and an increase to recourse debt, non-current, of approximately $121.5 million upon adoption as of January 1, 2021.

Interest expense for the three and six months ended June 30, 2021 was $1.9 million and $3.9 million, including amortization of issuance costs of $0.5 million and $1.0 million, respectively.

Non-recourse Debt Facilities

7.5% Term Loan due September 2028 - In December 2012 and later amended in August 2013, PPA IIIa entered into a $46.8 million credit agreement to fund the purchase and installation of our Energy Servers. The loan bears a fixed interest rate of 7.5% payable quarterly. The loan requires quarterly principal payments, which began in March 2014. The credit agreement requires us to maintain a debt service reserve for all funded systems, the balance of which was $3.6 million and $3.8 million as of June 30, 2021 and December 31, 2020, respectively, which was included as part of long-term restricted cash in the condensed consolidated balance sheets. The loan is secured by all assets of PPA IIIa.

6.07% Senior Secured Notes due March 2030 - The notes bear a fixed interest rate of 6.07% per annum payable quarterly, which began in December 2015 and ends in March 2030. The note purchase agreement requires us to maintain a debt service reserve, the balance of which was $8.8 million and $8.5 million as of June 30, 2021 and December 31, 2020, respectively, which was included as part of long-term restricted cash in the condensed consolidated balance sheets. The notes are secured by all the assets of the PPA IV.

LIBOR + 2.5% Term Loan due December 2021 - In June 2015, PPA V entered into a $131.2 million term loan due December 2021. The current portion of the LIBOR + 2.5% Term Loan as of June 30, 2021 and December 31, 2020 was $110.3 million and $114.1 million, respectively. There was no non-current portion of this loan as of June 30, 2021 and December 2020. In accordance with the credit agreement, PPA V was issued floating rate debt based on LIBOR plus a margin, paid quarterly. The applicable margins used for calculating interest expense are 2.25% for years 1-3 following the Term Conversion Date and 2.5% thereafter. For the lenders' commitments to the loan and the commitments to a letter of credit facility, the PPA V also pays commitment fees at 0.5% per annum over the outstanding commitments, paid quarterly. The loan is secured by all the assets of the PPA V and requires quarterly principal payments which began in March 2017. In connection with the floating-rate credit agreement, in July 2015, PPA V entered into pay-fixed, receive-float interest rate swap agreements to convert its floating-rate loan into a fixed-rate loan. The agreement also included commitments to a letter of credit facility with the aggregate principal amount of $6.4 million, later adjusted down to $6.2 million. The amount reserved under the Letter of Credit as of June 30, 2021 and December 31, 2020 was $5.4 million and $5.2 million, respectively, and the unused capacity was $0.8 million and $1.0 million, respectively.

Repayment Schedule and Interest Expense

The following table presents details of our outstanding loan principal repayment schedule as of June 30, 2021 (in thousands):

Remainder of 2021	$	114,110
2022		16,393
2023		22,166
2024		24,886
2025		28,022
Thereafter		313,638
	$	519,215

Interest expense of $14.6 million and $15.2 million for the three months ended June 30, 2021 and 2020, respectively, and $29.3 million and $37.3 million for the six months ended June 30, 2021 and 2020, respectively, was recorded in interest expense on the condensed consolidated statements of operations. This interest expense includes interest expense - related parties of $0.8 million for the three months ended June 30, 2020, and $2.2 million, for the six months ended June 30, 2020, respectively. We did not incur any interest expense - related parties during the three or six months ended June 30, 2021.

8. Derivative Financial Instruments

Interest Rate Swaps

We use various financial instruments to minimize the impact of variable market conditions on our results of operations. We use interest rate swaps to minimize the impact of fluctuations of interest rate changes on our outstanding debt where LIBOR is applied. We do not enter into derivative contracts for trading or speculative purposes.

The fair values of the derivatives designated as cash flow hedges as of June 30, 2021 and December 31, 2020 on our condensed consolidated balance sheets are as follows (in thousands):

		June 30, 2021		December 31, 2020
Liabilities				
Accrued expenses and other current liabilities	$	12,651	$	15,989

PPA V - In July 2015, PPA V entered into nine interest rate swap agreements to convert a variable interest rate debt to a fixed rate and we designated and documented the interest rate swap arrangements as cash flow hedges. Three of these swaps matured in 2016, three will mature on December 31, 2021 and the remaining three will mature on June 30, 2031. The effective change is recorded in accumulated other comprehensive loss and is recognized as interest expense on settlement. The notional amounts of the swaps are $180.1 million and $181.4 million as of June 30, 2021 and December 31, 2020, respectively.

We measure the swaps at fair value on a recurring basis. Fair value is determined by discounting future cash flows using LIBOR rates with appropriate adjustment for credit risk. We realized immaterial gains attributable to the change in valuation during the three and six months ended June 30, 2021 and 2020, and these gains are included in other expense, net, in the condensed consolidated statements of operations.

The changes in fair value of the derivative contracts designated as cash flow hedges and the amounts recognized in accumulated other comprehensive loss and in earnings are as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Beginning balance	$ 11,301	$ 17,415	$ 15,989	$ 9,238
Loss (gain) recognized in other comprehensive loss	1,880	928	(2,284)	9,284
Amounts reclassified from other comprehensive loss to earnings	(495)	(425)	(984)	(567)
Net loss (gain) recognized in other comprehensive loss	1,385	503	(3,268)	8,717
Gain recognized in earnings	(35)	(37)	(70)	(74)
Ending balance	$ 12,651	$ 17,881	$ 12,651	$ 17,881

Embedded EPP Derivatives in Sales Contracts

For the three months ended June 30, 2021 and 2020, we recorded the fair value of the embedded EPP derivatives and recognized an unrealized loss of $0.9 million and an unrealized gain of $0.4 million, respectively. For the six months ended June 30, 2021 and 2020, we recorded the fair value of the embedded EPP derivatives and recognized an unrealized loss of $1.5 million and an unrealized gain of $0.7 million, respectively. These gains and losses are included within loss on revaluation of embedded derivatives in the condensed consolidated statements of operations. The fair value of these derivatives was $7.0 million and $5.5 million as of June 30, 2021 and 2020, respectively.

9. Leases

Facilities, Office Buildings, and Vehicles

We lease most of our facilities, office buildings and vehicles under operating and finance leases that expire at various dates through February 2036. We lease various manufacturing facilities in Sunnyvale, Fremont and Mountain View, California. Our Sunnyvale manufacturing facility lease was entered into in April 2005 and expires in December 2023. In June 2020 and in March 2021, we signed leases in Fremont that will expire in 2027 and 2036, respectively, to replace our manufacturing facilities in Sunnyvale and Mountain View. The existing plants together comprise approximately 534,894 square feet of space. In June 2021, we extended the lease term for our headquarters in San Jose, California to 2031 and leased two additional floors. We lease additional office space as field offices in the United States and around the world including in Dubai, India, the Republic of Korea, China and Taiwan.

Some of these arrangements have free rent periods or escalating rent payment provisions. We recognize lease cost under such arrangements on a straight-line basis over the life of the leases. For the three months ended June 30, 2021 and 2020, rent expense for all occupied facilities was $3.8 million and $1.9 million, respectively. For the six months ended June 30, 2021 and 2020, rent expense for all occupied facilities was $7.0 million and $4.0 million, respectively.

Our leases have lease terms ranging from less than 1 year to 15 years, some of which include options to extend the leases. The lease term is the non-cancelable period of the lease and includes options to extend or terminate the lease when it is reasonably certain that an option will be exercised.

Operating and financing lease right-of-use assets and lease liabilities for facilities, office buildings and vehicles as of June 30, 2021 and December 31, 2020 were as follows (in thousands):

	June 30, 2021	December 31, 2020
Assets:		
Operating lease right-of-use assets, net [1, 2]	$ 69,708	$ 35,621
Financing lease right-of-use assets, net [2, 3, 4]	2,532	334
Total	$ 72,240	$ 35,955
Liabilities:		
Current:		
Operating lease liabilities	$ 5,375	$ 7,899
Financing lease liabilities [5]	759	74
Total current lease liabilities	6,134	7,973
Non-current:		
Operating lease liabilities	78,441	41,849
Financing lease liabilities [6]	1,878	267
Total non-current lease liabilities	80,319	42,116
Total lease liabilities	$ 86,453	$ 50,089

[1] These assets primarily include leases for facilities, office buildings and vehicles.

[2] Net of accumulated amortization.

[3] These assets primarily include leases for vehicles.

[4] Included in property, plant and equipment, net, in the condensed consolidated balance sheets, net of accumulated amortization.

[5] Included in accrued expenses and other current liabilities in the condensed consolidated balance sheets.

[6] Included in other long-term liabilities in the condensed consolidated balance sheets.

The components of our facilities, office buildings and vehicles' lease costs for the three and six months ended June 30, 2021 and 2020 were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Operating lease costs	$ 3,743	$ 1,915	$ 6,757	$ 3,912
Financing lease costs:				
Amortization of financing lease right-of-use assets	174	13	881	17
Interest expense for financing lease liabilities	46	4	244	6
Total financing lease costs	220	17	1,125	23
Short-term lease costs	169	83	341	222
Total lease costs	$ 4,132	$ 2,015	$ 8,223	$ 4,157

Weighted average remaining lease terms and discount rates for our facilities, office buildings and vehicles as of June 30, 2021 and December 31, 2020 were as follows:

	June 30, 2021	December 31, 2020
Remaining lease term (years):		
Operating leases	9.5 years	6.7 years
Finance leases	3.4 years	4.2 years
Discount rate:		
Operating leases	9.3 %	8.7 %
Finance leases	7.5 %	7.0 %

Future lease payments under lease agreements for our facilities, office buildings, and vehicles as of June 30, 2021, were as follows (in thousands):

	Operating Leases	Finance Leases
Remainder of 2021	$ 6,926	$ 555
2022	12,654	757
2023	14,397	753
2024	12,944	594
2025	13,135	290
Thereafter	73,762	75
Total minimum lease payments	133,818	3,024
Less: amounts representing interest or imputed interest	(50,002)	(387)
Present value of lease liabilities	$ 83,816	$ 2,637

Managed Services and Portfolio Financings Through PPA Entities

Certain of our customers enter into Managed Services or Portfolio Financings through a PPA Entity to finance their lease of Bloom Energy Servers. Prior to our adoption of ASC 842 as of January 1, 2020, such arrangements with customers that qualified as leases were classified as either sales-type leases or operating leases. For all pre-existing Managed Services arrangements or Portfolio Financings through PPA Entities, we have carried over the accounting classifications for those transactions and continue to account for such transactions as either sales-type leases or operating leases under ASC 842. Customer arrangements under Managed Services and Portfolio Financings through PPA Entities entered into after January 1, 2021 do not contain a lease under ASC 842 and are accounted for under ASC 606 as revenue arrangements.

Lease agreements under our Managed Services arrangements and Portfolio Financings through PPA Entities include non-cancellable lease terms, during which terms the majority of our investment in Energy Servers under lease are typically recovered. We mitigate remaining residual value risk of its Energy Servers through its provision of maintenance on the Energy Servers during the lease term and through insurance whose proceeds are payable in the event of theft, loss, damage, or destruction.

Managed Services Financings - Our Managed Services arrangements with financiers are accounted for as financing transactions. Payments received from the financier are recognized as financing obligations in our condensed consolidated balance sheets. These financing obligations are included in each agreements' contract value and are recognized as short-term or long-term liabilities based on the estimated payment dates. The lease agreements expire on various dates through 2034 and there was no recorded rent expense for the three months ended June 30, 2021 and 2020.

At June 30, 2021, future lease payments under the Managed Services financing obligations and the sublease payments from the customers under the related operating leases were as follows (in thousands):

	Financing Obligations	Sublease Payments[1]
Remainder of 2021	$ 20,760	$ (20,760)
2022	42,252	(42,252)
2023	43,192	(43,192)
2024	41,093	(41,093)
2025	40,056	(40,056)
Thereafter	89,883	(89,883)
Total lease payments	277,236	$ (277,236)
Less: imputed interest	(161,742)	
Total lease obligations	115,494	
Less: current obligations	(13,818)	
Long-term lease obligations	$ 101,676	

[1] Sublease Payments primarily represents the fees received by the bank from our customer for the electricity generated by our Energy Servers leased under our Managed Services and other similar arrangements, which also pay down our financing obligation to the bank.

The long-term financing obligations, as reflected in our condensed consolidated balance sheets, were $459.9 million and $460.0 million as of June 30, 2021 and December 31, 2020, respectively. The difference between these obligations and the principal obligations in the table above will be offset against the carrying value of the related Energy Servers at the end of the lease and the remainder recognized as a gain at that point.

Portfolio Financings through PPA Entities - Customer arrangements entered into prior to January 1, 2020 under Portfolio Financing arrangements through a PPA Entity that qualified as leases are accounted for as either sales-type leases or operating leases. Since January 1, 2020, we have not entered into any new PPAs with customers under such arrangements.

The components of our aggregate net investment in sales-type leases under our Portfolio Financings through PPA entities consisted of the following (in thousands):

	June 30, 2021	December 31, 2020
Lease payment receivables, net[1]	$ 47,170	$ 49,806
Estimated residual value of leased assets (unguaranteed)	890	890
Net investment in sales-type leases	48,060	50,696
Less: current portion	(5,603)	(5,428)
Non-current portion of net investment in sales-type leases	$ 42,457	$ 45,268

[1] Net of current estimated credit losses of approximately $0.1 million and $0.1 million as of June 30, 2021 and December 31, 2020, respectively.

As of June 30, 2021, the future scheduled customer payments from sales-type leases were as follows (in thousands):

	Future minimum lease payments
Remainder of 2021	$ 2,971
2022	6,110
2023	6,435
2024	6,797
2025	7,125
Thereafter	19,176
Total undiscounted cash flows	48,614
Less: imputed interest	(1,393)
Present value of lease payments[1]	$ 47,221

[1] Amount comprises a current and long-term portion of lease receivables of $5.6 million and $42.5 million, respectively, after giving effect to a $0.1 million current expected credit loss reserve on the long-term portion, which is reflected as a component of the net investment in sales-type leases presented in our condensed consolidated statement of financial position as customer financing receivables.

Future estimated operating lease payments we expect to receive from Portfolio Financing arrangements through PPA Entities as of June 30, 2021, were as follows (in thousands):

	Operating Leases
Remainder of 2021	$ 21,798
2022	44,258
2023	45,345
2024	46,590
2025	47,612
Thereafter	264,207
Total lease payments	$ 469,810

10. Stock-Based Compensation Expense and Employee Benefit Plans

Stock-Based Compensation Expense

The following table summarizes the components of stock-based compensation expense in the condensed consolidated statements of operations (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Cost of revenue	$ 3,804	$ 4,736	$ 6,803	$ 10,243
Research and development	5,291	4,714	10,199	10,810
Sales and marketing	4,010	2,234	8,095	6,124
General and administrative	6,028	6,947	11,246	14,473
	$ 19,133	$ 18,631	$ 36,343	$ 41,650

Stock Option and Stock Award Activity

The following table summarizes the stock option activity under our stock plans during the reporting period:

	Outstanding Options			
	Number of Shares	Weighted Average Exercise Price	Remaining Contractual Life (Years)	Aggregate Intrinsic Value
				(in thousands)
Balances at December 31, 2020	15,354,271	$ 21.27	6.0	$ 129,855
Granted	—			
Exercised	(2,470,262)	24.67		
Cancelled	(630,306)	13.58		
Balances at June 30, 2021	12,253,703	20.98	5.8	96,586
Vested and expected to vest at June 30, 2021	12,046,166	21.18	5.8	92,978
Exercisable at June 30, 2021	8,619,596	25.28	5.1	37,719

Stock Options - During the three months ended June 30, 2021 and 2020, we recognized $3.4 million and $4.9 million of stock-based compensation expense for stock options, respectively. We did not grant options in the three and six months ended June 30, 2021. We granted 200,000 options of Class A common stock during the three and six months ended June 30, 2020 and the weighted average grant-date fair value of those options was $7.30 per share.

As of June 30, 2021 and 2020, we had unrecognized compensation expense related to unvested stock options of $12.6 million and $31.0 million, respectively. This expense is expected to be recognized over the remaining weighted-average period of 1.3 years and 2.2 years, respectively. Cash received from stock options exercised totaled $60.9 million and $1.0 million for the six months ended June 30, 2021 and 2020, respectively.

A summary of our stock awards activity and related information is as follows:

	Number of Awards Outstanding	Weighted Average Grant Date Fair Value
Unvested Balance at December 31, 2020	6,418,788	$ 13.71
Granted	5,147,861	24.56
Vested	(1,951,664)	16.94
Forfeited	(745,708)	13.43
Unvested Balance at June 30, 2021	8,869,277	19.32

Stock Awards - The estimated fair value of restricted stock units ("RSUs ") and performance stock units ("PSUs") is based on the fair value of our Class A common stock on the date of grant. For the three months ended June 30, 2021 and 2020, we recognized $14.1 million and $10.5 million of stock-based compensation expense for stock awards, respectively.

As of June 30, 2021 and 2020, we had $141.2 million and $35.3 million of unrecognized stock-based compensation expense related to unvested stock awards, expected to be recognized over a weighted average period of 2.6 years and 1.2 years, respectively.

During 2020 and 2021, we granted PSUs to certain executive officers and employees that only vest upon the achievement of certain specific financial or operational performance criteria. Stock-based compensation expense associated with these PSUs is recognized over the service period as we evaluate the probability of the achievement of the performance conditions.

In May 2021, we issued RSUs and PSUs to our Chief Executive Officer. The RSUs vest over four years. Some of the PSUs can be earned based on achieving certain financial performance goals while the remaining are earned based upon achieving certain stock price goals. The PSUs will be subject to a two-year post-vest holding period in which the award holder will be restricted from selling any shares (net of shares settled for taxes). As of June 30, 2021, the unamortized compensation expense for the RSUs and PSUs was $30.0 million. Actual compensation expense is dependent on the performance of the PSUs that vest based upon a performance condition. We estimated the fair value of the PSUs that vest based on a market condition on the date of grant using a Monte Carlo simulation with the following assumptions: (i) expected volatility of 71.2%, (ii) risk-free interest rate of 1.6%, and (iii) no expected dividend yield.

The following table presents the stock activity and the total number of shares available for grant under our stock plans as of June 30, 2021:

	Plan Shares Available for Grant
Balances at December 31, 2020	20,233,754
Added to plan	7,675,984
Granted	(5,147,681)
Cancelled	1,376,014
Expired	(171,843)
Balances at June 30, 2021	23,966,228

2018 Employee Stock Purchase Plan

During the six months ended June 30, 2021 and 2020, we recognized $2.2 million and $4.7 million of stock-based compensation expense for the 2018 ESPP, respectively. We issued 977,508 shares in the six months ended June 30, 2021. During the six months ended June 30, 2021, we added an additional 1,902,572 shares and there were 3,512,465 shares available for issuance as of June 30, 2021.

As of June 30, 2021 and 2020, we had $2.1 million and $3.7 million of unrecognized stock-based compensation expense, expected to be recognized over a weighted average period of 0.2 years and 0.6 years, respectively.

11. Portfolio Financings

Overview

We have developed three financing options that enable customers' use of the Energy Servers through third-party ownership financing arrangements. For additional information on these financing options, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2020.

PPA Entities' Aggregate Assets and Liabilities

Generally, the assets of an operating company owned by an investment company can be used to settle only the operating company obligations, and the operating company creditors do not have recourse to us. The following are the aggregate carrying values of our VIEs' assets and liabilities in our condensed consolidated balance sheets, after eliminations of intercompany transactions and balances, including each of the PPA Entities in the PPA IIIa transaction, the PPA IV transaction, and the PPA V transaction (in thousands):

	June 30, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 4,140	$ 1,421
Restricted cash	1,296	4,698
Accounts receivable	4,207	4,420
Customer financing receivable	5,603	5,428
Prepaid expenses and other current assets	628	3,048
Total current assets	15,874	19,015
Property and equipment, net	240,326	252,020
Customer financing receivable, non-current	42,457	45,268
Restricted cash, non-current	15,208	15,320
Other long-term assets	—	37
Total assets	$ 313,865	$ 331,660
Liabilities		
Current liabilities:		
Accrued expenses and other current liabilities	$ 16,118	$ 19,510
Deferred revenue and customer deposits	662	662
Non-recourse debt	117,690	120,846
Total current liabilities	134,470	141,018
Deferred revenue and customer deposits, non-current	5,744	6,072
Non-recourse debt, non-current	98,093	102,045
Total liabilities	$ 238,307	$ 249,135

We consolidated each PPA Entity as VIEs in the PPA IV transaction and PPA V transaction, as we remain the minority shareholder in each of these transactions but have determined that we are the primary beneficiary of these VIEs. These PPA Entities contain debt that is non-recourse to us and own Energy Server assets for which we do not have title.

12. Related Party Transactions

Our operations include the following related party transactions (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Total revenue from related parties	$ 4,124	$ 881	$ 4,894	$ 1,930
Interest expense to related parties	—	794	—	2,160

Bloom Energy Japan Limited

In May 2013, we entered into a joint venture with Softbank Corp., which is accounted for as an equity method investment. Under this arrangement, we sell Energy Servers and provide maintenance services to the joint venture. For the three months ended June 30, 2021 and 2020, we recognized related party total revenue of $0.8 million and $0.9 million, respectively. For the six months ended June 30, 2021 and 2020, we recognized related party total revenue of $1.6 million and $1.9 million, respectively. We had no accounts receivable from this joint venture as of June 30, 2021.

SK Engineering & Construction Co., Ltd Joint Venture

In September 2019, we entered into a joint venture agreement with SK E&C to establish a light-assembly facility in the Republic of Korea for sales of certain portions of our Energy Server for the stationary utility and commercial and industrial market in the Republic of Korea. The joint venture is majority controlled and managed by us and is accounted for as a consolidated subsidiary. For the three and six months ended June 30, 2021, we recognized related party revenue of $3.3 million. As of June 30, 2021, we had outstanding accounts receivable of $3.6 million. We recognized no related party revenue for the three and six months ended June 30, 2020.

13. Commitments and Contingencies

Commitments

Purchase Commitments with Suppliers and Contract Manufacturers - As of June 30, 2021 and December 31, 2020, we had no material open purchase orders with our component suppliers and third-party manufacturers that are not cancellable.

Portfolio Financings Performance Guarantees - We guarantee the performance of Energy Servers at certain levels of output and efficiency to customers over the contractual term. We paid $0.1 million and $5.7 million for the six months ended June 30, 2021 and 2020, respectively.

Letters of Credit - In 2019, pursuant to the PPA II upgrade of Energy Servers, we agreed to indemnify our financing partner for losses that may be incurred in the event of certain regulatory, legal or legislative development and established a cash-collateralized letter of credit facility for this purpose. As of June 30, 2021, the balance of this cash-collateralized letter of credit was $107.4 million, of which $34.6 million and $72.8 million is recognized as short-term and long-term restricted cash, respectively.

Pledged Funds -In 2019, pursuant to the PPA IIIb refinancing and energy servers upgrade program, we pledged $20.0 million for a seven-year period to secure our operations and maintenance obligations with respect to the totality of our obligations to the financier. We categorized the $20.0 million as restricted cash on our condensed consolidated balance sheet as of December 31, 2019. It was agreed all or a portion of such funds would be released if we meet certain credit rating and/or market capitalization milestones prior to the end of the pledge period. If we do not meet the required criteria within the first five-year period, the funds would still be released to us over the following two years as long as the energy servers continue to perform in compliance with our warranty obligations. In December of 2020, we met our first milestone and 33% or $6.6 million of the $20.0 million was released and no longer required to be pledged. As of June 30, 2021, the balance of the long-term restricted cash was $13.3 million.

Contingencies

Indemnification Agreements - We enter into standard indemnification agreements with our customers and certain other business partners in the ordinary course of business. Our exposure under these agreements is unknown because it involves future claims that may be made against us but have not yet been made. To date, we have not paid any claims or been required to defend any action related to our indemnification obligations. However, we may record charges in the future as a result of these indemnification obligations.

Delaware Economic Development Authority - In March 2012, we entered into an agreement with the Delaware Economic Development Authority to provide a grant of $16.5 million to us as an incentive to establish a new manufacturing facility in Delaware and to provide employment for full time workers at the facility over a certain period of time. As of June 30, 2021, we have recorded $1.0 million in current liabilities and $9.4 million in other long-term liabilities for potential future repayments of this grant.

Investment Tax Credits - Our Energy Servers are eligible for federal ITCs that accrued to qualified property under Internal Revenue Code Section 48 when placed into service. However, the ITC program has operational criteria that extend for five years. If the energy property is disposed of or otherwise ceases to be qualified investment credit property before the close of the five-year recapture period is fulfilled, it could result in a partial reduction of the incentives. Energy Servers are purchased by the PPA Entities, other financial sponsors, or customers and, therefore, these parties bear the risk of repayment if the assets placed in service do not meet the ITC operational criteria in the future although in certain limited circumstances we do provide indemnification for such risk.

Legal Matters - We are involved in various legal proceedings that arise in the ordinary course of business. We review all legal matters at least quarterly and assess whether an accrual for loss contingencies needs to be recorded. We record an accrual for loss contingencies when management believes that it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Legal matters are subject to uncertainties and are inherently unpredictable, so the actual liability in any such matters may be materially different from our estimates. If an unfavorable resolution were to occur, there exists the possibility of a material adverse impact on our consolidated financial condition, results of operations or cash flows for the period in which the resolution occurs or on future periods.

In July 2018, two former executives of Advanced Equities, Inc., Keith Daubenspeck and Dwight Badger, filed a statement of claim with the American Arbitration Association in Santa Clara, CA, against us, Kleiner Perkins, Caufield & Byers, LLC (“KPCB”), New Enterprise Associates, LLC (“NEA”) and affiliated entities of both KPCB and NEA seeking to compel arbitration and alleging a breach of a confidential agreement executed between the parties on June 27, 2014 (the “Confidential Agreement”). On May 7, 2019, KPCB and NEA were dismissed with prejudice. On June 15, 2019, a second amended statement of claim was filed against us alleging securities fraud, fraudulent inducement, a breach of the Confidential Agreement, and violation of the California unfair competition law. On July 16, 2019, we filed our answering statement and affirmative defenses. On September 27, 2019, we filed a motion to dismiss the statement of claim. On March 24, 2020, the Tribunal denied our motion to dismiss in part, and ordered that claimant’s relief is limited to rescission of the Confidential Agreement or remedies consistent with rescission, and not expectation damages. On September 14, 2020, the Tribunal issued an interim order dismissing the claimant’s remaining claims and requesting further briefing on the issue of prevailing party. On November 10, 2020, the Tribunal issued an order declaring us the prevailing party and requesting a motion for award of attorney’s fees. On March 17, 2021, we received the final award for attorneys' fees and costs. On March 26, 2021, we filed a petition in the Northern District of California to confirm the award. Messrs. Badger and Daubenspeck have taken the position that the award should be vacated, including on the ground that one of the arbitrators made insufficient disclosures or was biased against them.

In June 2019, Messrs. Daubenspeck and Badger filed a complaint against our Chief Executive Officer ("CEO") and our former Chief Financial Officer ("CFO") in the United States District Court for the Northern District of Illinois asserting nearly identical claims as those in the pending arbitration discussed above. The lawsuit was stayed pending the outcome of the arbitration. The stay was lifted on October 20, 2020. On March 19, 2021 we filed a motion to dismiss the case on several grounds. On May 3, 2021, plaintiffs filed a motion to stay the lawsuit pending the outcome of the petition to confirm the arbitration award in the Northern District of California. We believe the complaint to be without merit and that the issues were previously tried and dismissed in the arbitration. We are unable to estimate any range of reasonably possible losses.

In March 2019, the Lincolnshire Police Pension Fund filed a class action complaint in the Superior Court of the State of California, County of Santa Clara, against us, certain members of our

senior management, certain of our directors and the underwriters in our July 25, 2018 IPO alleging violations under Sections 11 and 15 of the Securities Act of 1933, as amended

(the "Securities Act"), for alleged misleading statements or omissions in our Registration Statement on Form S-1 filed with the SEC in connection with the IPO. Two related class action cases were subsequently filed in the Santa Clara County Superior Court against the same defendants containing the same allegations; Rodriquez vs Bloom Energy et al. was filed on April 22, 2019 and Evans vs Bloom Energy et al. was filed on May 7, 2019. These cases have been consolidated. Plaintiffs' consolidated amended complaint was filed with the court on September 12, 2019. On October 4, 2019, defendants moved to stay the lawsuit pending the federal district court action discussed below. On December 7, 2019, the Superior Court issued an order staying the action through resolution of the parallel federal litigation mentioned below. We believe the complaint to be without merit and we intend to defend this action vigorously. We are unable to estimate any range of reasonably possible losses.

In May 2019, Elissa Roberts filed a class action complaint in the federal district court for the Northern District of California against us, certain members of our senior management team, and certain of our directors alleging violations under Section 11 and 15 of the Securities Act for alleged misleading statements or omissions in our Registration Statement on Form S-1 filed with the SEC in connection with the IPO. On September 3, 2019, James Hunt was appointed as lead plaintiff and Levi & Korsinsky was appointed as plaintiff's counsel. On November 4, 2019, plaintiffs filed an amended complaint adding the underwriters in the IPO, claims under Sections 10b and 20a of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and extending the class period to September 16, 2019. On April 21, 2020, plaintiffs filed a second amended complaint adding claims under the Securities Act. The second amended complaint also adds allegations pertaining to the restatement and, as to claims under the Exchange Act, extends the class period through February 12, 2020. On July 1, 2020, we filed a motion to dismiss the second amended complaint and are waiting for a ruling on that motion. We believe the complaint to be without merit and we intend to defend this action vigorously. We are unable to predict the outcome of this litigation at this time and accordingly are not able to estimate any range of reasonably possible losses.

In September 2019, we received a books and records demand from purported stockholder Dennis Jacob ("Jacob Demand"). The Jacob Demand cites allegations from the September 17, 2019 report prepared by admitted short seller Hindenburg Research. In November 2019, we received a substantially similar books and records demand from the same law firm on behalf of purported stockholder Michael Bolouri ("Bolouri Demand" and, together with the Jacob Demand, the "Demands"). On January 13, 2020, Messrs. Jacob and Bolouri filed a complaint in the Delaware Court of Chancery to enforce the Demands in the matter styled *Jacob, et al. v. Bloom Energy Corp.*, C.A. No. 2020-0023-JRS. On March 9, 2020, Messrs. Jacob and Bolouri filed an amended complaint in the Delaware Court of Chancery to add allegations regarding the restatement. The court held a one-day trial on December 7, 2020. On February 25, 2021, the Delaware Court of Chancery issued a decision rejecting the Bolouri Demand but granting in part the Jacob Demand allowing limited access to certain books and records pertaining to the allegations made in the Hindenburg Research Report. On March 29, 2021, the Court of Chancery entered a Final Order and Judgment regarding the required production of documents. On April 28, 2021, we produced documents responsive to the Final Order and Judgment to Mr. Jacob. We are unable to estimate any range of reasonably possible losses.

In March 2020, Francisco Sanchez filed a class action complaint in Santa Clara County Superior Court against us alleging certain wage and hour violations under the California Labor Code and Industrial Welfare Commission Wage Orders and that we engaged in unfair business practices under the California Business and Professions Code, and in July 2020 he amended his complaint to add claims under the California Labor Code Private Attorneys General Act. On November 30, 2020, we filed a motion to compel arbitration and the motion was to be heard on March 5, 2021. On February 24, 2021, Mr. Sanchez dismissed the individual and class action claims without prejudice, leaving one cause of action for enforcement of the Private Attorney Generals Act. In April 2021, an amended complaint reflecting these changes was filed with the Santa Clara Superior Court. The parties have agreed to attend a mediation on January 10, 2022. Given that the case is still in its early stages, we are unable to estimate any range of reasonably possible losses.

In June 2021, we filed a petition for writ of mandate and a complaint for declaratory and injunctive relief in the Santa Clara Superior Court against the City of Santa Clara for failure to issue building permits for two of our customer installations and asking the court to require the City of Santa Clara to process and issue the building permits. If we are unable to secure building permits for these customer installations in a timely fashion, our customers will terminate their contracts with us and select another energy provider. In addition, if we are no longer able to install our Energy Servers in Santa Clara under building permits, we may not able to secure future customer bookings for installation in the City of Santa Clara.

14. Segment Information

Our chief operating decision makers ("CODMs"), the CEO and the CFO, review financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. The CODMs allocate resources and make operational decisions based on direct involvement with our operations and product development efforts. We are managed under a functionally-based organizational structure with the head of each function reporting to the CEO. The CODMs assess performance, including incentive compensation, based upon consolidated operations performance and financial results on a consolidated basis. As such, we have a single operating unit structure and are a single reporting segment.

15. Income Taxes

For the three months ended June 30, 2021 and 2020, we recorded provisions for income taxes of $0.3 million and $0.1 million on pre-tax losses of $58.1 million and $47.8 million for effective tax rates of (0.5)% and (0.3)%, respectively. For the six months ended June 30, 2021 and 2020, we recorded provisions for income taxes of $0.4 million and $0.3 million on pre-tax losses of $87.8 million and $129.4 million for effective tax rates of (0.5)% and (0.2)%, respectively.

The effective tax rate for the three and six months ended June 30, 2021 and 2020 is lower than the statutory federal tax rate primarily due to a full valuation allowance against U.S. deferred tax assets.

16. Net Loss per Share Available to Common Stockholders

The following table sets forth the computation of our net loss per share available to common stockholders, basic and diluted (in thousands, except share and per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Numerator:				
Net loss available to Class A and Class B common stockholders	$ (53,863)	$ (42,512)	$ (78,752)	$ (118,461)
Denominator:				
Weighted average shares of common stock, basic and diluted	172,749	125,928	171,753	124,823
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.31)	$ (0.34)	$ (0.46)	$ (0.95)

The following common stock equivalents (in thousands) were excluded from the computation of our net loss per share available to common stockholders, diluted, for the three months presented as their inclusion would have been antidilutive:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Convertible notes	14,187	31,162	14,187	31,162
Stock options and awards	6,403	4,788	15,028	4,889
	20,590	35,950	29,215	36,051

17. Subsequent Events

There have been no subsequent events that occurred during the period subsequent to the date of these condensed consolidated financial statements that would require adjustment to our disclosure in the condensed consolidated financial statements as presented.

ITEM 2 - MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on current expectations, estimates, and projections about our industry, management's beliefs, and certain assumptions made by management. For example, forward-looking statements include, but are not limited to, our expectations regarding our products, services, business strategies, impact of COVID-19, operations, supply chain, new markets and the sufficiency of our cash and our liquidity. Forward-looking statements can also be identified by words such as "future," "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "targets," "forecasts," "will," "would," "could," "can," "may," and similar terms. These statements are based on the beliefs and assumptions of our management based on information currently available to management at the time they are made. Such forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by such forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included in Part II, Item 1A of this Quarterly Report on Form 10-Q and in our other filings with the Securities and Exchange Commission, including our Annual Report on Form 10-K for the fiscal year ended December 31, 2020 filed on February 26, 2021. Such forward-looking statements speak only as of the date of this report. We disclaim any obligation to update any forward-looking statements to reflect events or circumstances after the date of such statements. You should review these risk factors for a more complete understanding of the risks associated with an investment in our securities. The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and notes thereto included elsewhere in this Quarterly Report on Form 10-Q.

Overview

Description of Bloom Energy

We created the first large-scale, commercially viable solid oxide fuel-cell based power generation platform that provides clean and resilient power to businesses, essential services, and critical infrastructure. Our technology, invented in the United States, is the most advanced thermal electric generation technology on the market today. Our fuel-flexible Bloom Energy Servers can use biogas and hydrogen, in addition to natural gas, to create electricity at significantly higher efficiencies than traditional, combustion-based resources. In addition, our fuel cell technology can be used to create hydrogen, which is increasingly recognized as a critically important tool necessary for the full decarbonization of the energy economy. Our enterprise customers are among the largest multinational corporations who are leaders in adopting new technologies. We also have strong relationships with some of the largest utility companies in the United States and the Republic of Korea.

We market and sell our Energy Servers primarily through our direct sales organization in the United States, and also have direct and indirect sales channels internationally. Recognizing that deploying our solutions requires a material financial commitment, we have developed a number of financing options to support sales of our Energy Servers to customers who lack the financial capability to purchase our Energy Servers directly, who prefer to finance the acquisition using third-party financing or who prefer to contract for our services on a pay-as-you-go model.

Our typical target commercial or industrial customer has historically been either an investment-grade entity or a customer with investment-grade attributes such as size, assets and revenue, liquidity, geographically diverse operations and general financial stability. We have recently expanded our product and financing options to the below-investment-grade customers and have also expanded internationally to target customers with deployments on a wholesale grid. Given that our customers are typically large institutions with multi-level decision making processes, we generally experience a lengthy sales process.

COVID-19 Pandemic

General

We continue to monitor and adjust as appropriate our operations in response to the COVID-19 pandemic. As a technology company that supplies resilient, reliable and clean energy, we have been able to conduct the majority of operations as an "essential business" in California and Delaware, where we manufacture and perform many of our R&D activities, as well as in other states and countries where we are installing or maintaining our Energy Servers. While many of our employees continue to work from home unless they are directly supporting essential manufacturing production operations, installation work, and service and maintenance activities as well as some R&D and general administrative functions, we have implemented

a phased-in return of employees who were not included in these essential groups, including at our headquarters in San Jose, California. We expect a full return to the office in the Fall of 2021. We maintain protocols to minimize the risk of COVID-19 transmission within our facilities, including enhanced cleaning, temperature screenings upon entry and masking if required by the local authorities. We will continue to follow CDC and local guidelines when notified of possible exposures. For more information regarding the risks posed to our company by the COVID-19 pandemic, refer to Part II, Item 1A, *Risk Factors – Risks Related to Our Products and Manufacturing – Our business has been and continues to be adversely affected by the COVID-19 pandemic.*

Liquidity and Capital Resources

COVID-19 created disruptions throughout various aspects of our business as noted herein, but had a limited impact on our results of operation throughout 2020 and the three and six months ended June 30, 2021. This is in part due to the fact that throughout 2020, we were conservative with our working capital spend, maintaining as much flexibility as possible around the timing of taking and paying for inventory and manufacturing our product while managing potential changes or delays in installations. While we improved our liquidity in 2020, we increased our working capital spend in the first half of 2021. We have entered into new leases to maintain sufficient manufacturing facilities to meet anticipated demand in 2022, including new product line expansion. In addition, we also increased our working capital spend and resources to enhance our marketing efforts and to expand into new geographies both domestically and internationally.

Although, we believe we have the sufficient capital for these activities over the next 12 months, we may enter the equity or debt market for additional expansion capital. Please refer to Note 7 - *Outstanding Loans and Security Agreements* in Part I, Item 1, *Financial Statements*; and Part II, Item 1A, *Risk Factors – Risks Related to Our Liquidity – Our substantial indebtedness, and restrictions imposed by the agreements governing our and our PPA Entities' outstanding indebtedness, may limit our financial and operating activities and may adversely affect our ability to incur additional debt to fund future needs,* and *We may not be able to generate sufficient cash to meet our debt service obligations*, for more information regarding the terms of and risks associated with our debt.

Sales

We have not experienced a significant impact on our selling activity related to COVID-19 during the three and six months ended June 30, 2021.

Customer Financing

The ongoing COVID-19 pandemic resulted in a significant drop in the ability of many financiers (particularly financing institutions) to monetize tax credits, primarily the result of a potential drop in taxable income stemming from the pandemic. However, during the three months ended June 30, 2021, we began to see this constraint improving. As of June 30, 2021, we had obtained financing for the majority of the financing required for our remaining 2021 installations. In addition, our ability to obtain financing for our Energy Servers partly depends on the creditworthiness of our customers, and a few of our customers' credit ratings have fallen during the pandemic, which can impact the financing for their use of an Energy Server. We continue to work on obtaining the remaining financing required for our remaining 2021 installations but if we are unable to secure financing for any of our remaining 2021 installations or any new installations, our revenue, cash flow and liquidity will be materially impacted.

Installations and Maintenance of Energy Servers

Our installation and maintenance operations were impacted by the COVID-19 pandemic in 2020 and these impacts continued during the three and six months ended June 30, 2021. Our installation projects have experienced some delays relating to, among other things, shortages in available parts and labor for design, installation and other work; the inability or delay in our ability to access customer facilities due to shutdowns or other restrictions; and the decreased productivity of our general contractors, their sub-contractors, medium-voltage electrical gear suppliers, and the wide range of engineering and construction related specialist suppliers on whom we rely for successful and timely installations. Our installations completed during the three and six months ended June 30, 2021 were minimally impacted by these factors, but given our mitigation strategies, we were able to complete our planned installations.

As to maintenance, if we are delayed in or unable to perform scheduled or unscheduled maintenance, our previously-installed Energy Servers will likely experience adverse performance impacts including reduced output and/or efficiency, which could result in warranty and/or guaranty claims by our customers. Further, due to the nature of our Energy Servers, if we are unable to replace worn parts in accordance with our standard maintenance schedule, we may be subject to increased costs in the

future. During the three and six months ended June 30, 2021, we experienced no delays in servicing our Energy Servers due to COVID-19.

Supply Chain

During 2020, we experienced COVID-19 related delays from certain vendors and suppliers, although we were able to mitigate the impact so that we did not experience delays in the manufacturing and installation of our Energy Servers. We have a global supply chain and obtain components from Asia, Europe and India. In many cases, the components we obtain are jointly developed with our suppliers and unique to us, which makes it difficult to obtain and qualify alternative suppliers should our suppliers be impacted by the COVID-19 pandemic.

During the three and six months ended June 30, 2021, we continued to experience supply chain disruptions due to COVID-19. There have been a number of supply chain disruptions throughout the global supply chain as countries are in various stages of opening up and demand for certain components increases. Although we were able to find alternatives for many component shortages, we experienced some delays and cost increases with respect to logistics and container shortages. We have put actions in place to mitigate the disruptions by booking alternate sea routes, air shipments, creating virtual hubs and consolidating shipments coming from the same region. During the three months ended June 30, 2021, we experienced an increase in lead times for most of our components due to a variety of factors, including supply shortages, shipping delays and labor shortages, and we expect this to continue into the third quarter of 2021. During the three months ended June 30, 2021, we also experienced price increases in raw materials, which are used in our components and subassemblies that we expect to continue into the third quarter of 2021. In addition, we expect component shortages especially for semiconductors and specialty metals to persist at least through the second half of 2021. In the event we are unable to mitigate the impact of price increases in raw materials, electric components and freight, it could delay the manufacturing and installation of our Energy Servers, which would adversely impact our cash flows and results of operations, including revenue and gross margin.

If spikes in COVID-19 occur in regions in which our supply chain operates, including as a result of the Delta variant, which recently happened in India and Japan, we could experience a delay in components and incur further freight price increases, which could in turn impact production and installations and our cash flow and results of operations, including revenue and gross margin.

Manufacturing

To date, COVID-19 has not impacted our production given the safety protocols we have put in place augmented by our ability to increase our shifts and obtain a contingent work force for some of the manufacturing activities. We have incurred additional labor expense due to enhanced safety protocols designed to minimize exposure and risk of COVID-19 transmission. If COVID-19 materially impacts our supply chain or if we experience a significant COVID-19 outbreak that affects our manufacturing workforce, our production could be adversely impacted which could adversely impact our cash flow and results of operation, including revenue.

Purchase and Financing Options

Overview

Initially, we offered our Energy Servers only as direct sale, in which the customer purchases the product directly from us for cash payments made in installments. Over time, we learned that while interested in our Energy Servers, some customers lacked the interest or financial capability to purchase our Energy Servers directly. Additionally, some of these customers were not in a position to optimize the use of federal tax benefits associated with the ownership of our Energy Servers like the federal Investment Tax Credit ("ITC") or accelerated depreciation.

In order to expand our offerings to those unable to or those who prefer not directly purchase our Energy Servers, we subsequently developed three financing options that enabled customers' use of the Energy Servers with a pay as you go model through third-party ownership financing arrangements.

Under the Traditional Lease option, a customer may lease one or more Energy Servers from a financial institution that purchases such Energy Servers. In most cases, the financial institution completes its purchase from us immediately after commissioning. We both (i) facilitate this financing arrangement between the financial institution and the customer and (ii) provide ongoing operations and maintenance services for the Energy Servers (such arrangement, a “Traditional Lease”).

Alternatively, a customer may enter into one of two major types of contracts with us for the use of the Energy Servers or the purchase of electricity generated by the Energy Servers. The first type of contract has a fixed monthly payment component

that is required regardless of the Energy Servers' performance, and in some cases also includes a variable payment based on the Energy Server's performance (a "Managed Services Agreement"). Managed Services Agreements are then financed pursuant to a sale-leaseback with a financial institution (a "Managed Services Financing"). The second type of services contract requires the customer to pay for each kilowatt-hour produced by the Energy Servers (a "Power Purchase Agreement" or "PPA"). PPAs are typically financed on a portfolio basis. PPAs have been financed through tax equity partnerships, acquisition financings, and direct sales to investors (each, a "Portfolio Financing").

Our capacity to offer our Energy Servers through any of these financed arrangements depends in large part on the ability of the financing party or parties involved to optimize the federal tax benefits associated with a fuel cell, like the ITC or accelerated depreciation. Interest rate fluctuations may also impact the attractiveness of any financing offerings for our customers, and currency exchange fluctuations may also impact the attractiveness of international offerings. Our ability to finance a Managed Services Agreement or a PPA is limited by the creditworthiness of the customer. Additionally, the Traditional Lease and Managed Services Financing options are also limited by the customer's willingness to commit to making fixed payments regardless of the performance of our obligations under the customer agreement.

In each of our financing options, we typically perform the functions of a project developer, including identifying end customers and financiers, leading the negotiations of the customer agreements and financing agreements, securing all necessary permitting and interconnections approvals, and overseeing the design and construction of the project up to and including commissioning the Energy Servers.

Warranties and Guaranties

We typically provide warranties and guaranties regarding the performance (efficiency and output) of the Energy Servers' to both the customer and in the case of Portfolio Financings, the investor. We refer to a "performance warranty" as a commitment where the failure of the Energy Servers to satisfy the stated performance level obligates us to repair or replace the Energy Servers as necessary to improve performance. If we fail to complete such repair or replacement, or if repair or replacement is impossible, we may be obligated to repurchase the Energy Servers from the customer or financier. We refer to a "performance guaranty" as a commitment where the failure of the Energy Servers to satisfy the stated performance level obligates us to make a payment to compensate the beneficiary of such guaranty for the resulting increased cost or decreased benefits resulting from the failure to meet the guaranteed level. Our obligation to make payments under the performance guaranty is always contractually capped.

In most cases, we include the first year of performance warranties and guaranties in the sale price of the Energy Server. Typically, performance warranties and guaranties made for the benefit of the customer are in the Managed Services Agreement or PPA, as the case may be. In a Portfolio Financing, the performance warranties and guaranties made for the benefit of the investors are in an operations and maintenance agreement ("O&M Agreement"). In a Traditional Lease or direct purchase option, the performance warranties and guaranties are in an extended maintenance service agreement.

Direct Purchase

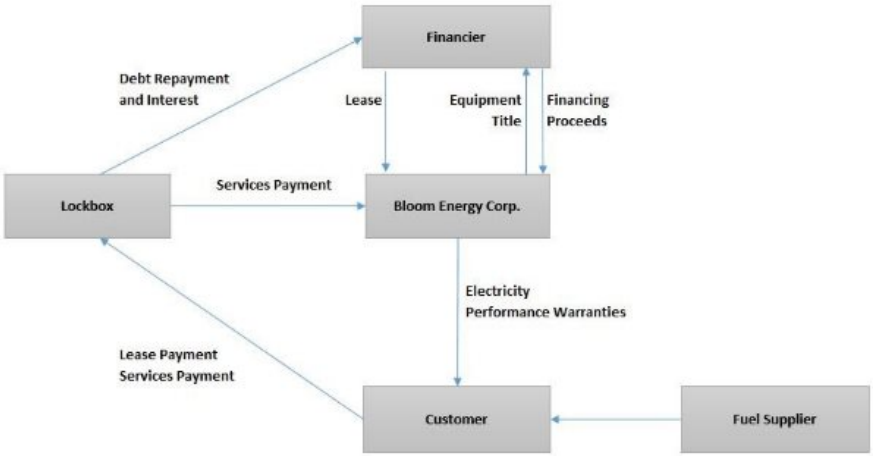
There are customers who purchase our Energy Servers directly pursuant to a fuel cell system supply and installation agreement. In connection with the purchase of Energy Servers, the customers enter into an O&M Agreement that provide for certain performance warranties and guaranties. The O&M Agreement may either be (i) for a one-year period, subject to annual renewal at the customer's option, under which our customers have historically almost always renewed the O&M Agreement for an additional year each year, or (ii) for a fixed term, typically 20 years.

These performance guarantees are negotiated on a case-by-case basis, but we typically provide an output guaranty of 95% measured semi-annually and an efficiency guaranty of 54% measured cumulatively from the date the applicable Energy Server(s) are commissioned. In each case, underperformance obligates us to make a payment to the owner of the Energy Server(s). As of June 30, 2021, our obligation to make payments for underperformance on the direct purchase projects was capped at an aggregate total of approximately $106.7 million (including payments both for low output and for low efficiency). As of June 30, 2021, our aggregate remaining potential liability under this cap was approximately $86.2 million.

Overview of Financing and Lease Options

The substantial majority of bookings made in recent periods have been Managed Services Agreements and PPAs. Each of our financing transaction structures is described in further detail below.

Managed Services Financing



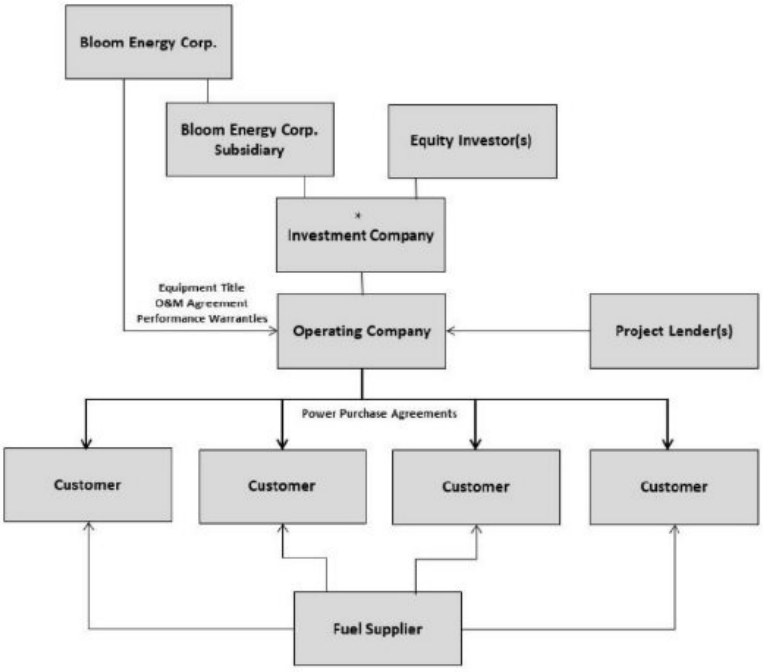
Under our Managed Services Financing option, we enter into a Managed Services Agreement with a customer for a certain term. In exchange for the use of the Energy Server and its generated electricity, the customer makes a monthly payment. The monthly payment always includes a fixed monthly capacity-based payment, and in some cases also includes a performance-based payment based on the performance of the Energy Server. The fixed capacity-based payments made by the customer under the Managed Services Agreement are applied toward our obligation to pay down our periodic rent liability under a sale-leaseback transaction with an investor. We assign all our rights to such fixed payments made by the customer to the financier, as lessor. The performance payment is transferred to us as compensation for operations and maintenance services and recognized as electricity revenue within the condensed consolidated statements of operations.

Under a Managed Services Financing, once we enter into a Managed Services Agreement with the customer, a financier is identified, we sell the Energy Server to the financier, as lessor, and the financier, as lessor, leases it back to us, as lessee, pursuant to a sale-leaseback transaction. The proceeds from the sale are recognized as a financing obligation within the condensed consolidated balance sheets. Any ongoing operations and maintenance service payments are scheduled in the Managed Services Agreement in the form of the performance-based payment described above. The financier typically pays the purchase price for an Energy Server contemplated by the Managed Services Agreement on or shortly after acceptance.

The duration of the master lease in a Managed Services Financing is currently between five and ten years.

Our Managed Services Agreements typically provide only for performance warranties of both the efficiency and output of the Energy Server, all of which are written for the benefit of the customer. These types of projects typically do not include guaranties above the warranty commitments, but in projects where the customer agreement includes a service payment for our operations and maintenance, that payment is typically proportionate to the output generated by the Energy Server(s) and our pricing assumes service revenues at the 95% output level. This means that our service revenues may be lower than expected if output is less than 95% and higher if output exceeds 95%. As of June 30, 2021, we had incurred no liabilities due to failure to repair or replace our Energy Servers pursuant to these performance warranties and the fleet of our Energy Servers deployed pursuant to the Managed Services Financings was performing at a lifetime average output of approximately 86%.

Portfolio Financings



*A type of Portfolio Financing pursuant to which we sell an entire operating company to an investor or tax-equity partnership in which we have no equity in the purchaser, also referred to as Third-Party PPA.

We have financed PPAs through two types of Portfolio Financings. In one type of transaction, we finance a portfolio of PPAs pursuant to a tax equity partnership in which we hold a managing member interest (such partnership, a "PPA Entity"). We sell the portfolio of Energy Servers to a single member limited liability project company (an "Operating Company"). The Operating Company sells the electricity generated by the Energy Servers contemplated by the PPAs to the ultimate end customers. As these transactions include an equity investment by us in the PPA Entity for which we are the primary beneficiary and therefore consolidate the entities, we recognize revenue as the electricity is produced. Our future plans to raise capital no longer contemplate these types of transactions.

We also finance PPAs through a second type of Portfolio Financing pursuant to which we sell an entire Operating Company to an investor or tax equity partnership in which we do not have an equity interest (a "Third-Party PPA"). We recognize revenue on the sale of each Energy Server purchased by the Operating Company on acceptance. For further discussion, see Note 11 - *Portfolio Financings* in Part I, Item 1, *Financial Statements*.

When we finance a portfolio of Energy Servers and PPAs through a Portfolio Financing, we enter into a sale, engineering and procurement and construction agreement ("EPC Agreement") and an O&M Agreement, in each case with the Operating Company that both is counter-party to the portfolio of PPAs and that will eventually own the Energy Servers. As counter-party to the portfolio of PPAs, the Operating Company, as owner of the Energy Servers, receives all customer payments generated under the PPAs, any ITC, all accelerated tax depreciation benefits, and any other available state or local benefits arising out of the ownership or operation of the Energy Servers, to the extent not already allocated to the end customer under the PPA.

The sales of our Energy Servers to the Operating Company in connection with a Portfolio Financing have many of the same terms and conditions as a direct sale. Payment of the purchase price is generally broken down into multiple installments,

which may include payments prior to shipment, upon shipment or delivery of the Energy Server, and upon acceptance of the Energy Server. Acceptance typically occurs when the Energy Server is installed and running at full power as defined in the applicable EPC Agreement. A one-year service warranty is provided with the initial sale. After the expiration of the initial standard one-year warranty, the Operating Company has the option to extend our operations and maintenance services under the O&M Agreement on an annual basis at a price determined at the time of purchase of our Energy Server, which may be renewed annually for each Energy Server for up to 30 years. After the standard one-year warranty period, the Operating Company has almost always exercised the option to renew our operations and maintenance services under the O&M Agreement.

We typically provide performance warranties and guaranties related to output to the Operating Company under the O&M Agreement. We also backstop all of the Operating Company's obligations under the portfolio of PPAs, including both the repair or replacement obligations pursuant to the performance warranties and any payment liabilities under the guaranties.

As of June 30, 2021, we had incurred no liabilities to investors in Portfolio Financings due to failure to repair or replace Energy Servers pursuant to these performance warranties. Our obligation to make payments for underperformance against the performance guaranties was capped at an aggregate total of approximately $114.3 million (including payments both for low output and for low efficiency) and our aggregate remaining potential liability under this cap was approximately $104.8 million.

Obligations to Operating Companies

In addition to our obligations to the end customers, our Portfolio Financings involve many obligations to the Operating Company that purchases our Energy Servers. These obligations are set forth in the applicable EPC Agreement and O&M Agreement, and may include some or all of the following obligations:

- designing, manufacturing, and installing the Energy Servers, and selling such Energy Servers to the Operating Company;
- obtaining all necessary permits and other governmental approvals necessary for the installation and operation of the Energy Servers, and maintaining such permits and approvals throughout the term of the EPC Agreements and O&M Agreements;
- operating and maintaining the Energy Servers in compliance with all applicable laws, permits and regulations;
- satisfying the performance warranties and guaranties set forth in the applicable O&M Agreements; and
- complying with any other specific requirements contained in the PPAs with individual end-customers.

The EPC Agreement obligates us to repurchase the Energy Server in the event of certain IP Infringement claims. The O&M Agreement obligates us to repurchase the Energy Servers in the event the Energy Servers fail to comply with the performance warranties and guaranties in the O&M Agreement and we do not cure such failure in the applicable time period, or that a PPA terminates as a result of any failure by us to perform the obligations in the O&M Agreement. In some of our Portfolio Financings, our obligation to repurchase Energy Servers under the O&M extends to the entire fleet of Energy Servers sold in the event a systemic failure affects more than a specified number of Energy Servers.

In some Portfolio Financings, we have also agreed to pay liquidated damages to the applicable Operating Company in the event of delays in the manufacture and installation of our Energy Servers, either in the form of a cash payment or a reduction in the purchase price for the applicable Energy Servers.

Both the upfront purchase price for our Energy Servers and the ongoing fees for our operations and maintenance are paid on a fixed dollar-per-kilowatt basis.

Administration of Operating Companies

In each of our Portfolio Financings in which we hold an interest in the tax equity partnership, we perform certain administrative services as managing member on behalf of the applicable Operating Company, including invoicing the end customers for amounts owed under the PPAs, administering the cash receipts of the Operating Company in accordance with the requirements of the financing arrangements, interfacing with applicable regulatory agencies, and other similar obligations. We are compensated for these services on a fixed dollar-per-kilowatt basis.

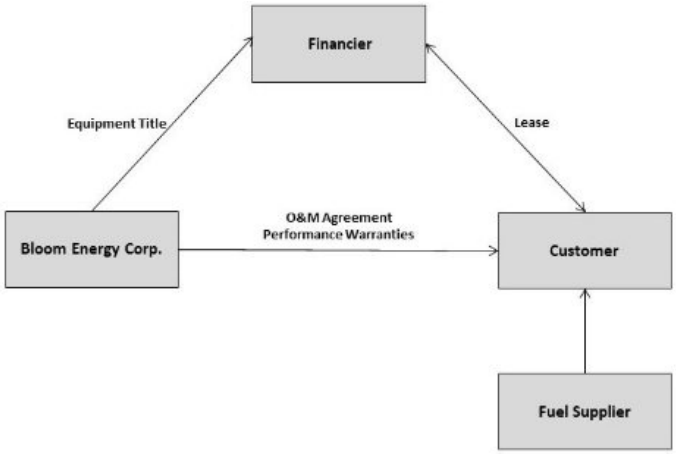
The Operating Company in each of our PPA Entities (with the exception of one PPA Entity) has incurred debt in order to finance the acquisition of Energy Servers. The lenders for these projects are a combination of banks and/or institutional investors. In each case, the debt is secured by all of the assets of the applicable Operating Company, such assets being primarily

comprised of the Energy Servers and a collateral assignment of each of the contracts to which the Operating Company is a party, including the O&M Agreement and the PPAs. As further collateral, the lenders receive a security interest in 100% of the membership interest of the Operating Company. The lenders have no recourse to us or to any of the other equity investors (the "Equity Investors") in the Operating Company for liabilities arising out of the portfolio.

We have determined that we are the primary beneficiary in the PPA Entities, subject to reassessments performed as a result of upgrade transactions. Accordingly, we consolidate 100% of the assets, liabilities and operating results of these entities, including the Energy Servers and lease income, in our condensed consolidated financial statements. We recognize the Equity Investors' share of the net assets of the investment entities as noncontrolling interests in subsidiaries in our condensed consolidated balance sheet. We recognize the amounts that are contractually payable to these investors in each period as distributions to noncontrolling interests in our condensed consolidated statements of convertible redeemable preferred stock, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest. Our condensed consolidated statements of cash flows reflect cash received from these investors as proceeds from investments by noncontrolling interests in subsidiaries. Our condensed consolidated statements of cash flows also reflect cash paid to these investors as distributions paid to noncontrolling interests in subsidiaries. We reflect any unpaid distributions to these investors as distributions payable to noncontrolling interests in subsidiaries on our condensed consolidated balance sheets. However, the Operating Companies are separate and distinct legal entities, and Bloom Energy Corporation may not receive cash or other distributions from the Operating Companies except in certain limited circumstances and upon the satisfaction of certain conditions, such as compliance with applicable debt service coverage ratios and the achievement of a targeted internal rate of return to the Equity Investors, or otherwise.

For further information about our Portfolio Financings, see Note 11 - *Portfolio Financings* in Part I, Item 1, *Financial Statements.*

Traditional Lease



Under the Traditional Lease option, the customer enters into a lease directly with a financier (the "Lease"), which pays us for our Energy Servers purchased pursuant to a direct sales agreement. We recognize product and installation revenue upon acceptance. After the standard one-year warranty period, our customers have almost always exercised the option to enter into service agreement for operations and maintenance work with us, under which we receive annual service payments from the customer. The price for the annual operations and maintenance services is set at the time we enter into the Lease. The term of a lease in a Traditional Lease option ranges from five to ten years.

The direct sales agreement provides for sale and the installation of our Energy Servers and includes a standard one-year warranty, to the financier as purchaser. The services agreement with the customer provides certain performance warranties and guaranties, with the services term offered on an annually renewing basis at the discretion of, and to, the customer. The customer must provide fuel for the Bloom Energy Servers to operate.

The direct sales agreement in a Traditional Lease arrangement typically provides for performance warranties and guaranties of both the efficiency and output of our Energy Servers, all of which are written in favor of the customer. As of June 30, 2021, we had incurred no liabilities due to failure to repair or replace our Energy Servers pursuant to these performance warranties. Our obligation to make payments for underperformance against the performance guaranties for projects financed pursuant to a Traditional Lease was capped contractually under the sales agreement between us and each customer at an aggregate total of approximately $6.0 million (including payments both for low output and for low efficiency) and our aggregate remaining potential liability under this cap was approximately $3.2 million.

Remarketing at Termination of Lease

In the event the customer does not renew or purchase our Energy Servers upon the expiration of its Lease, we may remarket any such Energy Servers to a third party. Any proceeds of such sale would be allocated between us and the applicable financing partner as agreed between them at the time of such sale.

Delivery and Installation

The timing of delivery and installations of our products have a significant impact on the timing of the recognition of product and installation revenue. Many factors can cause a lag between the time that a customer signs a purchase order and our recognition of product revenue. These factors include the number of Energy Servers installed per site, local permitting and utility requirements, environmental, health and safety requirements, weather, and customer facility construction schedules. Many of these factors are unpredictable and their resolution is often outside of our or our customers' control. Customers may also ask us to delay an installation for reasons unrelated to the foregoing, including delays in their obtaining financing. Further, due to unexpected delays, deployments may require unanticipated expenses to expedite delivery of materials or labor to ensure the installation meets the timing objectives. These unexpected delays and expenses can be exacerbated in periods in which we deliver and install a larger number of smaller projects. In addition, if even relatively short delays occur, there may be a significant shortfall between the revenue we expect to generate in a particular period and the revenue that we are able to recognize. For our installations, revenue and cost of revenue can fluctuate significantly on a periodic basis depending on the timing of acceptance and the type of financing used by the customer.

International Channel Partners

India. In India, sales activities are currently conducted by Bloom Energy (India) Pvt. Ltd., our wholly-owned indirect subsidiary; however, we continue to evaluate the Indian market to determine whether the use of channel partners would be a beneficial go-to-market strategy to grow our India market sales.

Japan. In Japan, sales have been conducted pursuant to a Japanese joint venture established between us and subsidiaries of SoftBank Corp, called Bloom Energy Japan Limited ("Bloom Energy Japan"). Under this arrangement, we sell Energy Servers to Bloom Energy Japan and we recognize revenue once the Energy Servers leave the port in the United States. Bloom Energy Japan enters into the contract with the end customer and performs all installation work as well as some of the operations and maintenance work. As of July 1, 2021, we acquired Softbank Corp.'s interest in Bloom Energy Japan Limited for a cash payment and our now the sole owner of Bloom Energy Japan.

The Republic of Korea. In 2018, Bloom Energy Japan consummated a sale of Energy Servers in the Republic of Korea to Korea South-East Power Company. Following this sale, we entered into a Preferred Distributor Agreement with SK Engineering & Construction Co., Ltd. ("SK E&C") to enable us to sell directly into the Republic of Korea.

Under our agreement with SK E&C, SK E&C has a right of first refusal during the term of the agreement, with certain exceptions, to serve as distributor of Energy Servers for any fuel cell generation project in the Republic of Korea, and we have the right of first refusal to serve as SK E&C's supplier of generation equipment for any Bloom Energy fuel cell project in the Republic of Korea. Under the terms of each purchase order, title, risk of loss and acceptance of the Energy Servers pass from us to SK E&C upon delivery at the named port of lading for shipment in the United States for the Energy Servers shipped in 2018 and thereafter, upon delivery at the named port of unlading in the Republic of Korea, prior to unloading subject to final purchase order terms. The Preferred Distributor Agreement has an initial term expiring on December 31, 2021, and thereafter will automatically be renewed for three-year renewal terms unless either party terminates this agreement by prior written notice under certain circumstances.

Under the terms of the Preferred Distributor Agreement, we (or our subsidiary) contract directly with the customer to provide operations and maintenance services for the Energy Servers. We have established a subsidiary in the Republic of Korea, Bloom Energy Korea, LLC, to which we subcontract such operations and maintenance services. The terms of the

operations and maintenance are negotiated on a case-by-case basis with each customer, but are generally expected to provide the customer with the option to receive services for at least 10 years, and for up to the life of the Energy Servers.

SK E&C Joint Venture Agreement. In September 2019, we entered into a joint venture agreement with SK E&C to establish a light-assembly facility in the Republic of Korea for sales of certain portions of our Energy Server for the stationary utility and commercial and industrial market in the Republic of Korea. The joint venture is majority controlled and managed by us, with the facility, which became operational in July 2020. Other than a nominal initial capital contribution by Bloom Energy, the joint venture will be funded by SK E&C. SK E&C, who currently acts as a distributor for our Energy Servers for the stationary utility and commercial and industrial market in the Republic of Korea, will be the primary customer for the products assembled by the joint venture.

Community Distributed Generation Programs

In July 2015, the state of New York introduced its Community Distributed Generation ("CDG") program, which extends New York's net metering program in order to allow utility customers to receive net metering credits for electricity generated by distributed generation assets located on the utility's grid but not physically connected to the customer's facility. This program allows for the use of multiple generation technologies, including fuel cells. Since then the states of Connecticut and Maine have instituted a similar program and we expect that other states may adopt similar programs in the future. In June 2020, the New York Public Service Commission issued an Order that limited the CDG compensation structure for "high capacity factor resources," including fuel cells, in a way that will make the economics for these types of projects more challenging in the future. However, the projects that were already under contract were grandfathered into the program under the previous compensation structure.

We have entered into sales, installation, operations and maintenance agreements with three developers for the deployment of our Energy Servers pursuant to the New York CDG program for a total of 441 systems. As of June 30, 2021, we have recognized revenue associated with 221 systems. We continue to believe that these types of subscriber-based programs could be a source of future revenue and will continue to look to generate sales through these programs during 2021.

Comparison of the Three and Six Months Ended June 30, 2021 and 2020

Key Operating Metrics

In addition to the measures presented in the condensed consolidated financial statements, we use certain key operating metrics below to evaluate business activity, to measure performance, to develop financial forecasts and to make strategic decisions.

We no longer consider billings related to our products to be a key operating metric. Billings as a metric was introduced to provide insight into our customer contract billings as differentiated from revenue when a significant portion of those customer contracts had product and installation billings recognized as electricity revenue over the term of the contract instead of at the time of delivery or acceptance. Today, a very small portion of our customer contracts have revenue recognized over the term of the contract, and thus it is no longer a meaningful metric for us.

Acceptances

We use acceptances as a key operating metric to measure the volume of our completed Energy Server installation activity from period to period. Acceptance typically occurs upon transfer of control to our customers, which depending on the contract terms is when the system is shipped and delivered to our customers, when the system is shipped and delivered and is physically ready for startup and commissioning, or when the system is shipped and delivered and is turned on and producing power.

The product acceptances in the three and six months ended June 30, 2021 and 2020 were as follows:

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
Product accepted during the period (in 100 kilowatt systems)	433	306	127	41.5 %	791	562	229	40.7 %

Product accepted for the three months ended June 30, 2021 compared to the same period in 2020 increased by 127 systems, or 41.5%, as demand increased for our Energy Servers in the Republic of Korea and the United States.

Product accepted for the six months ended June 30, 2021 compared to the same period in 2020 increased by 229 systems, or 40.7%, as demand increased for our Energy Servers in the Republic of Korea and the utility sector where we accepted 146 systems as part of the CDG program.

Our customers have several purchase options for our Energy Servers. The portion of acceptances attributable to each purchase option in the three and six months ended June 30, 2021 and 2020 was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Direct Purchase (including Third-Party PPAs and International Channels)	99 %	100 %	99 %	99 %
Managed Services	1 %	— %	1 %	1 %
	100 %	100 %	100 %	100 %

The portion of total revenue attributable to each purchase option in the three and six months ended June 30, 2021 and 2020 was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Direct Purchase (including Third-Party PPAs and International Channels)	89 %	88 %	89 %	87 %
Traditional Lease	1 %	1 %	1 %	1 %
Managed Services	5 %	5 %	5 %	6 %
Portfolio Financings	5 %	6 %	5 %	6 %
	100 %	100 %	100 %	100 %

Costs Related to Our Products

Total product related costs for the three and six months ended June 30, 2021 and 2020 was as follows:

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
Product costs of product accepted in the period	$2,351 /kW	$2,409 /kW	$(58) /kW	(2.4)%	$2,339/kW	$2,456 /kW	$(117)/kW	(4.8)%
Period costs of manufacturing related expenses not included in product costs (in thousands)	$ 4,252	$ 4,913	$ (661)	(13.5)%	$ 7,838	$ 11,267	$ (3,429)	(30.4)%
Installation costs on product accepted in the period	$853 /kW	$1,200 /kW	$(347) /kW	(28.9)%	$541/kW	$1,011/kW	$(470)/kW	(46.5)%

Product costs of product accepted for the three months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $58 per kilowatt driven generally by our ongoing cost reduction efforts to reduce material costs in conjunction with our suppliers and our reduction in labor and overhead costs through improved processes and automation at our manufacturing facilities.

Product costs of product accepted for the six months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $117 per kilowatt driven generally by our ongoing cost reduction efforts to reduce material costs in conjunction with our suppliers and our reduction in labor and overhead costs through improved processes and automation at our manufacturing facilities.

Period costs of manufacturing related expenses for the three months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $0.7 million primarily driven by higher absorption of fixed manufacturing costs into product costs due to a larger volume of builds through our factory tied to our acceptance growth, which resulted in higher factory utilization and higher utilization of inventory materials.

Period costs of manufacturing related expenses for the six months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $3.4 million primarily driven by higher absorption of fixed manufacturing costs into product costs due to a larger volume of builds through our factory tied to our acceptance growth, which resulted in higher factory utilization and higher utilization of inventory materials.

Installation costs on product accepted for the three months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $347 per kilowatt. Each customer site is different and installation costs can vary due to a number of factors, including site complexity, size, location of gas, personalized applications, the customer's option to complete the installation of our Energy Servers themselves, and the timing between the delivery and final installation of our product acceptances under certain circumstances. As such, installation on a per kilowatt basis can vary significantly from period-to-period. For the three months ended June 30, 2021, the decrease in installation cost was driven by site mix as many of the

acceptances did not have installation, either because the installation was done by our distribution channel partner in the Republic of Korea or the final installation associated with a specific customer will be completed later in the year although the Energy Servers were delivered and accepted during the quarter.

Installation costs on product accepted for the six months ended June 30, 2021 compared to the same period in 2020 decreased by approximately $470 per kilowatt. For the six months ended June 30, 2021, the decrease in install cost was driven by site mix as many of the acceptances did not have installation, either because the installation was done by our distribution channel partner in the Republic of Korea or the final installation associated with a specific customer will be completed later in the year although the Energy Servers were delivered and accepted during the period.

Results of Operations

A discussion regarding the comparison of our financial condition and results of operations for the three and six months ended June 30, 2021 and 2020 is presented below.

Revenue

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)				(dollars in thousands)			
Product	$ 146,867	$ 116,197	$ 30,670	26.4 %	$ 284,797	$ 215,756	$ 69,041	32.0 %
Installation	28,879	29,839	(960)	(3.2)%	31,538	46,457	(14,919)	(32.1)%
Service	35,707	26,208	9,499	36.2 %	72,124	51,355	20,769	40.4 %
Electricity	17,017	15,612	1,405	9.0 %	34,018	30,987	3,031	9.8 %
Total revenue	$ 228,470	$ 187,856	$ 40,614	21.6 %	$ 422,477	$ 344,555	$ 77,922	22.6 %

Total Revenue

Total revenue increased by $40.6 million, or 21.6%, for the three months ended June 30, 2021 as compared to the prior year period. This increase was primarily driven by a $30.7 million increase in product revenue and $9.5 million increase in service revenue partially offset by a $1.0 million decrease in installation revenue.

Total revenue increased by $77.9 million, or 22.6%, for the six months ended June 30, 2021 as compared to the prior year period. This increase was primarily driven by a $69.0 million increase in product revenue and $20.8 million increase in service revenue partially offset by a $14.9 million decrease in installation revenue.

Product Revenue

Product revenue increased by $30.7 million, or 26.4%, for the three months ended June 30, 2021 as compared to the prior year period. The product revenue increase was driven primarily by a 41.5% increase in product acceptances as a result of expansion in existing markets. Product revenue was minimally impacted by price reductions on a per unit basis.

Product revenue increased by $69.0 million, or 32.0%, for the six months ended June 30, 2021 as compared to the prior year period. The product revenue increase was driven primarily by a 40.7% increase in product acceptances as a result of expansion in existing markets and in our CDG program. Product revenue was minimally impacted by price reductions on a per unit basis.

Installation Revenue

Installation revenue decreased by $1.0 million, or 3.2%, for the three months ended June 30, 2021 as compared to the prior year period. This decrease in installation revenue was driven by site mix as many of the acceptances did not have installation, either because the installation was done by our distribution channel partner in the Republic of Korea or the final installation associated with a specific customer will be completed later in the year although the Energy Servers were delivered and accepted during the quarter.

Installation revenue decreased by $14.9 million, or 32.1%, for the six months ended June 30, 2021 as compared to the prior year period. This decrease in installation revenue was driven by site mix as many of the acceptances did not have installation, either because the installation was done by our distribution channel partner in the Republic of Korea or the final installation associated with a specific customer will be completed later in the year although the Energy Servers were delivered and accepted during the period.

Service Revenue

Service revenue increased by $9.5 million, or 36.2%, for the three months ended June 30, 2021 as compared to the prior year period. This increase was primarily due to the 41.5% increase in acceptances plus the maintenance contract renewals associated with it including growth internationally.

Service revenue increased by $20.8 million, or 40.4%, for the six months ended June 30, 2021 as compared to the prior year period. This increase was primarily due to the 40.7% increase in acceptances plus the maintenance contract renewals associated with it including growth internationally.

Electricity Revenue

Electricity revenue increased by $1.4 million, or 9.0%, for the three months ended June 30, 2021 as compared to the prior year period due to the increase in the managed services asset base.

Electricity revenue increased by $3.0 million, or 9.8%, for the six months ended June 30, 2021 as compared to the prior year period due to the increase in the managed services asset base.

Cost of Revenue

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)				(dollars in thousands)			
Product	$ 108,891	$ 83,127	$ 25,764	31.0 %	$ 196,185	$ 155,616	$ 40,569	26.1 %
Installation	36,515	38,287	(1,772)	(4.6)%	41,140	59,066	(17,926)	(30.3)%
Service	35,565	28,652	6,913	24.1 %	71,683	59,622	12,061	20.2 %
Electricity	10,155	11,541	(1,386)	(12.0)%	21,474	24,071	(2,597)	(10.8)%
Total cost of revenue	$ 191,126	$ 161,607	$ 29,519	18.3 %	$ 330,482	$ 298,375	$ 32,107	10.8 %

Total Cost of Revenue

Total cost of revenue increased by $29.5 million, or 18.3%, for the three months ended June 30, 2021 as compared to the prior year period primarily driven by a $25.8 million increase in cost of product revenue and $6.9 million increase in cost of service revenue partially offset by a $1.8 million decrease in cost of installation revenue.

Total cost of revenue increased by $32.1 million, or 10.8%, for the six months ended June 30, 2021 as compared to the prior year period primarily driven by a $40.6 million increase in cost of product revenue and $12.1 million increase in cost of service revenue partially offset by a $17.9 million decrease in cost of installation revenue.

Cost of Product Revenue

Cost of product revenue increased by $25.8 million, or 31.0%, for the three months ended June 30, 2021 as compared to the prior year period. The cost of product revenue increase was driven primarily by a 41.5% increase in product acceptances, partially offset by ongoing cost reduction efforts, which reduced material, labor and overhead costs on a per unit basis by 4.6%.

Cost of product revenue increased by $40.6 million, or 26.1%, for the six months ended June 30, 2021 as compared to the prior year period. The cost of product revenue increase was driven primarily by a 40.7% increase in product acceptances, partially offset by ongoing cost reduction efforts, which reduced material, labor and overhead costs on a per unit basis by 8.6%.

Cost of Installation Revenue

Cost of installation revenue decreased by $1.8 million, or (4.6)%, for the three months ended June 30, 2021 as compared to the prior year period. This decrease, similar to the $1.0 million decrease in installation revenue, was driven by site mix as many of the acceptances did not have installation in the three months ended June 30, 2021.

Cost of installation revenue decreased by $17.9 million, or (30.3)%, for the six months ended June 30, 2021 as compared to the prior year period. This decrease, similar to the $14.9 million decrease in installation revenue, was driven by site mix as many of the acceptances did not have installation in the six months ended June 30, 2021.

Cost of Service Revenue

Cost of service revenue increased by $6.9 million, or 24.1%, for the three months ended June 30, 2021 as compared to the prior year period. This increase was primarily due to the 41.5% increase in acceptances plus the maintenance contract renewals associated with the increase in our fleet of Energy Servers, partially offset by the significant improvements in power module life, cost reductions and our actions to proactively manage the fleet optimizations.

Cost of service revenue increased by $12.1 million, or 20.2%, for the six months ended June 30, 2021 as compared to the prior year period. This increase was primarily due to the 40.7% increase in acceptances plus the maintenance contract renewals associated with the increase in our fleet of Energy Servers, partially offset by the significant improvements in power module life, cost reductions and our actions to proactively manage the fleet optimizations.

Cost of Electricity Revenue

Cost of electricity revenue decreased by $1.4 million, or (12.0)%, for the three months ended June 30, 2021 as compared to the prior year period, primarily due to the $0.9 million change in the fair value of the natural gas fixed price forward contract and lower property tax expenses.

Cost of electricity revenue decreased by $2.6 million, or (10.8)%, for the six months ended June 30, 2021 as compared to the prior year period, primarily due to the $1.6 million change in the fair value of the natural gas fixed price forward contract and lower property tax expenses.

Gross Profit and Gross Margin

	Three Months Ended June 30,			Six Months Ended June 30,		
	2021	2020	Change	2021	2020	Change
	(dollars in thousands)					
Gross profit:						
Product	$ 37,976	$ 33,070	$ 4,906	$ 88,612	$ 60,140	$ 28,472
Installation	(7,636)	(8,448)	812	(9,602)	(12,609)	3,007
Service	142	(2,444)	2,586	441	(8,267)	8,708
Electricity	6,862	4,071	2,791	12,544	6,916	5,628
Total gross profit	$ 37,344	$ 26,249	$ 11,095	$ 91,995	$ 46,180	$ 45,815
Gross margin:						
Product	26 %	28 %		31 %	28 %	
Installation	(26) %	(28) %		(30) %	(27) %	
Service	0 %	(9) %		1 %	(16) %	
Electricity	40 %	26 %		37 %	22 %	
Total gross margin	16 %	14 %		22 %	13 %	

Total Gross Profit

Gross profit improved by $11.1 million in the three months ended June 30, 2021 as compared to the prior year period primarily driven by improved product cost and favorable sales mix from growth in product and electricity.

Gross profit improved by $45.8 million in the six months ended June 30, 2021 as compared to the prior year period primarily driven by both the improvement in our product revenue and product gross margin resulting from continued product cost reduction initiatives.

Product Gross Profit

Product gross profit increased by $4.9 million in the three months ended June 30, 2021 as compared to the prior year period. The improvement is driven by a 41.5% increase in product acceptances.

Product gross profit increased by $28.5 million in the six months ended June 30, 2021 as compared to the prior year period. The improvement is driven by a 40.7% increase in product acceptances, and a 3% improvement in product gross margin.

Installation Gross Loss

Installation gross loss decreased by $0.8 million in the three months ended June 30, 2021 as compared to the prior year period driven by the site mix, as many of the acceptances did not have installation in the current time period, and other site related factors such as site complexity, size, local ordinance requirements, and location of the utility interconnect.

Installation gross loss decreased by $3.0 million in the six months ended June 30, 2021 as compared to the prior year period driven by the site mix, as many of the acceptances did not have installation in the current time period, and other site related factors such as site complexity, size, local ordinance requirements, and location of the utility interconnect.

Service Gross Profit (Loss)

Service gross profit (loss) improved by $2.6 million in the three months ended June 30, 2021 as compared to the prior year period to achieve a break even gross margin. This was primarily due to the significant improvements in power module life, cost reductions, and our actions to proactively manage the fleet optimizations.

Service gross profit (loss) improved by $8.7 million in the six months ended June 30, 2021 as compared to the prior year period to achieve a positive gross margin of 1%. This was primarily due to the significant improvements in power module life, cost reductions, and our actions to proactively manage the fleet optimizations.

Electricity Gross Profit

Electricity gross profit increased by $2.8 million in the three months ended June 30, 2021 as compared to the prior year period mainly due to the increase in the managed service asset base and the $0.9 million change in the fair value of the natural gas fixed price forward contract.

Electricity gross profit increased by $5.6 million in the six months ended June 30, 2021 as compared to the prior year period mainly due to the increase in the managed service asset base and the $1.6 million change in the fair value of the natural gas fixed price forward contract.

Operating Expenses

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)				(dollars in thousands)			
Research and development	$ 25,673	$ 19,377	$ 6,296	32.5 %	$ 48,968	$ 42,656	$ 6,312	14.8 %
Sales and marketing	22,727	11,427	11,300	98.9 %	42,679	25,376	17,303	68.2 %
General and administrative	31,655	24,945	6,710	26.9 %	57,456	54,043	3,413	6.3 %
Total operating expenses	$ 80,055	$ 55,749	$ 24,306	43.6 %	$ 149,103	$ 122,075	$ 27,028	22.1 %

Total Operating Expenses

Total operating expenses increased by $24.3 million in the three months ended June 30, 2021 as compared to the prior year period. This increase was primarily attributable to our investment in demand origination capability both in the United States and internationally, investment in brand and product management, and our continued investment in our R&D capabilities to support our technology roadmap.

Total operating expenses increased by $27.0 million in the six months ended June 30, 2021 as compared to the prior year period. This increase was primarily attributable to our investment in business development and front-end sales both in the United States and internationally, investment in brand and product management, and our continued investment in our R&D capabilities to support our technology roadmap.

Research and Development

Research and development expenses increased by $6.3 million in the three months ended June 30, 2021 as compared to the prior year period as we began shifting our investments from sustaining engineering projects for the current Energy Server platform to continued development of the next generation platform, and to support our technology roadmap, including our hydrogen, electrolyzer, carbon capture, marine and biogas solutions.

Research and development expenses increased by $6.3 million in the six months ended June 30, 2021 as compared to the prior year period as we began shifting our investments from sustaining engineering projects for the current Energy Server platform, to continued development of the next generation platform and to support our technology roadmap, including our hydrogen, electrolyzer, carbon capture, marine and biogas solutions.

Sales and Marketing

Sales and marketing expenses increased by $11.3 million in the three months ended June 30, 2021 as compared to the prior year period. This increase was primarily driven by the efforts to expand our United States and international sales force, as well as increased investment in brand and product management.

Sales and marketing expenses increased by $17.3 million in the six months ended June 30, 2021 as compared to the prior year period. This increase was primarily driven by the efforts to expand our United States and international sales force, as well as increased investment in brand and product management.

General and Administrative

General and administrative expenses increased by $6.7 million in the three months ended June 30, 2021 as compared to the prior year period. This increase was due to a $3.2 million increase in outside services and consulting spend, $2.5 million increase in payroll spend and $1.7 million increase in office and other expenses primarily supporting business development and sales force talent, partially offset by a $0.9 million reduction in stock-based compensation.

General and administrative expenses increased by $3.4 million in the six months ended June 30, 2021 as compared to the prior year period. This increase was due to a $7.1 million increase in outside services and consulting expenses, $3.0 million increase in payroll spend and $1.6 million increase in office and other expenses primarily supporting business development and sales force talent, partially offset by a $5.9 million reduction in legal expenses and $3.2 million reduction in stock-based compensation.

Stock-Based Compensation

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)				(dollars in thousands)			
Cost of revenue	$ 3,804	$ 4,736	$ (932)	(19.7)%	$ 6,803	$ 10,243	$ (3,440)	(33.6)%
Research and development	5,291	4,714	577	12.2 %	10,199	10,810	(611)	(5.7)%
Sales and marketing	4,010	2,234	1,776	79.5 %	8,095	6,124	1,971	32.2 %
General and administrative	6,028	6,947	(919)	(13.2)%	11,246	14,473	(3,227)	(22.3)%
Total stock-based compensation	$ 19,133	$ 18,631	$ 502	2.7 %	$ 36,343	$ 41,650	$ (5,307)	(12.7)%

Total stock-based compensation for the three months ended June 30, 2021 compared to the prior year period increased by $0.5 million primarily driven by the efforts to expand our U.S. and international sales force, as well as investment to build our brand and product management teams.

Total stock-based compensation for the six months ended June 30, 2021 compared to the prior year period decreased by $5.3 million primarily driven by the vesting of the one-time employee grants at the time of IPO, which were completed in July 2020.

Other Income and Expense

	Three Months Ended June 30,			Six Months Ended June 30,		
	2021	2020	Change	2021	2020	Change
			(in thousands)			
Interest income	$ 76	$ 332	$ (256)	$ 150	$ 1,151	$ (1,001)
Interest expense	(14,553)	(14,374)	(179)	(29,284)	(35,128)	5,844
Interest expense - related parties	—	(794)	794	—	(2,160)	2,160
Other income (expense), net	22	(3,913)	3,935	(63)	(3,921)	3,858
Loss on extinguishment of debt	—	—	—	—	(14,098)	14,098
Gain (loss) on revaluation of embedded derivatives	(942)	412	(1,354)	(1,460)	696	(2,156)
Total	$ (15,397)	$ (18,337)	$ 2,940	$ (30,657)	$ (53,460)	$ 22,803

Interest Income

Interest income is derived from investment earnings on our cash balances primarily from money market funds.

Interest income for the three months ended June 30, 2021 as compared to the prior year period decreased by $0.3 million primarily due to the decrease in the rates of interest earned on our cash balances.

Interest income for the six months ended June 30, 2021 as compared to the prior year period decreased by $1.0 million primarily due to the decrease in the rates of interest earned on our cash balances.

Interest Expense

Interest expense is from our debt held by third parties.

Interest expense for the three months ended June 30, 2021 as compared to the prior year period increased by $0.2 million.

Interest expense for the six months ended June 30, 2021 as compared to the prior year period decreased by $5.8 million. This decrease was primarily due to lower interest expense as a result of refinancing our notes at a lower interest rate, and the elimination of the amortization of the debt discount associated with notes that have now been converted to equity.

Interest Expense - Related Parties

Interest expense - related parties is from our debt held by related parties.

Interest expense - related parties for the three months ended June 30, 2021 as compared to the prior year period decreased by $0.8 million due to the conversion of all of our notes held by related parties during 2020.

Interest expense - related parties for the six months ended June 30, 2021 as compared to the prior year period decreased by $2.2 million due to the conversion of all of our notes held by related parties during 2020.

Other Expense, net

Other expense, net, is primarily derived from investments in joint ventures, plus the impact of foreign currency translation.

Other expense, net, for the three months ended June 30, 2021 as compared to the prior year period decreased by $3.9 million due to an impairment in our investment in the Bloom Energy Japan joint venture in 2020.

Other expense, net for the six months ended June 30, 2021 as compared to the prior year period decreased by $3.9 million due to an impairment in our investment in the Bloom Energy Japan joint venture in 2020.

Loss on Extinguishment of Debt

Loss on extinguishment of debt for the six months ended June 30, 2021 as compared to the prior year period improved by $14.1 million resulting from our debt restructuring and debt extinguishment in the prior year's period. There were no comparable debt restructuring activities in the current year's period.

Gain (Loss) on Revaluation of Embedded Derivatives

Gain (loss) on revaluation of embedded derivatives is derived from the change in fair value of our sales contracts of embedded EPP derivatives valued using historical grid prices and available forecasts of future electricity prices to estimate future electricity prices.

Gain (loss) on revaluation of embedded derivatives for the three months ended June 30, 2021 as compared to the prior year period worsened by $1.4 million due to the change in fair value of our embedded EPP derivatives in our sales contracts.

Gain (loss) on revaluation of embedded derivatives for the six months ended June 30, 2021 as compared to the prior year period worsened by $2.2 million due to the change in fair value of our embedded EPP derivatives in our sales contracts.

Provision for Income Taxes

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)							
Income tax provision	$ 313	$ 141	$ 172	122.0 %	$ 437	$ 265	$ 172	64.9 %

Income tax provision consists primarily of income taxes in foreign jurisdictions in which we conduct business. We maintain a full valuation allowance for domestic deferred tax assets, including net operating loss and certain tax credit carryforwards.

Income tax provision increased for the three and six months ended June 30, 2021 as compared to the prior year period was primarily due to fluctuations in the effective tax rates on income earned by international entities.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2021	2020	Amount	%	2021	2020	Amount	%
	(dollars in thousands)							
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	$ (4,558)	$ (5,466)	$ 908	16.6 %	$ (9,450)	$ (11,159)	$ 1,709	15.3 %

Net loss attributable to noncontrolling interests is the result of allocating profits and losses to noncontrolling interests under the hypothetical liquidation at book value ("HLBV") method. HLBV is a balance sheet-oriented approach for applying the equity method of accounting when there is a complex structure, such as the flip structure of the PPA Entities.

Net loss attributable to noncontrolling interests and redeemable noncontrolling interests for the three months ended June 30, 2021 as compared to the prior year period improved by $0.9 million due to increased losses in our PPA Entities, which are allocated to our noncontrolling interests.

Net loss attributable to noncontrolling interests and redeemable noncontrolling interests for the six months ended June 30, 2021 as compared to the prior year period improved by $1.7 million due to increased losses in our PPA Entities, which are allocated to our noncontrolling interests.

Liquidity and Capital Resources

As of June 30, 2021, we had cash and cash equivalents of $204.0 million. Our cash and cash equivalents consist of highly liquid investments with maturities of three months or less, including money market funds. We maintain these balances with high credit quality counterparties, continually monitor the amount of credit exposure to any one issuer and diversify our investments in order to minimize our credit risk.

As of June 30, 2021, we had $290.7 million of total outstanding recourse debt, $215.8 million of non-recourse debt and $20.9 million of other long-term liabilities. For a complete description of our outstanding debt, please see Note 7 - *Outstanding Loans and Security Agreements* in Part I, Item 1, *Financial Statements*.

The combination of our existing cash and cash equivalents is expected to be sufficient to meet our anticipated cash flow needs for the next 12 months and thereafter for the foreseeable future. If these sources of cash are insufficient to satisfy our near-term or future cash needs, we may require additional capital from equity or debt financings to fund our operations, in particular, our manufacturing capacity, product development and market expansion requirements, to timely respond to competitive market pressures or strategic opportunities, or otherwise. In addition, we are continuously evaluating alternatives for efficiently funding our capital expenditures and ongoing operations. We may, from time to time, engage in a variety of financing transactions for such purposes, including factoring our accounts receivable. We may not be able to secure timely additional financing on favorable terms, or at all. The terms of any additional financings may place limits on our financial and operating flexibility. If we raise additional funds through further issuances of equity or equity-linked securities, our existing stockholders could suffer dilution in their percentage ownership of us, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock.

Our future capital requirements will depend on many factors, including our rate of revenue growth, the timing and extent of spending on research and development efforts and other business initiatives, the rate of growth in the volume of system builds and the need for additional manufacturing space, the expansion of sales and marketing activities both in domestic and international markets, market acceptance of our products, our ability to secure financing for customer use of our Energy Servers, the timing of installations, and overall economic conditions including the impact of COVID-19 on our ongoing and future operations. In order to support and achieve our future growth plans, we may need or seek advantageously to obtain additional funding through an equity or debt financing. As of June 30, 2021, we were still working to secure the remaining financing for the planned installations of our Energy Servers in 2021. Failure to obtain this financing will affect our results of operations, including revenues and cash flows.

As of June 30, 2021, the current portion of our total debt is $119.7 million, all of which is outstanding non-recourse debt. We expect a certain portion of the non-recourse debt would be refinanced by the applicable PPA Entity prior to maturity.

A summary of our condensed consolidated sources and uses of cash, cash equivalents and restricted cash was as follows (in thousands):

	Six Months Ended June 30,	
	2021	**2020**
Net cash provided by (used in):		
Operating activities	$ (35,302)	$ (40,235)
Investing activities	(34,461)	(19,560)
Financing activities	53,804	6,536

Net cash provided by (used in) our PPA Entities, which are incorporated into the condensed consolidated statements of cash flows, was as follows (in thousands):

	Six Months Ended June 30,	
	2021	2020
PPA Entities [1]		
Net cash provided by PPA operating activities	$ 12,669	$ 15,016
Net cash used in PPA financing activities	(13,462)	(13,649)

[1] The PPA Entities' operating and financing cash flows are a subset of our condensed consolidated cash flows and represent the stand-alone cash flows prepared in accordance with U.S. GAAP. Operating activities consist principally of cash used to run the operations of the PPA Entities, the purchase of Energy Servers from us and principal reductions in loan balances. Financing activities consist primarily of changes in debt carried by our PPAs, and payments from and distributions to noncontrolling partnership interests. We believe this presentation of net cash provided by (used in) PPA activities is useful to provide the reader with the impact to condensed consolidated cash flows of the PPA Entities in which we have only a minority interest.

Operating Activities

Our operating activities have consisted of net loss adjusted for certain non-cash items plus changes in our operating assets and liabilities or working capital. The decrease in cash used in operating activities during the six months ended June 30, 2021 as compared to the prior year period was primarily the result of improved operating performance offset by an increase in our net working capital of $17.1 million in the six months ended June 30, 2021 due to the timing of revenue transactions and corresponding collections and the increase in inventory levels to support future demand.

Investing Activities

Our investing activities have consisted of capital expenditures that include increasing our production capacity. We expect to continue such activities as our business grows. Cash used in investing activities of $34.5 million during the six months ended June 30, 2021 was primarily the result of expenditures on tenant improvements for a newly leased engineering building in Fremont, California. We expect to continue to make capital expenditures over the next few quarters to prepare our new manufacturing facility in Fremont, California for production, which includes the purchase of new equipment and other tenant improvements. We intend to fund these capital expenditures from cash on hand as well as cash flow to be generated from operations. We may also evaluate and arrange equipment lease financing to fund these capital expenditures.

Financing Activities

Historically, our financing activities have consisted of borrowings and repayments of debt including to related parties, proceeds and repayments of financing obligations, distributions paid to noncontrolling interests and redeemable noncontrolling interests, and the proceeds from the issuance of our common stock. Net cash provided by financing activities during the six months ended June 30, 2021 was $53.8 million, an increase of $47.3 million compared to the prior year period primarily due to proceeds from stock option exercises and the sale of shares under our 2018 Employee Stock Purchase Plan.

Critical Accounting Policies and Estimates

The condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles as applied in the United States ("U.S. GAAP") The preparation of the condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues, costs and expenses and related disclosures. Our discussion and analysis of our financial results under Results of Operations below are based on our audited results of operations, which we have prepared in accordance with U.S. GAAP. In preparing these condensed consolidated financial statements, we make assumptions, judgments and estimates that can affect the reported amounts of assets, liabilities, revenues and expenses, and net income. On an ongoing basis, we base our estimates on historical experience, as appropriate, and on various other assumptions that we believe to be reasonable under the circumstances. Changes in the accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results could differ significantly from the estimates made by our management. We evaluate our estimates and assumptions on an ongoing basis. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected. We believe that the following critical accounting policies involve a greater degree of judgment and complexity than our other accounting policies. Accordingly, these

are the policies we believe are the most critical to understanding and evaluating the condensed consolidated financial condition and results of operations.

The accounting policies that most frequently require us to make assumptions, judgments and estimates, and therefore are critical to understanding our results of operations, include:

- Revenue Recognition;
- Leases: Incremental Borrowing Rate;
- Stock-Based Compensation;
- Income Taxes;
- Principles of Consolidation; and
- Allocation of Profits and Losses of Consolidated Entities to Noncontrolling Interests and Redeemable Noncontrolling Interests

Management's Discussion and Analysis of Financial Condition and Results of Operations contained in Part II, Item 7 of our Annual Report on Form 10-K for our fiscal year ended December 31, 2020 provides a more complete discussion of our critical accounting policies and estimates. During the six months ended June 30, 2021, there were no significant changes to our critical accounting policies and estimates, except as noted below:

We adopted ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging - Contracts in Entity's Own Equity* (Subtopic 815-40) ("ASU 2020-06"), which simplifies the accounting for convertible instruments. We applied the modified retrospective method as of January 1, 2021 in our condensed consolidated financial statements. Upon adoption of ASU 2020-06, we no longer record the conversion feature of convertible notes in equity. Instead, our convertible notes are accounted for as a single liability measured at their amortized cost and there is no longer a debt discount representing the difference between the carrying value, excluding issuance costs, and the principal of the convertible debt instrument. As a result, there is no longer interest expense relating to the amortization of the debt discount over the term of the convertible debt instrument. Similarly, the portion of issuance costs previously allocated to equity are now reclassified to debt and will be amortized as interest expense. As a result of this change in accounting policy, management no longer considers valuation of the Green Notes to be a critical accounting policy and estimate.

ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There were no significant changes to our quantitative and qualitative disclosures about market risk during six months ended June 30, 2021. Please refer to Part II, Item 7A, *Quantitative and Qualitative Disclosures about Market Risk* included in our Annual Report on Form 10-K for our fiscal year ended December 31, 2020 for a more complete discussion of the market risks we consider.

ITEM 4 CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of June 30, 2021. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of June 30, 2021, our disclosure controls and procedures were effective.

Inherent Limitations on Effectiveness of Internal Controls

Our management, including the CEO and CFO, does not expect that our disclosure controls or our internal controls over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of the effectiveness of controls to future periods are subject to risks. Over time, controls may become inadequate because of changes in business conditions or deterioration in the degree of compliance with policies or procedures.

Changes in Internal Control over Financial Reporting

During the three months ended June 30, 2021, there were no changes in our internal controls over financial reporting, which were identified in connection with management's evaluation required by paragraph (d) of Rules 13a-15 and 15d-15 under the Exchange Act, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II

ITEM 1 - LEGAL PROCEEDINGS

We are, and from time to time we may become, involved in legal proceedings or be subject to claims arising in the ordinary course of our business. For a discussion of legal proceedings, see Note 13 - *Commitments and Contingencies* in Part I, Item 1, *Financial Statements*. We are not presently a party to any other legal proceedings that in the opinion of our management and if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, financial condition or cash flows.

ITEM 1A - RISK FACTORS

Investing in our securities involves a high degree of risk. You should carefully consider the material risks and uncertainties described below that make an investment in us speculative or risky, as well as the other information in this Quarterly Report on Form 10-Q, including our condensed consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" before you decide to purchase our securities. The occurrence of one or more of these risks may cause the market price of our Class A common stock to decline, and you could lose all or part of your investment. It is not possible to predict or identify all such risks and uncertainties, as our operations could also be affected by factors, events or uncertainties that are not presently known to us or that we currently do not consider to present significant risks to our operations. Therefore, you should not consider the following risks to be a complete statement of all the potential risks or uncertainties that we face.

Risk Factor Summary

The following summarizes the more complete risk factors that follow. It should be read in conjunction with the complete Risk Factors section and should not be relied upon as an exhaustive summary of all the material risks facing our business.

Risks Related to Our Business, Industry and Sales

- The distributed generation industry is an emerging market and distributed generation may not receive widespread market acceptance, which may make evaluating our business and future prospects difficult.
- Our products involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis, our business could be harmed.
- Our Energy Servers have significant upfront costs, and we will need to attract investors to help customers finance purchases.
- The economic benefits of our Energy Servers to our customers depend on the cost of electricity available from alternative sources, including local electric utility companies, and such cost structure is subject to change.
- If we are not able to continue to reduce our cost structure in the future, our ability to become profitable may be impaired.
- We rely on interconnection requirements and net metering arrangements that are subject to change.
- We currently face and will continue to face significant competition.
- We derive a substantial portion of our revenue and backlog from a limited number of customers, and the loss of or a significant reduction in orders from a large customer could have a material adverse effect on our operating results and other key metrics.
- Our ability to develop new products and enter into new markets could be negatively impacted if we are unable to identify partners to assist in such development or expansion, and our products may not be successful if we are unable to maintain alignment with evolving industry standards and requirements.

Risks Related to Our Products and Manufacturing

- Our business has been and continues to be adversely affected by the COVID-19 pandemic.
- Our future success depends in part on our ability to increase our production capacity, and we may not be able to do so in a cost-effective manner.
- If our Energy Servers contain manufacturing defects, our business and financial results could be harmed.
- The performance of our Energy Servers may be affected by factors outside of our control, which could result in harm to our business and financial results.
- If our estimates of the useful life for our Energy Servers are inaccurate or we do not meet our performance warranties and performance guaranties, or if we fail to accrue adequate warranty and guaranty reserves, our business and financial results could be harmed.

- Our business is subject to risks associated with construction, utility interconnection, cost overruns and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations.
- Any significant disruption in the operations at our headquarters or manufacturing facilities could delay the production of our Energy Servers, which would harm our business and results of operations.
- The failure of our suppliers to continue to deliver necessary raw materials or other components of our Energy Servers in a timely manner and to specification could prevent us from delivering our products within required time frames and could cause installation delays, cancellations, penalty payments and damage to our reputation.
- We have, in some instances, entered into long-term supply agreements that could result in insufficient inventory and negatively affect our results of operations.
- We face supply chain competition, including competition from businesses in other industries, which could result in insufficient inventory and negatively affect our results of operations.
- We, and some of our suppliers, obtain capital equipment used in our manufacturing process from sole suppliers and, if this equipment is damaged or otherwise unavailable, our ability to deliver our Energy Servers on time will suffer.
- Possible new trade tariffs could have a material adverse effect on our business.

Risks Related to Government Incentive Programs

- Our business currently benefits from the availability of rebates, tax credits and other financial programs and incentives, and the reduction, modification, or elimination of such benefits could cause our revenue to decline and harm our financial results.
- We rely on tax equity financing arrangements to realize the benefits provided by ITCs and accelerated tax depreciation and in the event these programs are terminated, our financial results could be harmed.

Risks Related to Legal Matters and Regulations

- We are subject to various national, state and local laws and regulations that could impose substantial costs upon us and cause delays in the delivery and installation of our Energy Servers.
- The installation and operation of our Energy Servers are subject to environmental laws and regulations in various jurisdictions, and there is uncertainty with respect to the interpretation of certain environmental laws and regulations to our Energy Servers, especially as these regulations evolve over time.
- As a technology that runs, in part, on fossil fuel, we may be subject to a heightened risk of regulation, to a potential for the loss of certain incentives, and to changes in our customers' energy procurement policies.

Risks Related to Our Intellectual Property

- Our failure to protect our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights may be costly.
- Our patent applications may not result in issued patents, and our issued patents may not provide adequate protection, either of which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.

Risks Related to Our Financial Condition and Operating Results

- We have incurred significant losses in the past and we may not be profitable for the foreseeable future.
- Our financial condition and results of operations and other key metrics are likely to fluctuate on a quarterly basis in future periods, which could cause our results for a particular period to fall below expectations, resulting in a severe decline in the price of our Class A common stock.
- If we fail to manage our growth effectively, our business and operating results may suffer.
- If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.
- Our ability to use our deferred tax assets to offset future taxable income may be subject to limitations that could subject our business to higher tax liability.

Risks Related to Our Liquidity

- We must maintain the confidence of our customers in our liquidity, including in our ability to timely service our debt obligations and in our ability to grow our business over the long-term.
- Our substantial indebtedness, and restrictions imposed by the agreements governing our and our PPA Entities' outstanding indebtedness, may limit our financial and operating activities and may adversely affect our ability to incur additional debt to fund future needs.
- We may not be able to generate sufficient cash to meet our debt service obligations.

Risks Related to Our Operations

- We may have conflicts of interest with our PPA Entities (defined herein).
- Expanding operations internationally could expose us to additional risks.
- If we are unable to attract and retain key employees and hire qualified management, technical, engineering, finance and sales personnel, our ability to compete and successfully grow our business could be harmed.

- A breach or failure of our networks or computer or data management systems could damage our operations and our reputation.

Risks Related to Ownership of Our Common Stock

- The stock price of our Class A common stock has been and may continue to be volatile.
- We may issue additional shares of our Class A common stock in connection with any future conversion of the Green Notes (defined herein) and thereby dilute our existing stockholders and potentially adversely affect the market price of our Class A common stock.
- The dual class structure of our common stock and the voting agreements among certain stockholders have the effect of concentrating voting control of our Company with KR Sridhar, our Chairman and Chief Executive Officer, and also with those stockholders who held our capital stock prior to the completion of our initial public offering, which limits or precludes your ability to influence corporate matters and may adversely affect the trading price of our Class A common stock.

Risks Related to Our Business, Industry and Sales

The distributed generation industry is an emerging market and distributed generation may not receive widespread market acceptance, which may make evaluating our business and future prospects difficult.

The distributed generation industry is still relatively nascent in an otherwise mature and heavily regulated industry, and we cannot be sure that potential customers will accept distributed generation broadly, or our Energy Server products specifically. Enterprises may be unwilling to adopt our solution over traditional or competing power sources for any number of reasons, including the perception that our technology or our company is unproven, lack of confidence in our business model, the perceived unavailability of back-up service providers to operate and maintain the Energy Servers, and lack of awareness of our product or their perception of regulatory or political headwinds. Because distributed generation is an emerging industry, broad acceptance of our products and services is subject to a high level of uncertainty and risk. If the market for our products and services does not develop as we anticipate, our business will be harmed. As a result, predicting our future revenue and appropriately budgeting for our expenses is difficult, and we have limited insight into trends that may emerge and affect our business. If actual results differ from our estimates or if we adjust our estimates in future periods, our operating results and financial position could be materially and adversely affected.

Our products involve a lengthy sales and installation cycle, and if we fail to close sales on a regular and timely basis, our business could be harmed.

Our sales cycle is typically 12 to 18 months but can vary considerably. In order to make a sale, we must typically provide a significant level of education to prospective customers regarding the use and benefits of our product and our technology. The period between initial discussions with a potential customer and the eventual sale of even a single product typically depends on a number of factors, including the potential customer's budget and decision as to the type of financing it chooses to use, as well as the arrangement of such financing. Prospective customers often undertake a significant evaluation process that may further extend the sales cycle. Once a customer makes a formal decision to purchase our product, the fulfillment of the sales order by us requires a substantial amount of time. Generally, the time between the entry into a sales contract with a customer and the installation of our Energy Servers can range from nine to twelve months or more. This lengthy sales and installation cycle is subject to a number of significant risks over which we have little or no control. Because of both the long sales and long installation cycles, we may expend significant resources without having certainty of generating a sale.

These lengthy sales and installation cycles increase the risk that an installation may be delayed and/or may not be completed. In some instances, a customer can cancel an order for a particular site prior to installation, and we may be unable to recover some or all of our costs in connection with design, permitting, installation and site preparations incurred prior to cancellation. Cancellation rates can be between 10% and 20% in any given period due to factors outside of our control, including an inability to install an Energy Server at the customer's chosen location because of permitting or other regulatory issues, delays or unanticipated costs in securing interconnection approvals or necessary utility infrastructure, unanticipated changes in the cost, or other reasons unique to each customer. Our operating expenses are based on anticipated sales levels, and many of our expenses are fixed. If we are unsuccessful in closing sales after expending significant resources or if we experience delays or cancellations, our business could be materially and adversely affected. Since, in general, we do not recognize revenue on the sales of our products until installation and acceptance, a small fluctuation in the timing of the completion of our sales transactions could cause our operating results to vary materially from period to period.

Our Energy Servers have significant upfront costs, and we will need to attract investors to help customers finance purchases.

Our Energy Servers have significant upfront costs. In order to expand our offerings to customers who lack the financial capability to purchase our Energy Servers directly and/or who prefer to lease the product or contract for our services on a pay-as-you-go model, we subsequently developed various financing options that enabled customers use of the Energy Servers without a direct purchase through third-party ownership financing arrangements. For an overview of these different financing arrangements, please see Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations – Purchase and Financing Options*. At present, we still had not secured funding for all of our planned installations in 2021. If we are not able to secure funding in a timely fashion, our results of operations and financial condition will be negatively impacted. We continue to innovate our customer contracts to attempt to attract new customers and these may have different terms and financing conditions from prior transactions.

We rely on and need to grow committed financing capacity with existing partners or attract additional partners to support our growth, finance new projects and new types of product offerings, including fuel cells for the hydrogen market. In addition, at any point in time, our ability to deploy our backlog is contingent on securing available financing. Our ability to attract third-party financing depends on many factors that are outside of our control, including an investors ability to utilize tax credits and other government incentives, interest rate and/or currency exchange fluctuations, our perceived creditworthiness and the condition of credit markets generally. Our financing of customer purchases of our Energy Servers is subject to conditions such as the customer's credit quality and the expected minimum internal rate of return on the customer engagement, and if these conditions are not satisfied, we may be unable to finance purchases of our Energy Servers, which would have an adverse effect on our revenue in a particular period. If we are unable to help our customers arrange financing for our Energy Servers generally, our business will be harmed. Additionally, the Traditional Lease option and the Managed Services Financing option, as with all leases, are also limited by the customer's willingness to commit to making fixed payments regardless of the performance of the Energy Servers or our performance of our obligations under the customer agreement. To the extent we are unable to arrange future financings for any of our current projects, our business would be negatively impacted.

Further, our sales process for transactions that require financing require that we make certain assumptions regarding the cost of financing capital. Actual financing costs may vary from our estimates due to factors outside of our control, including changes in customer creditworthiness, macroeconomic factors, the returns offered by other investment opportunities available to our financing partners, and other factors. If the cost of financing ultimately exceeds our estimates, we may be unable to proceed with some or all of the impacted projects or our revenue from such projects may be less than our estimates.

The economic benefits of our Energy Servers to our customers depend on the cost of electricity available from alternative sources, including local electric utility companies, and such cost structure is subject to change.

We believe that a customer's decision to purchase our Energy Servers is significantly influenced by its price, the price predictability of electricity generated by our Energy Servers in comparison to the retail price, and the future price outlook of electricity from the local utility grid and other energy sources. These prices are subject to change and may affect the relative benefits of our Energy Servers. Several factors that could influence these prices and are beyond our control, include the impact of energy conservation initiatives that reduce electricity consumption; construction of additional power generation plants (including nuclear, coal or natural gas); technological developments by others in the electric power industry; the imposition of "departing load," "standby," power factor charges, greenhouse gas emissions charges, or other charges by local electric utility or regulatory authorities; and changes in the rates offered by local electric utilities and/or in the applicability or amounts of charges and other fees imposed or incentives granted by such utilities on customers. In addition, even with available subsidies for our products, the current low cost of grid electricity in some states and countries does not render our product economically attractive.

Furthermore, an increase in the price of natural gas or curtailment of availability (e.g., as a consequence of physical limitations or adverse regulatory conditions for the delivery of production of natural gas) or the inability to obtain natural gas service could make our Energy Servers less economically attractive to potential customers and reduce demand.

If we are not able to continue to reduce our cost structure in the future, our ability to become profitable may be impaired.

We must continue to reduce the manufacturing costs for our Energy Servers to expand our market. Additionally, certain of our existing service contracts were entered into based on projections regarding service costs reductions that assume continued advances in our manufacturing and services processes that we may be unable to realize. The cost of components and raw materials, for example, could increase in the future, offsetting any successes in reducing our manufacturing and services

costs. Any such increases could slow our growth and cause our financial results and operational metrics to suffer. In addition, we may face increases in our other expenses including increases in wages or other labor costs as well as installation, marketing, sales or related costs. In order to expand into new electricity markets (in which the price of electricity from the grid is lower) while still maintaining our current margins, we will need to continue to reduce our costs. Increases in any of these costs or our failure to achieve projected cost reductions could adversely affect our results of operations and financial condition and harm our business and prospects. If we are unable to reduce our cost structure in the future, we may not be able to achieve profitability, which could have a material adverse effect on our business and our prospects.

We rely on interconnection requirements and net metering arrangements that are subject to change.

Because our Energy Servers are designed to operate at a constant output 24x7, and our customers' demand for electricity typically fluctuates over the course of the day or week, there are often periods when our Energy Servers are producing more electricity than a customer may require, and such excess electricity must be exported to the local electric utility. Many, but not all, local electric utilities provide compensation to our customers for such electricity under "net metering" programs. Utility tariffs and fees, interconnection agreements and net metering requirements are subject to changes in availability and terms and some jurisdictions do not allow interconnections or export at all. At times in the past, such changes have had the effect of significantly reducing or eliminating the benefits of such programs. Changes in the availability of, or benefits offered by, utility tariffs, the net metering requirements or interconnection agreements in place in the jurisdictions in which we operate or in which we anticipate expanding into in the future could adversely affect the demand for our Energy Servers. For example, in California, the net metering tariff applicable to fuel cells currently expires in 2021. We are currently working on an alternative microgrid tariff that would be applicable to fuel cells. We cannot predict the outcome of the regulatory proceedings addressing such requirements, in which we remain an active participant. If there is not an economical tariff for fuel cells in California it may limit or end our ability to sell and install our Energy Servers in California.

We currently face and will continue to face significant competition.

We compete for customers, financing partners, and incentive dollars with other electric power providers. Many providers of electricity, such as traditional utilities and other companies offering distributed generation products, have longer operating histories, customer incumbency advantages. access to and influence with local and state governments, and access to more capital resources than us. Significant developments in alternative technologies, such as energy storage, wind, solar, or hydro power generation, or improvements in the efficiency or cost of traditional energy sources, including coal, oil, natural gas used in combustion, or nuclear power, may materially and adversely affect our business and prospects in ways we cannot anticipate. We may also face new competitors who are not currently in the market. If we fail to adapt to changing market conditions and to compete successfully with grid electricity or new competitors, our growth will be limited, which would adversely affect our business results.

We derive a substantial portion of our revenue and backlog from a limited number of customers, and the loss of or a significant reduction in orders from a large customer could have a material adverse effect on our operating results and other key metrics.

In any particular period, a substantial amount of our total revenue has and could continue to come from a relatively small number of customers. As an example, in the year ended December 31, 2020, two customers, SK E&C and Duke Energy, accounted for approximately 34% and 28% of our total revenue. The loss of any large customer order or any delays in installations of new Energy Servers with any large customer would materially and adversely affect our business results.

Our ability to develop new products and enter into new markets could be negatively impacted if we are unable to identify partners to assist in such development or expansion, and our products may not be successful if we are unable to maintain alignment with evolving industry standards and requirements.

We continue to develop new products for new markets and, as we move into those markets, we may need to identify new business partners and suppliers in order to facilitate such development and expansion, such as our entry into the hydrogen market. Identifying such partners and suppliers is a lengthy process and is subject to significant risks and uncertainties, such as an inability to negotiate mutually-acceptable terms for the partnership. In addition, there could be delays in the design, manufacture and installation of such new products and we may not be timely in the development of new products, limiting our ability to expand our business and harming our financial condition and results of operations.

In addition, as we continue to invest in research and development to sustain or enhance our existing products, the introduction of new technologies and the emergence of new industry standards or requirements could render our products obsolete. Further, in developing our products, we have made, and will continue to make, assumptions with respect to which standards or requirements will be adopted by our customers and standards-setting organizations. If market acceptance of our products is reduced or delayed or the standards-setting organizations fail to develop timely commercially viable standards our business would be harmed

Risks Related to Our Products and Manufacturing

Our business has been and continues to be adversely affected by the COVID-19 pandemic.

We continue to monitor and adjust as appropriate our operations in response to the COVID-19 pandemic. The precautions that we have implemented in our operations may not be sufficient to prevent exposure to COVID-19. While we do maintain protocols to minimize the risk of COVID-19 transmission within our facilities, including enhanced cleaning, temperature screenings upon entry and masking if required by the local authorities, there is no guarantee that these measures will prevent an outbreak.

If a significant number of employees are exposed and sent home, particularly in our manufacturing facilities, our production could be significantly impacted. Furthermore, since our manufacturing process involves tasks performed at both our California and Delaware facilities, an outbreak at either facility would have a substantial impact on our overall production, and in such case, our cash flow and results of operations including revenue will be adversely affected.

We have experienced COVID-19 related delays from certain vendors and suppliers, which, in turn, could cause delays in the manufacturing and installation of our Energy Servers and adversely impact our cash flows and results of operations including revenue. Alternative or replacement suppliers, may not be available and ongoing delays could affect our business and growth. For example, particular suppliers on which we rely were shut down in 2020, and we were not able to obtain all the needed parts. In addition, new and potentially more contagious variants of the COVID-19 virus are developing in several countries, which can lead to future disruptions in the availability or price of these or other parts, and we cannot guarantee that we will succeed in finding alternate suppliers that are able to meet our needs. In addition, international air and sea logistics systems have been heavily impacted by the COVID-19 pandemic. Air carriers have significantly reduced their passenger and air freight capacity, and many ports are either temporarily closed or have reduced their hours of operation. Actions by government agencies may further restrict the operations of freight carriers, which would negatively impact our ability to receive the parts and supplies we need to manufacture our Energy Servers or to deliver them to our customers.

As discussed elsewhere, we also rely on third party financing for our customers' purchases of our Energy Server and the current environment may cause third party financiers to experience liquidity problems, difficulty obtaining tax partners or elect to suspend or cancel investments in our projects. If we are delayed in obtaining financing for the purchase of our Energy Servers on behalf of our customers, our cash flow and results of operations, including revenue will be adversely affected. For example, in the three months ended March 31, 2021, we were delayed in obtaining financing for our 2021 installations and cash flow was impacted as we did not receive deposits from financiers in advance of purchase of our Energy Servers. If delays in financing continue, then our cash flows, results of operations and revenue will be adversely impacted.

Our installation and maintenance operations have also been impacted by the COVID-19 pandemic. For example, our installation projects have experienced delays relating to, among other things, shortages in available labor for design, installation and other work; the inability or delay in our ability to access customer facilities due to shutdowns or other restrictions; the decreased productivity of our general contractors, their sub-contractors, medium-voltage electrical gear suppliers, and the wide range of engineering and construction related specialist suppliers on whom we rely for successful and timely installations; the stoppage of work by gas and electric utilities on which we are critically dependent for hook ups; and the unavailability of necessary civil and utility inspections as well as the review of our permit submissions and issuance of permits by multiple authorities that have jurisdiction over our activities.

We are not the only business impacted by these shortages and delays, which means that we are subject to risk of increased competition for scarce resources, which may result in delays or increases in the cost of obtaining such services, including increased labor costs and/or fees. An inability to install our Energy Servers would negatively impact our acceptances, and thereby impact our cash flows and results of operations, including revenue.

As to maintenance, if we are delayed in or unable to perform scheduled or unscheduled maintenance, our previously-installed Energy Servers will likely experience adverse performance impacts including reduced output and/or efficiency, which could result in warranty and/or guaranty claims by our customers. Further, due to the nature of our Energy Servers, if we are unable to replace worn parts in accordance with our standard maintenance schedule, we may be subject to increased costs in the future.

We continue to remain in close communication with our manufacturing facilities, employees, customers, suppliers and partners, but there is no guarantee we will be able to mitigate the impact of this dynamic and fluid situation.

Our future success depends in part on our ability to increase our production capacity, and we may not be able to do so in a cost-effective manner.

To the extent we are successful in growing our business, we may need to increase our production capacity. For example, we entered leased a new facility to increase our production capacity in order to meet our planned 2021 production targets, but we still need to complete the required build out in a timely manner. Our ability to plan, construct and equip additional manufacturing facilities is subject to significant risks and uncertainties, including the following:

- The risks inherent in the development and construction of new facilities, including risks of delays and cost overruns as a result of factors outside our control, which may include delays in government approvals, burdensome permitting conditions, and delays in the delivery of manufacturing equipment and subsystems that we manufacture or obtain from suppliers.
- Adding manufacturing capacity in any international location will subject us to new laws and regulations including those pertaining to labor and employment, environmental and export / import. In addition, it brings with it the risk of managing larger scale foreign operations.
- We may be unable to achieve the production throughput necessary to achieve our target annualized production run rate at our current and future manufacturing facilities.
- Manufacturing equipment may take longer and cost more to engineer and build than expected, and may not operate as required to meet our production plans.
- We may depend on third-party relationships in the development and operation of additional production capacity, which may subject us to the risk that such third parties do not fulfill their obligations to us under our arrangements with them.
- We may be unable to attract or retain qualified personnel. For example, currently the market for manufacturing labor has been constrained, which could pose a risk to our ability to increase production.

If we are unable to expand our manufacturing facilities or develop our existing facilities in a timely manner to meet increased demand, we may be unable to further scale our business, which would negatively affect our results of operations and financial condition. Conversely, if the demand for our Energy Servers or our production output decreases or does not rise as expected, we may not be able to spread a significant amount of our fixed costs over the production volume, resulting in a greater than expected per unit fixed cost, which would have a negative impact on our financial condition and our results of operations.

If our Energy Servers contain manufacturing defects, our business and financial results could be harmed.

Our Energy Servers are complex products and they may contain undetected or latent errors or defects. In the past, we have experienced latent defects only discovered once the Energy Server is deployed in the field. Changes in our supply chain or the failure of our suppliers to otherwise provide us with components or materials that meet our specifications could introduce defects into our products. As we grow our manufacturing volume, the chance of manufacturing defects could increase. In addition, new product introductions or design changes made for the purpose of cost reduction, performance improvement, fulfilling new customer requirements or improved reliability could introduce new design defects that may impact Energy Server performance and life. Any design or manufacturing defects or other failures of our Energy Servers to perform as expected could cause us to incur significant service and re-engineering costs, divert the attention of our engineering personnel from product development efforts, and significantly and adversely affect customer satisfaction, market acceptance, and our business reputation.

Furthermore, we may be unable to correct manufacturing defects or other failures of our Energy Servers in a manner satisfactory to our customers, which could adversely affect customer satisfaction, market acceptance, and our business reputation.

The performance of our Energy Servers may be affected by factors outside of our control, which could result in harm to our business and financial results.

Field conditions, such as the quality of the natural gas supply and utility processes, which vary by region and may be subject to seasonal fluctuations or environmental factors such as smoke from wild fires, have affected the performance of our Energy Servers and are not always possible to predict until the Energy Server is in operation. As we move into new geographies and deploy new service configurations, we may encounter new and unanticipated field conditions. Adverse impacts on performance may require us to incur significant service and re-engineering costs or divert the attention of our engineering personnel from product development efforts. Furthermore, we may be unable to adequately address the impacts of factors outside of our control in a manner satisfactory to our customers. Any of these circumstances could significantly and adversely affect customer satisfaction, market acceptance, and our business reputation.

If our estimates of the useful life for our Energy Servers are inaccurate or we do not meet our performance warranties and performance guaranties, or if we fail to accrue adequate warranty and guaranty reserves, our business and financial results could be harmed.

We offer certain customers the opportunity to renew their O&M Agreements (defined herein) on an annual basis, for up to 30 years, at prices predetermined at the time of purchase of the Energy Server. We also provide performance warranties and performance guaranties covering the efficiency and output performance of our Energy Servers. Our pricing of these contracts and our reserves for warranty and replacement are based upon our estimates of the useful life of our Energy Servers and their components, including assumptions regarding improvements in power module life that may fail to materialize. We do not have a long history with a large number of field deployments, especially for new product introductions, and our estimates may prove to be incorrect. Failure to meet these warranty and performance guaranty levels may require us to replace the Energy Servers at our expense or refund their cost to the customer, or require us to make cash payments to the customer based on actual performance, as compared to expected performance, capped at a percentage of the relevant equipment purchase prices. We accrue for product warranty costs and recognize losses on service or performance warranties when required by U.S. GAAP based on our estimates of costs that may be incurred and based on historical experience. However, as we expect our customers to renew their O&M agreements each year, the total liability over time may be more than the accrual. Actual warranty expenses have in the past been and may in the future be greater than we have assumed in our estimates, the accuracy of which may be hindered due to our limited history operating at our current scale. Therefore, if our estimates of the useful life for our Energy Servers are inaccurate or we do not meet our performance warranties and performance guaranties, or if we fail to accrue adequate warranty and guaranty reserves, our business and financial results could be harmed.

Our business is subject to risks associated with construction, utility interconnection, cost overruns and delays, including those related to obtaining government permits and other contingencies that may arise in the course of completing installations.

Because we generally do not recognize revenue on the sales of our Energy Servers until installation and acceptance except where a third party is responsible for installation (such as in our sales in the Republic of Korea and certain cases in the United States), our financial results depend to a large extent on the timeliness of the installation of our Energy Servers. Furthermore, in some cases, the installation of our Energy Servers may be on a fixed price basis, which subjects us to the risk of cost overruns or other unforeseen expenses in the installation process.

The construction, installation, and operation of our Energy Servers at a particular site is also generally subject to oversight and regulation in accordance with national, state, and local laws and ordinances relating to building codes, safety, environmental protection, and related matters, and typically require various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. For more information regarding these restrictions, please see the risk factors in the section entitled "*Risks Related to Legal Matters and Regulations*." As a result, unforeseen delays in the review and permitting process could delay the timing of the construction and installation of our Energy Servers and could therefore adversely affect the timing of the recognition of revenue related to the installation, which could harm our operating results in a particular period.

In addition, the completion of many of our installations depends on the availability of and timely connection to the natural gas grid and the local electric grid. In some jurisdictions, local utility companies or the municipality have denied our request for connection or have required us to reduce the size of certain projects. In addition, some municipalities have recently adopted restrictions that prohibit any new construction that allows for the use of natural gas. For more information regarding these restrictions, please see the risk factor entitled "*As a technology that runs, in part, on fossil fuel, we may be subject to a heightened risk of regulation, to a potential for the loss of certain incentives, and to changes in our customers' energy*

procurement policies." Any delays in our ability to connect with utilities, delays in the performance of installation-related services, or poor performance of installation-related services by our general contractors or sub-contractors will have a material adverse effect on our results and could cause operating results to vary materially from period to period.

Furthermore, we rely on the ability of our third-party general contractors to install Energy Servers at our customers' sites and to meet our installation requirements. We currently work with a limited number of general contractors, which has impacted and may continue to impact our ability to make installations as planned. Our work with contractors or their sub-contractors may have the effect of our being required to comply with additional rules (including rules unique to our customers), working conditions, site remediation, and other union requirements, which can add costs and complexity to an installation project. The timeliness, thoroughness, and quality of the installation-related services performed by some of our general contractors and their sub-contractors in the past have not always met our expectations or standards and may not meet our expectations and standards in the future.

Any significant disruption in the operations at our headquarters or manufacturing facilities could delay the production of our Energy Servers, which would harm our business and results of operations.

We manufacture our Energy Servers in a limited number of manufacturing facilities, any of which could become unavailable either temporarily or permanently for any number of reasons, including equipment failure, material supply, public health emergencies or catastrophic weather or geologic events. For example, our headquarters and several of our manufacturing facilities are located in the San Francisco bay area, an area that is susceptible to earthquakes, floods and other natural disasters. The occurrence of a natural disaster such as an earthquake, drought, extreme heat, flood, fire, localized extended outages of critical utilities (such as California's public safety power shut-offs) or transportation systems, or any critical resource shortages could cause a significant interruption in our business, damage or destroy our facilities, our manufacturing equipment, or our inventory, and cause us to incur significant costs, any of which could harm our business, our financial condition and our results of operations. The insurance we maintain against fires, earthquakes and other natural disasters may not be adequate to cover our losses in any particular case.

The failure of our suppliers to continue to deliver necessary raw materials or other components of our Energy Servers in a timely manner and to specification could prevent us from delivering our products within required time frames and could cause installation delays, cancellations, penalty payments and damage to our reputation.

We rely on a limited number of third-party suppliers, and in some cases sole suppliers, for some of the raw materials and components for our Energy Servers, including certain rare earth materials and other materials that may be of limited supply. If our suppliers provide insufficient inventory at the level of quality required to meet our standards and customer demand or if our suppliers are unable or unwilling to provide us with the contracted quantities (as we have limited or in some case no alternatives for supply), our results of operations could be materially and negatively impacted. If we fail to develop or maintain our relationships with our suppliers, or if there is otherwise a shortage or lack of availability of any required raw materials or components, we may be unable to manufacture our Energy Servers or our Energy Servers may be available only at a higher cost or after a long delay. There have been a number of supply chain disruptions throughout the global supply chain as countries are in various stages of opening up and demand for certain components increases associated with the COVID-19 pandemic. For example, we expect component shortages especially for semiconductors and specialty metals to persist at least through the second half of 2021. Such delays and shortages could prevent us from delivering our Energy Servers to our customers within required time frames and cause order cancellations, which would adversely impact our cash flows and results of operations.

In some cases, we have had to create our own supply chain for some of the components and materials utilized in our fuel cells. We have made significant expenditures in the past to develop our supply chain. In many cases, we entered into contractual relationships with suppliers to jointly develop the components we needed. These activities are time and capital intensive. In addition, some of our suppliers use proprietary processes to manufacture components. We may be unable to obtain comparable components from alternative suppliers without considerable delay, expense, or at all, as replacing these suppliers could require us either to make significant investments to bring the capability in-house or to invest in a new supply chain partner. Some of our suppliers are smaller, private companies, heavily dependent on us as a customer. If our suppliers face difficulties obtaining the credit or capital necessary to expand their operations when needed, they could be unable to supply necessary raw materials and components needed to support our planned sales and services operations, which would negatively impact our sales volumes and cash flows.

The failure by us to obtain raw materials or components in a timely manner or to obtain raw materials or components that meet our quantity and cost requirements could impair our ability to manufacture our Energy Servers or increase their costs or service costs of our existing portfolio of Energy Servers under maintenance services agreements. If we cannot obtain substitute

materials or components on a timely basis or on acceptable terms, we could be prevented from delivering our Energy Servers to our customers within required time frames, which could result in sales and installation delays, cancellations, penalty payments, or damage to our reputation, any of which could have a material adverse effect on our business and results of operations. In addition, we rely on our suppliers to meet quality standards, and the failure of our suppliers to meet or exceed those quality standards could cause delays in the delivery of our products, cause unanticipated servicing costs, and cause damage to our reputation.

We have, in some instances, entered into long-term supply agreements that could result in insufficient inventory and negatively affect our results of operations.

We have entered into long-term supply agreements with certain suppliers. Some of these supply agreements provide for fixed or inflation-adjusted pricing, substantial prepayment obligations and in a few cases, supplier purchase commitments. These arrangements could mean that we end up paying for inventory that we did not need or that was at a higher price than the market. Further, we face significant specific counterparty risk under long-term supply agreements when dealing with suppliers without a long, stable production and financial history. Given the uniqueness of our product, many of our suppliers do not have a long operating history and are private companies that may not have substantial capital resources. In the event any such supplier experiences financial difficulties, it may be difficult or impossible, or may require substantial time and expense, for us to recover any or all of our prepayments. We do not know whether we will be able to maintain long-term supply relationships with our critical suppliers or whether we may secure new long-term supply agreements. Additionally, many of our parts and materials are procured from foreign suppliers, which exposes us to risks including unforeseen increases in costs or interruptions in supply arising from changes in applicable international trade regulations such as taxes, tariffs, or quotas. Any of the foregoing could materially harm our financial condition and our results of operations.

We face supply chain competition, including competition from businesses in other industries, which could result in insufficient inventory and negatively affect our results of operations.

Certain of our suppliers also supply parts and materials to other businesses including businesses engaged in the production of consumer electronics and other industries unrelated to fuel cells. As a relatively low-volume purchaser of certain of these parts and materials, we may be unable to procure a sufficient supply of the items in the event that our suppliers fail to produce sufficient quantities to satisfy the demands of all of their customers, which could materially harm our financial condition and our results of operations.

We, and some of our suppliers, obtain capital equipment used in our manufacturing process from sole suppliers and, if this equipment is damaged or otherwise unavailable, our ability to deliver our Energy Servers on time will suffer.

Some of the capital equipment used to manufacture our products and some of the capital equipment used by our suppliers have been developed and made specifically for us, are not readily available from multiple vendors, and would be difficult to repair or replace if they did not function properly. If any of these suppliers were to experience financial difficulties or go out of business or if there were any damage to or a breakdown of our manufacturing equipment and we could not obtain replacement equipment in a timely manner, our business would suffer. In addition, a supplier's failure to supply this equipment in a timely manner with adequate quality and on terms acceptable to us could disrupt our production schedule or increase our costs of production and service.

Possible new trade tariffs could have a material adverse effect on our business.

Our business is dependent on the availability of raw materials and components for our Energy Servers, particularly electrical components common in the semiconductor industry, specialty steel products / processing and raw materials. Tariffs imposed on steel and aluminum imports have increased the cost of raw materials for our Energy Servers and decreased the available supply. Additional new trade tariffs or other trade protection measures that are proposed or threatened and the potential escalation of a trade war and retaliation measures could have a material adverse effect on our business, results of operations and financial condition. Consequently, the imposition of tariffs on items imported by us from China or other countries could increase our costs and could have a material adverse effect on our business and our results of operations.

A failure to properly comply (or to comply properly) with foreign trade zone laws and regulations could increase the cost of our duties and tariffs.

We have established two foreign trade zones, one in California and one in Delaware, through qualification with U.S. Customs and Border Protection, and are approved for "zone to zone" transfers between our California and Delaware facilities. Materials received in a foreign trade zone are not subject to certain U.S. duties or tariffs until the material enters U.S.

commerce. We benefit from the adoption of foreign trade zones by reduced duties, deferral of certain duties and tariffs, and reduced processing fees, which help us realize a reduction in duty and tariff costs. However, the operation of our foreign trade zones requires compliance with applicable regulations and continued support of U.S. Customs and Border Protection with respect to the foreign trade zone program. If we are unable to maintain the qualification of our foreign trade zones, or if foreign trade zones are limited or unavailable to us in the future, our duty and tariff costs would increase, which could have an adverse effect on our business and results of operations.

Risks Related to Government Incentive Programs

Our business currently benefits from the availability of rebates, tax credits and other financial programs and incentives, and the reduction, modification, or elimination of such benefits could cause our revenue to decline and harm our financial results.

The U.S. federal government and some state and local governments provide incentives to end users and purchasers of our Energy Servers in the form of rebates, tax credits, and other financial incentives, such as system performance payments and payments for renewable energy credits associated with renewable energy generation. In addition, some countries outside the United States also provide incentives to end users and purchasers of our Energy Servers. We currently have operations and sell our Energy Servers in Japan, India, and the Republic of Korea (collectively, our "Asia Pacific region"), where in some locations such as the Republic of Korea, Renewable Portfolio Standards ("RPS") are in place to promote the adoption of renewable power generation, including fuel cells. Our Energy Servers have qualified for tax exemptions, incentives, or other customer incentives in many states including the states of California, Connecticut, Massachusetts, New Jersey and New York. Some states have utility procurement programs and/or renewable portfolio standards for which our technology is eligible. Our Energy Servers are currently installed in ten U.S. states, each of which may have its own enabling policy framework. We utilize these governmental rebates, tax credits, and other financial incentives to lower the effective price of the Energy Servers to our customers in the U. S. and the Asia Pacific region. Financiers and Equity Investors in our PPA Programs may also take advantage of these financial incentives, lowering the cost of capital and energy to our customers. However, these incentives or RPS's may expire on a particular date, end when the allocated funding is exhausted, or be reduced or terminated as a matter of regulatory or legislative policy.

For example, the RPS is scheduled to be replaced at the beginning of 2022 with the Hydrogen Portfolio Standard (“HPS”). This may impact the demand for our Energy Servers in the Republic of Korea. Initially, we do not expect the HPS to require 100% hydrogen as a feedstock for fuel cell projects. The Ministry of Trade, Industry, and Economy is running a stakeholder process in 2021, which will determine the specifics of the HPS incentive mechanism. For the six months ended June 30, 2021 and for the year ended December 31, 2020, our revenue in the Republic of Korea accounted for 36% and 34% of our total revenue, respectively. Therefore, if sales of our Energy Servers to this market decline in the future, this may have a material adverse effect on our financial condition and results of operations.

As another example, in the United States, commercial purchasers of fuel cells are eligible to claim the federal ITC. While the current administration has proposed extending the ITC for up to 10 years as part of its infrastructure plan, under current law the ITC will end on December 31, 2023.

The ITC program has operational criteria that extend for five years. If the energy property is disposed or otherwise ceases to be qualified investment credit property before the close of the five-year recapture period is fulfilled, it could result in a partial reduction in incentives. In the case of a Portfolio Financing, the owner of the portfolio bears the risk of repayment if the assets placed in service do not meet the ITC operational criteria in the future.

As another example, many of our installations in California interconnect with investor-owned utilities on Fuel Cell Net Energy Metering (“FC NEM”) tariffs. It is not yet clear that the FC NEM tariffs will be available for new installations after December 31, 2021 and installations that are currently on FC NEM tariffs will have to meet more stringent greenhouse gas emission standards to remain eligible for the FC NEM tariffs. Recognizing this, we are working through the appropriate regulatory channels to establish alternative interconnection opportunities through an active proceeding at the California Public Utilities Commission. The proceeding, which is focused on the commercialization of microgrids, is currently ongoing, and we anticipate clarity on interconnection opportunities by late 2021. In parallel, we are pursuing an extension of the FC NEM tariffs. It is not certain that our efforts to obtain an acceptable substitute or extend the FC NEM tariffs will be successful. If our customers are unable to interconnect under the FC NEM tariffs or a suitable alternative, the costs of interconnection may increase and such an increase may negatively impact demand for our products. Additionally, the uncertainty regarding

requirements for service under any of these tariffs could negatively impact the perceived value of or risks associated with our products, which could also negatively impact demand.

Changes in the availability of rebates, tax credits, and other financial programs and incentives could reduce demand for our Energy Servers, impair sales financing, and adversely impact our business results. The continuation of these programs and incentives depends upon political support which to date has been bipartisan and durable.

We rely on tax equity financing arrangements to realize the benefits provided by ITCs and accelerated tax depreciation and in the event these programs are terminated, our financial results could be harmed.

We expect that Energy Server deployments through certain of our financed transactions will receive capital from Equity Investors who derive a significant portion of their economic returns through tax benefits. Equity Investors are generally entitled to substantially all of the project's tax benefits, such as those provided by the ITC and Modified Accelerated Cost Recovery System ("MACRS") or bonus depreciation, until the Equity Investors achieve their respective agreed rates of return. The number of and available capital from potential Equity Investors is limited, we compete with other energy companies eligible for these tax benefits to access such investors, and the availability of capital from Equity Investors is subject to fluctuations based on factors outside of our control such as macroeconomic trends and changes in applicable taxation regimes. Concerns regarding our limited operating history, lack of profitability and that we are the only party who can perform operations and maintenance on our Energy Servers have made it difficult to attract investors in the past. Our ability to obtain additional financing in the future depends on the continued confidence of banks and other financing sources in our business model, the market for our Energy Servers, and the continued availability of tax benefits applicable to our Energy Servers. In addition, conditions in the general economy and financial and credit markets may result in the contraction of available tax equity financing. If we are unable to enter into tax equity financing agreements with attractive pricing terms, or at all, we may not be able to obtain the capital needed to fund our financing programs or use the tax benefits provided by the ITC and MACRS depreciation, which could make it more difficult for customers to finance the purchase of our Energy Servers. Such circumstances could also require us to reduce the price at which we are able to sell our Energy Servers and therefore harm our business, our financial condition, and our results of operations.

Risks Related to Legal Matters and Regulations

We are subject to various national, state and local laws and regulations that could impose substantial costs upon us and cause delays in the delivery and installation of our Energy Servers.

The construction, installation, and operation of our Energy Servers at a particular site is also generally subject to oversight and regulation in accordance with national, state, and local laws and ordinances relating to building codes, safety, environmental protection, and related matters, and typically require various local and other governmental approvals and permits, including environmental approvals and permits, that vary by jurisdiction. In some cases, these approvals and permits require periodic renewal. These laws can give rise to liability for administrative oversight costs, cleanup costs, property damage, bodily injury, fines, and penalties. Capital and operating expenses needed to comply with the various laws and regulations can be significant, and violations may result in substantial fines and penalties or third-party damages.

It is difficult and costly to track the requirements of every individual authority having jurisdiction over our installations, to design our Energy Servers to comply with these varying standards, and to obtain all applicable approvals and permits. We cannot predict whether or when all permits required for a given project will be granted or whether the conditions associated with the permits will be achievable. The denial of a permit or utility connection essential to a project or the imposition of impractical conditions would impair our ability to develop the project. In addition, we cannot predict whether the permitting process will be lengthened due to complexities and appeals. Delay in the review and permitting process for a project can impair or delay our and our customers' abilities to develop that project or may increase the cost so substantially that the project is no longer attractive to us or our customers. Furthermore, unforeseen delays in the review and permitting process could delay the timing of the installation of our Energy Servers and could therefore adversely affect the timing of the recognition of revenue related to the installation, which could harm our operating results in a particular period. Additionally, in many cases we contractually commit to performing all necessary installation work on a fixed-price basis, and unanticipated costs associated with environmental remediation and/or compliance expenses may cause the cost of performing such work to exceed our revenue. The costs of complying with all the various laws, regulations and customer requirements, and any claims concerning noncompliance or liability with respect to contamination in the future, could have a material adverse effect on our financial condition or our operating results.

The installation and operation of our Energy Servers are subject to environmental laws and regulations in various jurisdictions, and there is uncertainty with respect to the interpretation of certain environmental laws and regulations to our Energy Servers, especially as these regulations evolve over time.

We are committed to compliance with applicable environmental laws and regulations including health and safety standards, and we continually review the operation of our Energy Servers for health, safety, and environmental compliance. Our Energy Servers, like other fuel cell technology-based products of which we are aware, produce small amounts of hazardous wastes and air pollutants, and we seek to address these in accordance with applicable regulatory standards. In addition, environmental laws and regulations such as the Comprehensive Environmental Response, Compensation and Liability Act in the United States impose liability on several grounds including for the investigation and cleanup of contaminated soil and ground water, for building contamination, for impacts to human health and for damages to natural resources. If contamination is discovered in the future at properties formerly owned or operated by us or currently owned or operated by us, or properties to which hazardous substances were sent by us, it could result in our liability under environmental laws and regulations. Many of our customers who purchase our Energy Servers have high sustainability standards, and any environmental noncompliance by us could harm our reputation and impact a current or potential customer's buying decision.

Maintaining compliance with laws and regulations can be challenging given the changing patchwork of environmental laws and regulations that prevail at the federal, state, regional, and local level. Most existing environmental laws and regulations preceded the introduction of our innovative fuel cell technology and were adopted to apply to technologies existing at the time (i.e., large coal, oil, or gas-fired power plants). Guidance from these agencies on how certain environmental laws and regulations may or may not be applied to our technology can be inconsistent.

For example, natural gas, which is the primary fuel used in our Energy Servers, contains benzene, which is classified as a hazardous waste if it exceeds 0.5 milligrams per liter. A small amount of benzene found in the public natural gas supply (equivalent to what is present in one gallon of gasoline in an automobile fuel tank, which are exempt from federal regulation) is collected by the gas cleaning units contained in our Energy Servers that are typically replaced at customers' sites once every 15 to 36 months. From 2010 to late 2016 and in the regular course of maintenance of the Energy Servers, we periodically replaced the units in our servers relying upon a federal environmental exemption that permitted the handling of such units without manifesting the contents as containing a hazardous waste. Although over the years and with the approval of two states, we believed that we operated appropriately under the exemption, the U.S. Environmental Protection Agency ("EPA") issued guidance for the first time in late 2016 that differed from our belief and conflicted with the state approvals we had obtained. We have complied with the new guidance and, given the comparatively small quantities of benzene produced, we do not anticipate significant additional costs or risks from our compliance with the revised 2016 guidance. In order to put this matter behind us and with no admission of law or fact, we agreed to a consent agreement that was ratified and incorporated by reference into a final order that was entered by an Environmental Appeals Judge for EPA's Environmental Appeals Board in May of 2020. Consistent with the consent agreement and final order, a final payment of approximately $1.2 million was made in the fourth quarter of 2020 and EPA has confirmed the matter is formally resolved. Additionally, a nominal penalty was paid to a state agency under that state's environmental laws relating to the same issue.

Some states in which we operate, including New York, New Jersey and North Carolina, have specific exemptions for fuel cells. Other states in which we currently operate, including California, have emissions-based requirements, most of which require permits or other notifications for quantities of emissions that are higher than those observed from our Energy Servers. For example, the Bay Area Air Quality Management District in California has an air permit and risk assessment exemption for emissions of chromium in the hexavalent form ("CR+6")that are more than 0.00051 lbs/year. Emissions above this level may trigger the need for a permit. Also, California's Proposition 65 requires notification of the presence of CR+6 unless public exposure is below .001 µg/day, the level determined to represent no significant health risk. Since the California standards are more stringent than those in any other state or foreign location in which we have installed Energy Servers to date, we are focused on California's standards. If stricter standards are adopted in other states or jurisdictions, it could impact our ability to obtain regulatory approval and/or could result in our not being able to operate in a particular local jurisdiction.

These examples illustrate that our technology is moving faster than the regulatory process in many instances and that there are inconsistencies between how we are regulated in different jurisdictions. It is possible that regulators could delay or prevent us from conducting our business in some way pending agreement on, and compliance with, shifting regulatory requirements. Such actions could delay the installation of Energy Servers, could result in penalties, could require modification or replacement or could trigger claims of performance warranties and defaults under customer contracts that could require us to repurchase their Energy Servers, any of which could adversely affect our business, our financial performance, and our reputation. In addition, new laws or regulations or new interpretations of existing laws or regulations could present marketing,

political or regulatory challenges and could require us to upgrade or retrofit existing equipment, which could result in materially increased capital and operating expenses.

As a technology that runs, in part, on fossil fuel, we may be subject to a heightened risk of regulation, to a potential for the loss of certain incentives, and to changes in our customers' energy procurement policies.

The current generation of our Energy Servers running on natural gas produce nearly 45% fewer carbon emissions than the average U.S. marginal power generation sources that our projects displace. However, the operation of our Energy Servers does produce carbon dioxide ("CO2"), which contributes to global climate change. As such, we may be negatively impacted by CO2-related changes in applicable laws, regulations, ordinances, rules, or the requirements of the incentive programs on which we and our customers currently rely. Changes (or a lack of change to comprehensively recognize the risks of climate change and recognize the benefit of our technology as one means to maintain reliable and resilient electric service with a lower greenhouse gas emission profile) in any of the laws, regulations, ordinances, or rules that apply to our installations and new technology could make it more difficult or more costly for us or our customers to install and operate our Energy Servers on particular sites, thereby negatively affecting our ability to deliver cost savings to customers. Certain municipalities in California have already banned the use of distributed generation products that utilize fossil fuel. Additionally, our customers' and potential customers' energy procurement policies may prohibit or limit their willingness to procure our Energy Servers. Our business prospects may be negatively impacted if we are prevented from completing new installations or our installations become more costly as a result of laws, regulations, ordinances, or rules applicable to our Energy Servers, or by our customers' and potential customers' energy procurement policies.

Existing regulations and changes to such regulations impacting the electric power industry may create technical, regulatory, and economic barriers, which could significantly reduce demand for our Energy Servers or affect the financial performance of current sites.

The market for electricity generation products is heavily influenced by U.S. federal, state, local, and foreign government regulations and policies as well as by internal policies and regulations of electric utility providers. These regulations and policies often relate to electricity pricing and technical interconnection of customer-owned electricity generation. These regulations and policies are often modified and could continue to change, which could result in a significant reduction in demand for our Energy Servers. For example, utility companies commonly charge fees to larger industrial customers for disconnecting from the electric grid or for having the capacity to use power from the electric grid for back-up purposes. These fees could change, thereby increasing the cost to our customers of using our Energy Servers and making them less economically attractive.

In addition, our project with Delmarva Power & Light Company (the "Delaware Project") is subject to laws and regulations relating to electricity generation, transmission, and sale in Delaware and at the federal level.

A law governing the sale of electricity from the Delaware Project was necessary to implement part of several incentives that Delaware offered to us to build our major manufacturing facility ("Manufacturing Center") in Delaware. Those incentives have proven controversial in Delaware, in part because our Manufacturing Center, while a significant source of continuing manufacturing employment, has not expanded as quickly as projected. The opposition to the Delaware Project is an example of potentially material risks associated with electric power regulation.

At the federal level, FERC has authority to regulate under various federal energy regulatory laws, wholesale sales of electric energy, capacity, and ancillary services, and the delivery of natural gas in interstate commerce. Also, several of the tax equity partnerships in which we have an interest are subject to regulation under FERC with respect to market-based sales of electricity, which requires us to file notices and make other periodic filings with FERC, which increases our costs and subjects us to additional regulatory oversight.

Although we generally are not regulated as a utility, federal, state, and local government statutes and regulations concerning electricity heavily influence the market for our product and services. These statutes and regulations often relate to electricity pricing, net metering, incentives, taxation, and the rules surrounding the interconnection of customer-owned electricity generation for specific technologies. In the United States, governments frequently modify these statutes and regulations. Governments, often acting through state utility or public service commissions, change and adopt different requirements for utilities and rates for commercial customers on a regular basis. Changes, or in some cases a lack of change, in any of the laws, regulations, ordinances, or other rules that apply to our installations and new technology could make it more costly for us or our customers to install and operate our Energy Servers on particular sites and, in turn, could negatively affect our ability to deliver cost savings to customers for the purchase of electricity.

We may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.

We may in the future become subject to product liability claims. Our Energy Servers are considered high energy systems because they use flammable fuels and may operate at 480 volts. Although our Energy Servers are certified to meet ANSI, IEEE, ASME, and NFPA design and safety standards, if an Energy Server is not properly handled in accordance with our servicing and handling standards and protocols, there could be a system failure and resulting liability. These claims could require us to incur significant costs to defend. Furthermore, any successful product liability claim could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about us and our Energy Servers, which could harm our brand, our business prospects, and our operating results. Our product liability insurance may not be sufficient to cover all potential product liability claims. Any lawsuit seeking significant monetary damages either in excess of our coverage or outside of our coverage may have a material adverse effect on our business and our financial condition.

Current or future litigation or administrative proceedings could have a material adverse effect on our business, our financial condition and our results of operations.

We have been and continue to be involved in legal proceedings, administrative proceedings, claims, and other litigation that arise in the ordinary course of business. Purchases of our products have also been the subject of litigation. For information regarding pending legal proceedings, please see Part II, Item 1, *Legal Proceedings* and Note 13 - *Commitments and Contingencies* in Part I, Item 1, *Financial Statements*. In addition, since our Energy Server is a new type of product in a nascent market, we have in the past needed and may in the future need to seek the amendment of existing regulations, or in some cases the development of new regulations, in order to operate our business in some jurisdictions. Such regulatory processes may require public hearings concerning our business, which could expose us to subsequent litigation.

Unfavorable outcomes or developments relating to proceedings to which we are a party or transactions involving our products such as judgments for monetary damages, injunctions, or denial or revocation of permits, could have a material adverse effect on our business, our financial condition, and our results of operations. In addition, settlement of claims could adversely affect our financial condition and our results of operations.

Risks Related to Our Intellectual Property

Our failure to protect our intellectual property rights may undermine our competitive position, and litigation to protect our intellectual property rights may be costly.

Policing unauthorized use of proprietary technology can be difficult and expensive, and the protective measures we have taken to protect our trade secrets may not be sufficient to prevent such use. For example, many of our engineers reside in California where it is not legally permissible to prevent them from working for a competitor. Also, litigation may be necessary to enforce our intellectual property rights, to protect our trade secrets, or to determine the validity and scope of the proprietary rights of others. Such litigation may result in our intellectual property rights being challenged, limited in scope, or declared invalid or unenforceable. We cannot be certain that the outcome of any litigation will be in our favor, and an adverse determination in any such litigation could impair our intellectual property rights, our business, our prospects, and our reputation.

We rely primarily on patent, trade secret, and trademark laws and non-disclosure, confidentiality, and other types of contractual restrictions to establish, maintain, and enforce our intellectual property and proprietary rights. However, our rights under these laws and agreements afford us only limited protection and the actions we take to establish, maintain, and enforce our intellectual property rights may not be adequate. For example, our trade secrets and other confidential information could be disclosed in an unauthorized manner to third parties, our owned or licensed intellectual property rights could be challenged, invalidated, circumvented, infringed, or misappropriated or our intellectual property rights may not be sufficient to provide us with a competitive advantage, any of which could have a material adverse effect on our business, financial condition, or operating results. In addition, the laws of some countries do not protect proprietary rights as fully as do the laws of the United States. As a result, we may not be able to protect our proprietary rights adequately abroad.

In connection with our expansion into new markets, we may need to develop relationships with new partners,
including project developers and/or financiers who may require access to certain of our intellectual property in order to mitigate perceived risks regarding our ability to service their projects over the contracted project duration. If we are unable to come to agreement regarding the terms of such access or find alternative means to address this perceived risk, such failure may

negatively impact our ability to expand into new markets. Alternatively, we may be required to develop new strategies for the protection of our intellectual property, which may be less protective than our current strategies and could therefore erode our competitive position.

Our patent applications may not result in issued patents, and our issued patents may not provide adequate protection, either of which may have a material adverse effect on our ability to prevent others from commercially exploiting products similar to ours.

We cannot be certain that our pending patent applications will result in issued patents or that any of our issued patents will afford protection against a competitor. The status of patents involves complex legal and factual questions, and the breadth of claims allowed is uncertain. As a result, we cannot be certain that the patent applications that we file will result in patents being issued or that our patents and any patents that may be issued to us in the future will afford protection against competitors with similar technology. In addition, patent applications filed in foreign countries are subject to laws, rules, and procedures that differ from those of the United States, and thus we cannot be certain that foreign patent applications related to issued U.S. patents will be issued in other regions. Furthermore, even if these patent applications are accepted and the associated patents issued, some foreign countries provide significantly less effective patent enforcement than in the United States.

In addition, patents issued to us may be infringed upon or designed around by others and others may obtain patents that we need to license or design around, either of which would increase costs and may adversely affect our business, our prospects, and our operating results.

We may need to defend ourselves against claims that we infringed, misappropriated, or otherwise violated the intellectual property rights of others, which may be time-consuming and would cause us to incur substantial costs.

Companies, organizations, or individuals, including our competitors, may hold or obtain patents, trademarks, or other proprietary rights that they may in the future believe are infringed by our products or services. These companies holding patents or other intellectual property rights allegedly relating to our technologies could, in the future, make claims or bring suits alleging infringement, misappropriation, or other violations of such rights, or otherwise assert their rights and by seeking licenses or injunctions. Several of the proprietary components used in our Energy Servers have been subjected to infringement challenges in the past. We also generally indemnify our customers against claims that the products we supply don't infringe, misappropriate, or otherwise violate third party intellectual property rights, and we therefore may be required to defend our customers against such claims. If a claim is successfully brought in the future and we or our products are determined to have infringed, misappropriated, or otherwise violated a third party's intellectual property rights, we may be required to do one or more of the following:

- cease selling or using our products that incorporate the challenged intellectual property;
- pay substantial damages (including treble damages and attorneys' fees if our infringement is determined to be willful);
- obtain a license from the holder of the intellectual property right, which may not be available on reasonable terms or at all; or
- redesign our products or means of production, which may not be possible or cost-effective.

Any of the foregoing could adversely affect our business, prospects, operating results, and financial condition. In addition, any litigation or claims, whether or not valid, could harm our reputation, result in substantial costs and divert resources and management attention.

We also license technology from third parties and incorporate components supplied by third parties into our products. We may face claims that our use of such technology or components infringes or otherwise violates the rights of others, which would subject us to the risks described above. We may seek indemnification from our licensors or suppliers under our contracts with them, but our rights to indemnification or our suppliers' resources may be unavailable or insufficient to cover our costs and losses.

Risks Related to Our Financial Condition and Operating Results

We have incurred significant losses in the past and we may not be profitable for the foreseeable future.

Since our inception in 2001, we have incurred significant net losses and have used significant cash in our business. As of June 30, 2021, we had an accumulated deficit of $3.2 billion. We expect to continue to expand our operations, including by investing in manufacturing, sales and marketing, research and development, staffing systems, and infrastructure to support our growth, as well as internationally. We may continue to incur net losses for the foreseeable future. Our ability to achieve profitability in the future will depend on a number of factors, including:

- growing our sales volume;
- increasing sales to existing customers and attracting new customers;
- expanding into new geographical markets and industry market sectors;
- attracting and retaining financing partners who are willing to provide financing for sales on a timely basis and with attractive terms;
- continuing to improve the useful life of our fuel cell technology and reducing our warranty servicing costs;
- reducing the cost of producing our Energy Servers;
- improving the efficiency and predictability of our installation process;
- improving the effectiveness of our sales and marketing activities; and
- attracting and retaining key talent in a competitive marketplace.

Even if we do achieve profitability, we may be unable to sustain or increase our profitability in the future.

Our financial condition and results of operations and other key metrics are likely to fluctuate on a quarterly basis in future periods, which could cause our results for a particular period to fall below expectations, resulting in a severe decline in the price of our Class A common stock.

Our financial condition and results of operations and other key metrics have fluctuated significantly in the past and may continue to fluctuate in the future due to a variety of factors, many of which are beyond our control. For example, the amount of product revenue we recognize in a given period is materially dependent on the volume of installations of our Energy Servers in that period and the type of financing used by the customer.

In addition to the other risks described herein, the following factors could also cause our financial condition and results of operations to fluctuate on a quarterly basis:

- the timing of installations, which may depend on many factors such as availability of inventory, product quality or performance issues, or local permitting requirements, utility requirements, environmental, health, and safety requirements, weather, the COVID-19 pandemic or such other health emergency, and customer facility construction schedules;
- size of particular installations and number of sites involved in any particular quarter;
- the mix in the type of purchase or financing options used by customers in a period, the geographical mix of customer sales, and the rates of return required by financing parties in such period;
- whether we are able to structure our sales agreements in a manner that would allow for the product and installation revenue to be recognized upfront;
- delays or cancellations of Energy Server installations;
- fluctuations in our service costs, particularly due to unexpected costs of servicing and maintaining Energy Servers;
- fluctuations in our research and development expense, including periodic increases associated with the pre-production qualification of additional tools as we expand our production capacity;
- interruptions in our supply chain;
- the length of the sales and installation cycle for a particular customer;
- the timing and level of additional purchases by existing customers;
- unanticipated expenses or installation delays associated with changes in governmental regulations, permitting requirements by local authorities at particular sites, utility requirements and environmental, health, and safety requirements;

- disruptions in our sales, production, service or other business activities resulting from disagreements with our labor force or our inability to attract and retain qualified personnel; and
- unanticipated changes in federal, state, local, or foreign government incentive programs available for us, our customers, and tax equity financing parties.

Fluctuations in our operating results and cash flow could, among other things, give rise to short-term liquidity issues. In addition, our revenue, key operating metrics, and other operating results in future quarters may fall short of our projections or the expectations of investors and financial analysts, which could have an adverse effect on the price of our Class A common stock.

If we fail to manage our growth effectively, our business and operating results may suffer.

Our current growth and future growth plans may make it difficult for us to efficiently operate our business, challenging us to effectively manage our capital expenditures and control our costs while we expand our operations to increase our revenue. If we experience a significant growth in orders without improvements in automation and efficiency, we may need additional manufacturing capacity and we and some of our suppliers may need additional and capital intensive equipment. Any growth in manufacturing must include a scaling of quality control as the increase in production increases the possible impact of manufacturing defects. In addition, any growth in the volume of sales of our Energy Servers may outpace our ability to engage sufficient and experienced personnel to manage the higher number of installations and to engage contractors to complete installations on a timely basis and in accordance with our expectations and standards. Any failure to manage our growth effectively could materially and adversely affect our business, our prospects, our operating results, and our financial condition. Our future operating results depend to a large extent on our ability to manage this expansion and growth successfully.

If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.

We are required to comply with Section 404 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"). The provisions of the act require, among other things, that we maintain effective internal control over financial reporting and disclosure controls and procedures. Preparing our financial statements involves a number of complex processes, many of which are done manually and are dependent upon individual data input or review. These processes include, but are not limited to, calculating revenue, deferred revenue and inventory costs. While we continue to automate our processes and enhance our review and put in place controls to reduce the likelihood for errors, we expect that for the foreseeable future many of our processes will remain manually intensive and thus subject to human error if we are unable to implement key operation controls around pricing, spending and other financial processes. For example, prior to our adoption of Section 404B of the Sarbanes-Oxley Act, we identified a material weakness in our internal control over financial reporting at December 31, 2019 related to the accounting for and disclosure of complex or non-routine transactions, which has been remediated. If we are unable to successfully maintain effective internal control over financial reporting, we may fail to prevent or detect material misstatements in our financial statements, in which case investors may lose confidence in the accuracy and completeness of our financial reports. Any failure to maintain effective disclosure controls and procedures or internal control over financial reporting could have a material adverse effect on our business and operating results and cause a decline in the price of our Class A common stock.

Our ability to use our deferred tax assets to offset future taxable income may be subject to limitations that could subject our business to higher tax liability.

We may be limited in the portion of net operating loss carryforwards ("NOLs") that we can use in the future to offset taxable income for U.S. federal and state income tax purposes. Our NOLs will expire, if unused, beginning in 2022 and 2028, respectively. A lack of future taxable income would adversely affect our ability to utilize these NOLs. In addition, under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"), a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its NOLs to offset future taxable income. Changes in our stock ownership as well as other changes that may be outside of our control could result in ownership changes under Section 382 of the Code, which could cause our NOLs to be subject to certain limitations. Our NOLs may also be impaired under similar provisions of state law. Our deferred tax assets, which are currently fully reserved with a valuation allowance, may expire unutilized or underutilized, which could prevent us from offsetting future taxable income.

Risks Related to Our Liquidity

We must maintain the confidence of our customers in our liquidity, including in our ability to timely service our debt obligations and in our ability to grow our business over the long-term.

Currently, we are the only provider able to fully support and maintain our Energy Servers. If potential customers believe we do not have sufficient capital or liquidity to operate our business over the long-term or that we will be unable to maintain their Energy Servers and provide satisfactory support, customers may be less likely to purchase or lease our products, particularly in light of the significant financial commitment required. In addition, financing sources may be unwilling to provide financing on reasonable terms. Similarly, suppliers, financing partners, and other third parties may be less likely to invest time and resources in developing business relationships with us if they have concerns about the success of our business.

Accordingly, in order to grow our business, we must maintain confidence in our liquidity and long-term business prospects among customers, suppliers, financing partners, and other parties. This may be particularly complicated by factors such as:

- our limited operating history at a large scale;
- the size of our debt obligations;
- our lack of profitability;
- unfamiliarity with or uncertainty about our Energy Servers and the overall perception of the distributed generation market;
- prices for electricity or natural gas in particular markets;
- competition from alternate sources of energy;
- warranty or unanticipated service issues we may experience;
- the environmental consciousness and perceived value of environmental programs to our customers;
- the size of our expansion plans in comparison to our existing capital base and the scope and history of operations;
- the availability and amount of tax incentives, credits, subsidies or other incentive programs; and
- the other factors set forth in this “Risk Factors” section.

Several of these factors are largely outside our control, and any negative perceptions about our liquidity or long-term business prospects, even if unfounded, would likely harm our business.

Our substantial indebtedness, and restrictions imposed by the agreements governing our and our PPA Entities’ outstanding indebtedness, may limit our financial and operating activities and may adversely affect our ability to incur additional debt to fund future needs.

As of June 30, 2021, we and our subsidiaries had approximately $506.5 million of total consolidated indebtedness, of which an aggregate of $290.7 million represented indebtedness that is recourse to us, all of which is classified as non-current. Of this $290.7 million in debt, $68.8 million represented debt under our 10.25% Senior Secured Notes (the "10.25% Senior Secured Notes"), and $221.9 million represented debt under the $230.0 million aggregate principal amount of our 2.50% Green Convertible Senior Notes due 2025 (the "Green Notes"). In addition, our PPA Entities’ (defined herein) outstanding indebtedness of $215.8 million represented indebtedness that is non-recourse to us. For a description and definition of PPA Entities, please see Part I, Item 2, *Management’s Discussion and Analysis – Purchase and Financing Options – Portfolio Financings*. The agreements governing our and our PPA Entities’ outstanding indebtedness contain, and other future debt agreements may contain, covenants imposing operating and financial restrictions on our business that limit our flexibility including, among other things:

- borrow money;
- pay dividends or make other distributions;
- incur liens;
- make asset dispositions;
- make loans or investments;
- issue or sell share capital of our subsidiaries;
- issue guaranties;

- enter into transactions with affiliates;
- merge, consolidate or sell, lease or transfer all or substantially all of our assets;
- require us to dedicate a substantial portion of cash flow from operations to the payment of principal and interest on indebtedness, thereby reducing the funds available for other purposes such as working capital and capital expenditures;
- make it more difficult for us to satisfy and comply with our obligations with respect to our indebtedness;
- subject us to increased sensitivity to interest rate increases;
- make us more vulnerable to economic downturns, adverse industry conditions, or catastrophic external events;
- limit our ability to withstand competitive pressures;
- limit our ability to invest in new business subsidiaries that are not PPA Entity-related;
- reduce our flexibility in planning for or responding to changing business, industry, and economic conditions; and/or
- place us at a competitive disadvantage to competitors that have relatively less debt than we have.

Our PPA Entities' debt agreements require the maintenance of financial ratios or the satisfaction of financial tests such as debt service coverage ratios and consolidated leverage ratios. Our PPA Entities' ability to meet these financial ratios and tests may be affected by events beyond our control and, as a result, we cannot assure you that we will be able to meet these ratios and tests.

Upon the occurrence of certain events to us, including a change in control, a significant asset sale or merger or similar transaction, our liquidation or dissolution or the cessation of our stock exchange listing, each of which may constitute a fundamental change under the outstanding notes, holders of certain of the notes have the right to cause us to repurchase for cash any or all of such outstanding notes. We cannot provide assurance that we would have sufficient liquidity to repurchase such notes. Furthermore, our financing and debt agreements contain events of default. If an event of default were to occur, the trustee or the lenders could, among other things, terminate their commitments and declare outstanding amounts due and payable and our cash may become restricted. We cannot provide assurance that we would have sufficient liquidity to repay or refinance our indebtedness if such amounts were accelerated upon an event of default. Borrowings under other debt instruments that contain cross-acceleration or cross-default provisions may, as a result, be accelerated and become due and payable as a consequence. We may be unable to pay these debts in such circumstances. We cannot provide assurance that the operating and financial restrictions and covenants in these agreements will not adversely affect our ability to finance our future operations or capital needs, or our ability to engage in other business activities that may be in our interest or our ability to react to adverse market developments.

As of June 30, 2021, we and our subsidiaries have approximately $506.5 million of total consolidated indebtedness, including $119.7 million in short-term debt and $386.7 million in long-term debt. Given our substantial level of indebtedness, it may be difficult for us to secure additional debt financing at an attractive cost, which may in turn impact our ability to expand our operations and our product development activities and to remain competitive in the market. Our liquidity needs could vary significantly and may be affected by general economic conditions, industry trends, performance, and many other factors not within our control.

We may not be able to generate sufficient cash to meet our debt service obligations.

Our ability to generate sufficient cash to make scheduled payments on our debt obligations will depend on our future financial performance and on our future cash flow performance, which will be affected by a range of economic, competitive, and business factors, many of which are outside of our control.

We finance a significant volume of Energy Servers and receive equity distributions from certain of the PPA Entities that purchase the Energy Servers and other project intangibles through a series of milestone payments. The milestone payments and equity distributions contribute to our cash flow. These PPA Entities are separate and distinct legal entities, do not guarantee our debt obligations, and have no obligation, contingent or otherwise, to pay amounts due under our debt obligations or to make any funds available to pay those amounts, whether by dividend, distribution, loan, or other payments. It is possible that the PPA Entities may not contribute significant cash to us.

If we do not generate sufficient cash to satisfy our debt obligations, including interest payments, or if we are unable to satisfy the requirement for the payment of principal at maturity or other payments that may be required from time to time under the terms of our debt instruments, we may have to undertake alternative financing plans such as refinancing or restructuring our debt, selling assets, reducing or delaying capital investments, or seeking to raise additional capital. We cannot provide assurance that any refinancing or restructuring would be possible, that any assets could be sold, or, if sold, of the timing of the

sales and the amount of proceeds realized from those sales, that additional financing could be obtained on acceptable terms, if at all, or that additional financing would be available or permitted under the terms of our various debt instruments then in effect. Furthermore, the ability to refinance indebtedness would depend upon the condition of the finance and credit markets at the time which have in the past been, and may in the future be, volatile. Our inability to generate sufficient cash to satisfy our debt obligations or to refinance our obligations on commercially reasonable terms or on a timely basis would have an adverse effect on our business, our results of operations and our financial condition.

Under some circumstances, we may be required to or elect to make additional payments to our PPA Entities or the Equity Investors.

Three of our PPA Entities are structured in a manner such that, other than the amount of any equity investment we have made, we do not have any further primary liability for the debts or other obligations of the PPA Entities. All of our PPA Entities that operate Energy Servers for end customers have significant restrictions on their ability to incur increased operating costs, or could face events of default under debt or other investment agreements if end customers are not able to meet their payment obligations under PPAs or if Energy Servers are not deployed in accordance with the project's schedule. In three cases, if our PPA Entities experience unexpected, increased costs such as insurance costs, interest expense or taxes or as a result of the acceleration of repayment of outstanding indebtedness, or if end customers are unable or unwilling to continue to purchase power under their PPAs, there could be insufficient cash generated from the project to meet the debt service obligations of the PPA Entity or to meet any targeted rates of return of Equity Investors. If a PPA Entity fails to make required debt service payments, this could constitute an event of default and entitle the lender to foreclose on the collateral securing the debt or could trigger other payment obligations of the PPA Entity. To avoid this, we could choose to contribute additional capital to the applicable PPA Entity to enable such PPA Entity to make payments to avoid an event of default, which could adversely affect our business or our financial condition.

Risks Related to Our Operations

We may have conflicts of interest with our PPA Entities.

In most of our PPA Entities, we act as the managing member and are responsible for the day-to-day administration of the project. However, we are also a major service provider for each PPA Entity in our capacity as the operator of the Energy Servers under an O&M agreement. Because we are both the administrator and the manager of our PPA Entities, as well as a major service provider, we face a potential conflict of interest in that we may be obligated to enforce contractual rights that a PPA Entity has against us in our capacity as a service provider. By way of example, a PPA Entity may have a right to payment from us under a warranty provided under the applicable operations and maintenance agreement, and we may be financially motivated to avoid or delay this liability by failing to promptly enforce this right on behalf of the PPA Entity. While we do not believe that we had any conflicts of interest with our PPA Entities as of June 30, 2021, conflicts of interest may arise in the future that cannot be foreseen at this time. In the event that prospective future Equity Investors and debt financing partners perceive there to exist any such conflicts, it could harm our ability to procure financing for our PPA Entities in the future, which could have a material adverse effect on our business.

Expanding operations internationally could expose us to additional risks.

Although we currently primarily operate in the United States, we continue to expand our business internationally. We currently have operations in the Asia Pacific region and more recently Dubai, United Arab Emirates to oversee operations in Europe and the Middle East. Managing any international expansion will require additional resources and controls including additional manufacturing and assembly facilities. Any expansion internationally could subject our business to risks associated with international operations, including:

- conformity with applicable business customs, including translation into foreign languages and associated expenses;
- lack of availability of government incentives and subsidies;
- challenges in arranging, and availability of, financing for our customers;
- potential changes to our established business model;
- cost of alternative power sources, which could be meaningfully lower outside the United States;
- availability and cost of natural gas;

- difficulties in staffing and managing foreign operations in an environment of diverse culture, laws, and customers, and the increased travel, infrastructure, and legal and compliance costs associated with international operations;
- installation challenges which we have not encountered before which may require the development of a unique model for each country;
- compliance with multiple, potentially conflicting and changing governmental laws, regulations, and permitting processes including environmental, banking, employment, tax, privacy, and data protection laws and regulations such as the EU Data Privacy Directive;
- compliance with U.S. and foreign anti-bribery laws including the Foreign Corrupt Practices Act and the U.K. Anti-Bribery Act;
- greater difficulties in securing or enforcing our intellectual property rights in certain jurisdictions;
- difficulties in collecting payments in foreign currencies and associated foreign currency exposure;
- restrictions on repatriation of earnings;
- compliance with potentially conflicting and changing laws of taxing jurisdictions where we conduct business and compliance with applicable U.S. tax laws as they relate to international operations, the complexity and adverse consequences of such tax laws, and potentially adverse tax consequences due to changes in such tax laws; and
- regional economic and political conditions.

In addition, a portion of our sales and expenses stem from countries outside of the United States, and are in currencies other than U.S. dollars, and therefore subject to foreign currency fluctuation. Accordingly, fluctuations in foreign currency rates could have a material impact on our financial results in future periods. As a result of these risks, any potential future international expansion efforts that we may undertake may not be successful, which may harm our ability for future growth.

If we are unable to attract and retain key employees and hire qualified management, technical, engineering, finance and sales personnel, our ability to compete and successfully grow our business could be harmed.

We believe that our success and our ability to reach our strategic objectives are highly dependent on the contributions of our key management, technical, engineering, finance and sales personnel. The loss of the services of any of our key employees could disrupt our operations, delay the development and introduction of our products and services and negatively impact our business, prospects, and operating results. In particular, we are highly dependent on the services of Dr. Sridhar, our Founder, President, Chief Executive Officer and Director, and other key employees. None of our key employees is bound by an employment agreement for any specific term. We cannot assure you that we will be able to successfully attract and retain senior leadership necessary to grow our business. In addition, many of the accounting rules related to our financing transactions are complex and require experienced and highly skilled personnel to review and interpret the proper accounting treatment with respect these transactions, and if we are unable to recruit and retain personnel with the required level of expertise to evaluate and accurately classify our revenue-producing transactions, our ability to accurately report our financial results may be harmed. There is increasing competition for talented individuals in our industry, and competition for qualified personnel is especially intense in the San Francisco Bay Area where our principal offices are located. Our failure to attract and retain our executive officers and other key management, technical, engineering, and sales personnel could adversely impact our business, our prospects, our financial condition, and our operating results.

A breach or failure of our networks or computer or data management systems could damage our operations and our reputation.

Our business is dependent on the security and efficacy of our networks and computer and data management systems. For example, our Energy Servers are connected to and controlled and monitored by our centralized remote monitoring service, and we rely on our internal computer networks for many of the systems we use to operate our business generally. The security of our infrastructure, including the network that connects our Energy Servers to our remote monitoring service, may be vulnerable to breaches, unauthorized access, misuse, computer viruses, or other malicious code and cyber-attacks that could have a material adverse impact on our business and our Energy Servers in the field, and the protective measures we have taken may be insufficient to prevent such events. A breach or failure of our networks or computer or data management systems due to intentional actions such as cyber-attacks, negligence, or other reasons could seriously disrupt our operations or could affect our ability to control or to assess the performance in the field of our Energy Servers and could result in disruption to our business and potentially legal liability. In addition, if certain of our IT systems failed, our production line might be affected, which could impact our business and operating results. These events, in addition to impacting our financial results, could result in significant costs or reputational consequences.

Risks Related to Ownership of Our Common Stock

The stock price of our Class A common stock has been and may continue to be volatile.

The market price of our Class A common stock has been and may continue to be volatile. In addition to factors discussed in this Risk Factors section, the market price of our Class A common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- overall performance of the equity markets;
- actual or anticipated fluctuations in our revenue and other operating results;
- changes in the financial projections we may provide to the public or our failure to meet these projections;
- failure of securities analysts to initiate or maintain coverage of us, changes in financial estimates by any securities analysts who follow us or our failure to meet these estimates or the expectations of investors;
- the issuance of reports from short sellers that may negatively impact the trading price of our Class A common stock;
- recruitment or departure of key personnel;
- the economy as a whole and market conditions in our industry;
- new laws, regulations, subsidies, or credits or new interpretations of them applicable to our business;
- negative publicity related to problems in our manufacturing or the real or perceived quality of our products;
- rumors and market speculation involving us or other companies in our industry;
- announcements by us or our competitors of significant technical innovations, acquisitions, strategic partnerships, or capital commitments;
- lawsuits threatened or filed against us; and
- other events or factors including those resulting from war, incidents of terrorism or responses to these events.

In addition, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. Stock prices of many companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. In the past, stockholders have instituted securities class action litigation following periods of market volatility. We are currently involved in securities litigation, which may subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business.

We may issue additional shares of our Class A common stock in connection with any future conversion of the Green Notes and thereby dilute our existing stockholders and potentially adversely affect the market price of our Class A common stock.

In the event that some or all of the Green Notes are converted and we elect to deliver shares of common stock, the ownership interests of existing stockholders will be diluted, and any sales in the public market of any shares of our Class A common stock issuable upon such conversion could adversely affect the prevailing market price of our Class A common stock. If we were not able to pay cash upon conversion of the Green Notes, the issuance of shares of Class A common stock upon conversion of the Green Notes could depress the market price of our Class A common stock.

The dual class structure of our common stock and the voting agreements among certain stockholders have the effect of concentrating voting control of our Company with KR Sridhar, our Chairman and Chief Executive Officer, and also with those stockholders who held our capital stock prior to the completion of our initial public offering, which limits or precludes your ability to influence corporate matters and may adversely affect the trading price of our Class A common stock.

Our Class B common stock has ten votes per share, and our Class A common stock has one vote per share. As of June 30, 2021, and after giving effect to the voting agreements between KR Sridhar, our Chairman and Chief Executive Officer, and certain holders of Class B common stock, our directors, executive officers, significant stockholders of our common stock, and their respective affiliates collectively held a majority of the voting power of our capital stock. Because of the ten-to-one voting ratio between our Class B and Class A common stock, the holders of our Class B common stock collectively will continue to control a majority of the combined voting power of our common stock and therefore are able to control all matters submitted to our stockholders for approval until the earliest to occur of (i) immediately prior to the close of business on July 27, 2023, (ii) immediately prior to the close of business on the date on which the outstanding shares of Class B common stock represent less than five percent (5%) of the aggregate number of shares of Class A common stock and Class B common stock then outstanding, (iii) the date and time or the occurrence of an event specified in a written conversion election delivered by

KR Sridhar to our Secretary or Chairman of the Board to so convert all shares of Class B common stock, or (iv) immediately following the date of the death of KR Sridhar. This concentrated control limits or precludes Class A stockholders' ability to influence corporate matters while the dual class structure remains in effect, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction requiring stockholder approval. In addition, this may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that Class A stockholders may feel are in their best interest as one of our stockholders.

Future transfers by holders of Class B common stock will generally result in those shares converting to Class A common stock, subject to limited exceptions such as certain transfers effected for estate planning purposes. The conversion of Class B common stock to Class A common stock will have the effect, over time, of increasing the relative voting power of those remaining holders of Class B common stock who retain their shares in the long-term.

In addition, the S&P Dow Jones and FTSE Russell have implemented changes to their eligibility criteria for inclusion of shares of public companies on certain indices, including the S&P 500, namely, to exclude companies with multiple classes of shares of common stock from being added to such indices. In addition, several shareholder advisory firms have announced their opposition to the use of multiple class structures. As a result, the dual class structure of our common stock may prevent the inclusion of our Class A common stock in such indices and has caused shareholder advisory firms to publish negative commentary about our corporate governance practices or otherwise seek to cause us to change our capital structure. Any such exclusion from indices could result in a less active trading market for our Class A common stock. Any actions or publications by shareholder advisory firms critical of our corporate governance practices or capital structure could also adversely affect the value of our Class A common stock.

We do not intend to pay dividends for the foreseeable future.

We have never declared or paid any cash dividends on our capital stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

Provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, may limit attempts by our stockholders to replace or remove our current management, may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, or employees, and may limit the market price of our Class A common stock.

Provisions in our restated certificate of incorporation and amended and restated bylaws may have the effect of delaying or preventing a change of control or changes in our management. Our restated certificate of incorporation and amended and restated bylaws include provisions that:

- require that our board of directors is classified into three classes of directors with staggered three year terms;
- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- require super-majority voting to amend some provisions in our restated certificate of incorporation and amended and restated bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- only the chairman of our board of directors, our chief executive officer, or a majority of our board of directors are authorized to call a special meeting of stockholders;
- prohibit stockholder action by written consent, which thereby requires all stockholder actions be taken at a meeting of our stockholders;
- establish a dual class common stock structure in which holders of our Class B common stock may have the ability to control the outcome of matters requiring stockholder approval even if they own significantly less than a majority of the outstanding shares of our common stock, including the election of directors and significant corporate transactions such as a merger or other sale of our Company or substantially all of our assets;
- expressly authorize the board of directors to make, alter, or repeal our bylaws; and

- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

In addition, our restated certificate of incorporation and our amended and restated bylaws provide that the Court of Chancery of the State of Delaware will be the exclusive forum for: any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action asserting a claim against us arising pursuant to the Delaware General Corporation Law, our restated certificate of incorporation or our amended and restated bylaws; or any action asserting a claim against us that is governed by the internal affairs doctrine. Our restated certificate of incorporation and our amended and restated bylaws provide that unless we consent in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. These choice of forum provisions may limit a stockholder's ability to bring a claim in a judicial forum that it finds favorable for disputes with us or any of our directors, officers, or other employees, which thereby may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our restated certificate of incorporation and our amended and restated bylaws to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, our operating results, and our financial condition.

Moreover, Section 203 of the Delaware General Corporation Law may discourage, delay, or prevent a change in control of our Company. Section 203 imposes certain restrictions on mergers, business combinations, and other transactions between us and holders of 15% or more of our common stock.

ITEM 2 - UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None

ITEM 3 - DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4 - MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5 - OTHER INFORMATION

Form of Employment, Change in Control and Severance Agreement. On August 3, 2021, the Board, upon recommendation of the Compensation Committee, in consultation with the Compensation Committee's independent compensation consultant, has approved a Form of Employment, Change in Control and Severance Agreement (the "Agreement") applicable to the CEO and certain of our executive officers, including the named executive officers (together, the "Executive Officers"), to encourage their continued attention, dedication and continuity with respect to their roles and responsibilities without the distraction that may arise from the possibility or occurrence of a change of control of Bloom Energy.

An Executive Officer will receive payments and benefits under his or her Agreement if the Executive Officer is subject to a Qualifying Termination (as defined in the Agreement), which means his or her employment is terminated without "cause" (as defined in the Agreement) or for "good reason" (as defined in the Agreement). A termination or resignation due to death or disability shall not constitute a Qualifying Termination.

The following terms apply with respect to each of the Executive Officer upon a Qualifying Termination, subject to such individual entering into and not revoking a release of claims in our favor within the time frame set forth in the Agreement:

- our Executive Officers (including our CEO) will be paid a lump sum severance payment (less applicable tax withholdings) equal to one time their annual base salary;

- our CEO will be paid a lump sum severance payment (less applicable tax withholdings) equal to one time his annual target incentive bonus amount; and
- our Executive Officers (including our CEO) may be reimbursed for premiums under COBRA for a period of 12 months.

An Executive Officer will also receive payments and benefits under his or her Agreement if the Executive Officer is subject to a CiC Qualifying Termination (as defined in the Agreement), which means his or her employment is terminated without “cause” (as defined in the Agreement) or for “good reason” (as defined in the Agreement), beginning on the date three (3) months prior to or within twelve (12) months following the consummation of a “change in control” (as defined in the Agreement). A termination or resignation due to death or disability shall not constitute a CiC Qualifying Termination.

The following terms apply with respect to each of the Executive Officer upon a CiC Qualifying Termination, subject to such individual entering into and not revoking a release of claims in our favor within the time frame set forth in the Agreement:

- 100% of all outstanding equity awards will vest (awards based on the achievement of performance criteria will vest as to 100% of the amount of the award assuming the performance criteria have been achieved at target levels or as set forth in the applicable award agreement);
- Our CEO will be paid a lump sum severance payment (less applicable tax withholdings) equal to two times his annual base salary and our other Executive Officers will be paid a lump sum severance payment (less applicable tax withholdings) equal to one and one-half times their annual base salary;
- Our CEO will be paid a lump sum severance payment (less applicable tax withholdings) equal to two times his annual target incentive bonus amount and our other Executive Officers will be paid a lump sum severance payment (less applicable tax withholdings) equal to one and one-half times their annual target incentive bonus amount; provided that in both cases the amount of bonus will be prorated; and
- Our CEO may be reimbursed for premiums under COBRA for a period of 24 months and our other Executive Officers may be reimbursed for premiums under COBRA for a period of 18 months.

If the total of lump sum of any payments under the Agreement would exceed limits defined in Section 280G of the Internal Revenue Code (the "Code") and would result in the imposition of an excise tax under Section 4999 of the Code, the such Executive Officer's benefits will be determined based on a “best net benefit” provision. Compensation payable under the Agreement is intended to comply with Section 409A of the Code.

ITEM 6 - EXHIBITS

			Incorporated by Reference			
Exhibit Number		**Description**	**Form**	**File No.**	**Exhibit**	**Filing Date**
10.1	^	Offer Letter between the Registrant and Guillermo Brooks dated May 31, 2021				Filed herewith
10.2		Third Amendment to Net Lease Agreement, dated as of June 6, 2021, by and between the Registrant and SPUS9 at First Street, LP				Filed herewith
10.3	†	Purchase, Engineering, Procurement and Construction Contract between the Registration, RAD 2021 Bloom ESA Funds I - V, and RAD Bloom Project Holdco LLC, dated as of June 25, 2021				Filed herewith
10.4	†	Operations and Maintenance Agreement between the Registrant and RAD Bloom Project Holdco LLC, dated as of June 25, 2021				Filed herewith
10.5	^	Form of Employment, Change in Control and Severance Agreement				Filed herewith
31.1		Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				Filed herewith
31.2		Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and 15d-14(a) of the Securities and Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002				Filed herewith
32.1	**	Certification of the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002				Filed herewith
101.INS		XBRL Instance Document- the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document				Filed herewith
101.SCH		Inline XBRL Taxonomy Extension Schema Document				Filed herewith
101.CAL		Inline XBRL Taxonomy Extension Calculation Linkbase Document				Filed herewith
101.DEF		Inline XBRL Taxonomy Extension Definition Linkbase Document				Filed herewith
101.LAB		Inline XBRL Taxonomy Extension Label Linkbase Document				Filed herewith
101.PRE		Inline XBRL Taxonomy Extension Presentation Linkbase Document				Filed herewith
104		Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)				

^ Management contracts or compensation plans or arrangements in which directors or executive officers are eligible to participate.

† Portions of this exhibit are redacted as permitted under Regulation S-K, Rule 601.

** The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this Quarterly Report on Form 10-Q and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

BLOOM ENERGY CORPORATION

Date: August 6, 2021

By: /s/ KR Sridhar
KR Sridhar
Founder, President, Chief Executive Officer and Director
(Principal Executive Officer)

Date: August 6, 2021

By: /s/ Gregory Cameron
Gregory Cameron
Executive Vice President and
Chief Financial Officer
(Principal Financial and Accounting Officer)

Bloomenergy

May 31, 2021

Guillermo (Billy) Brooks

Dear Billy,

I am pleased to offer you the position of **Executive Vice President**, **Sales** with Bloom Energy Corporation (the "Company"). In this full-time, salaried (exempt) position, you will report directly to me and will be based in your Home Office, in Florida. Your annual salary will be **$430,000,** less applicable withholdings and deductions. You will be paid every other Friday in accordance with the Company's normal payroll practices.

Pursuant to the terms of Bloom Energy's Employee Incentive (Bonus) Plan, you are eligible to participate in the discretionary bonus with a target of **100%** of your eligible compensation. The Incentive Plan payout is based on achievement of company metrics and individual performance. For 2021, we will guarantee a payout of 100% of the Bonus, prorated from your date of hire. We will also guarantee a payout at 100% achievement for the entirety of year 2022. You will receive a sign-on bonus in the amount of **$100,000** less applicable withholdings and deductions, payable within the first 30 days of your employment. Your position will be transferred to our San Jose headquarters on August 1, 2022. At that time, you will receive a payment of **$150,000** to cover the expenses linked to the relocation.

In addition, you will participate in a Change-in-Control agreement which is attached to this offer as Attachment B.

We will recommend that the Company's Board of Directors grant you Restricted Stock Units ("RSUs") of **100,000** shares of the Company's Class A Common Stock pursuant to the 2018 Equity Incentive Plan ("Plan"). Upon approval, the RSUs will start vesting on the 15th day (or the next trading day) of the month following your date of hire. Twenty-Five percent (25%) of the shares subject to RSUs shall vest on the one-year anniversary of the vesting commencement date and the remaining shares shall vest quarterly over the next three years until the RSU is fully vested after four years from the vesting commencement date. The grant is subject to your continued employment and the Company's standard terms and conditions.

In addition, we will recommend that the Company's Board of Directors grant you Performance Stock Units ("PSUs") of **100,000** shares of the Company's Class A Common Stock pursuant to the 2018 Equity Incentive Plan ("Plan"). The shares will be granted upon approval by the Compensation Committee of the performance metrics established and presented by the CEO in the next Compensation Committee meeting scheduled for July 2021. Once granted, the PSUs will vest according to the then approved vesting schedule, based on a combination of time and performance achievement, with a potential annual upside of 50% for a maximum of 150,000 shares over the 3 year vesting period. The grant is subject to your continued employment and the Company's standard terms and condition.

You will also be eligible to receive benefits that the Company generally provides to its employees, consistent with the eligibility terms of those programs. A more detailed description of these benefits will be provided to you upon joining the Company.

Your offer of employment is conditioned upon a satisfactory (at the Company's discretion) reference check, background check, and upon proof of your right to work in the US. Your employment

with the Company is further subject to the terms and conditions specified in “Attachment A” and “Attachment B” to this letter.

This letter and Attachments A and B set forth the terms of your employment with the Company and supersede any prior representations or agreements including, but not limited to, any representations made during your recruitment, interviews or pre-employment negotiations, whether written or oral.

We are very excited about you joining our team and look forward to a mutually rewarding relationship.

By signing below you are accepting the Company’s offer of employment pursuant to the terms and conditions specified in this letter and in Attachment A. After signing and dating this letter below, please return all pages by email or by confidential fax (408-543-1004). This offer of employment is valid for seven days.

Sincerely, Agreed to and accepted by:

/s/ KR Sridhar Signature: /s/ Guillermo Brooks

KR Sridhar Print Name: Guillermo Brooks

Founder, Chairman and CEO Date: 6/2/2021

Bloom Energy Corporation Start Date: Jun 10, 2021

ATTACHMENT A

In addition to the terms outlined in the attached offer letter, your employment at Bloom Energy is conditioned upon the following.

At-Will Employment. You will be an "at will" employee of the Company. This means that either you or the Company may terminate your employment at any time, for any reason or no reason, with our without cause or notice. Regular employment at the Company is for no specified period of time and the Company makes no guarantee or contract of continued employment. Although your job duties, title, compensation, and benefits, as well as the Company's personnel policies, may change from time to time, the "at will" nature of your employment may not be changed except in an express written agreement signed by you and the President of the Company. In the event that you choose to resign from the Company, we request that you give us at least two weeks' notice.

Stock Options/RSUs. If approved by the Board, your stock options and/or RSUs will be subject to the terms and conditions of the Company's 2018 Equity Incentive Plan and the equity award agreement. You will be provided with a copy of the Equity Incentive Plan and your equity award agreement following the Board's approval of your grant. No right to any stock is earned or accrued until such time that vesting occurs, nor does the grant confer any right to continued vesting or employment. All grants are subject to the Company's Insider Trading Policy, trading window and will be subject to the participant's continuous employment.

Incentive Plan (Bonus). Pursuant to the terms of Bloom Energy's Employee Incentive Plan, your eligible compensation is defined as your annual base pay at the end of the performance period. The calculation will be adjusted to include any proration based on start date or Leave of Absence in an eligible period. You must be on active status for at least 30 days of the quarter to be eligible for a bonus and at least 30 days of the year to be eligible for the annual bonus. To be eligible for the bonus, you must also be employed by BE on the date of payout. Your bonus is subject to the discretion and approval of the Board of Directors and will be paid in accordance with the Company's normal bonus payment practices.

Sign-On Bonus. In consideration of the bonus investment made by the Company, you agree to refund the full amount to the Company in the event that, prior to the first anniversary of receipt of such bonuses, you voluntarily terminate your employment or are terminated by the Company for cause. You will not have to refund the bonus if you are terminated for other reasons than cause.

Relocation Bonus. In consideration of the investment made by the Company for your relocation, you agree to refund your relocation amount in full to the Company in the event that, prior to the first anniversary of receipt of the relocation bonus you voluntarily terminate your employment or are terminated by the Company for cause. If you do not complete your relocation to the Bay area within the timeline stated, the amount in full becomes due and payable to the company immediately.

References. The Company reserves the right to conduct background investigations and/or reference checks on all of its potential employees. Your job offer, therefore, is contingent upon a clearance of such a background investigation and/or reference check, if any.

Right to Work. For purposes of federal immigration law, you will be required to provide to the Company documentary evidence of your identity and eligibility for employment in the United States. Such documentation must be provided to us within three (3) business days of your date of hire, or our employment relationship with you may be terminated.

Prior Employment. We also ask that, if you have not already done so, you disclose to the Company any and all agreements relating to your prior employment that may affect your eligibility to be employed by the Company or limit the manner in which you may be employed. It is the Company's understanding that any such agreements will not prevent you from performing the duties of your position and you represent that such is the case. Moreover, you agree that, during the term of your employment with the Company, you will not engage in any

other employment, occupation, consulting or other business activity directly related to the business in which the Company is now involved or becomes involved during the term of your employment, nor will you engage in any other activities that conflict with your obligations to the Company. Similarly, you agree not to bring any third party confidential information to the Company, including that of your former employer, and that in performing your duties for the Company you will not in any way utilize any such information.

Company Policies. As a Company employee, you will be expected to abide by the Company's policies. Specifically, you will be required to sign an acknowledgment that you have read and that you understand the Company's policies which are included in the Company Handbook.
Intellectual Property. As a condition of your employment, you are also required to sign and comply with the Company's "Employment, Confidential Information, Invention Assignment and Arbitration Agreement," which requires, among other provisions, the assignment of patent rights to any invention made during your employment at the Company, and nondisclosure of Company proprietary information. Please note that we must receive your signed Agreement on your first day of employment.

Arbitration. (a) Any dispute or controversy between you and the Company arising out of or relating solely to your employment relationship with the Company, including any dispute or allegation regarding the enforceability, unconscionability, interpretation, construction or breach of this Agreement, will be settled by final and binding arbitration through Judicial Arbitration and Mediation Services ("JAMS") by a single arbitrator to be held in Santa Clara County, California, in accordance with the JAMS rules for resolution of employment disputes then in effect, except as provided herein. This means that we both give up the right to have disputes decided in court by a jury; instead, a neutral arbitrator whose decision is final and binding will resolve it, subject to judicial review as provided by law. The arbitrator selected shall have the authority to grant any party all remedies otherwise available by law, including injunctions, but shall not have the power to grant any remedy that would not be available in a state or federal court in California. The arbitrator shall be bound by and shall strictly enforce the terms of this section and may not limit, expand or otherwise modify its terms. The arbitrator shall make a good faith effort to apply the substantive law (and the law of remedies, if applicable) of the state of California, or federal law, or both, as applicable, without reference to its conflicts of laws provisions, but an arbitration decision shall not be subject to review because of errors of law. The arbitrator is without jurisdiction to apply any different substantive law. The arbitrator shall have the authority to hear and rule on dispositive motions (such as motions for summary adjudication or summary judgment). The arbitrator shall have the powers granted by California law and the rules of JAMS which conducts the arbitration, except as modified or limited herein.

(b) Notwithstanding anything to the contrary in the rules of JAMS, the arbitration shall provide (i) for written discovery and depositions as provided in California Code of Civil Procedure Section 1283.05 and (ii) for a written decision by the arbitrator that includes the essential findings and conclusions upon which the decision is based which shall be issued no later than thirty (30) days after a dispositive motion is heard and/or an arbitration hearing has completed. Except in disputes where you assert a claim otherwise under a state or federal statute prohibiting discrimination in employment ("a Statutory Discrimination Claim"), the Company shall pay all fees and administrative costs charged by the arbitrator and JAMS. In disputes where you assert a Statutory Discrimination Claim against the Company, you are required to pay the American Arbitration Association's filing fee only to the extent such filing fee does not exceed the fee to file a complaint in state or federal court. The Company shall pay the balance of the arbitrator's fees and administrative costs.

(c) You and the Company shall have the same amount of time to file any claim against any other party as such party would have if such a claim had been filed in state or federal court. In conducting the arbitration, the arbitrator shall follow the rules of evidence of the State of California (including but not limited to all applicable privileges), and the award of the arbitrator must follow California and/or federal law, as applicable.

(d) The arbitrator shall be selected by the mutual agreement of the parties. If the parties cannot agree on an arbitrator, the parties shall alternately strike names from a list provided by JAMS until only one name remains.

(e) The decision of the arbitrator will be final, conclusive and binding on the parties to the arbitration. The prevailing party in the arbitration, as determined by the arbitrator, shall be entitled to recover her or its reasonable

attorneys' fees and costs, including the costs or fees charged by the arbitrator and JAMS. In disputes where you assert a Statutory Discrimination Claim, reasonable attorneys' fees shall be awarded by the arbitrator based on the same standard as such fees would be awarded if the Statutory Discrimination Claim had been asserted in state or federal court. Judgment may be entered on the arbitrator's decision in any court having jurisdiction.

(f) In the event of (1) a California Private Attorney General Action claim or (2) any claim determined by the arbitrator to be not properly in arbitration pursuant to applicable law, such claim(s) shall be brought as a civil action and shall be stayed pending resolution of all claims that are properly in arbitration.

Attachment B
CHANGE IN CONTROL AND SEVERANCE AGREEMENT

This Change in Control and Severance Agreement (the "**Agreement**") is entered into by **Guillermo ("Billy") Brooks** (the "**Executive**") and Bloom Energy Corporation, a Delaware corporation (the "**Company**"), on May 31, 2021, and is effective as of July 6, 2021 (the "**Effective Date**").

1. **Term of Agreement.**

Except to the extent renewed as set forth in this Section 1, this Agreement shall terminate the earlier of the first (1st) anniversary of the Effective Date (the "**Expiration Date**") or the date the Executive's employment with the Company terminates for a reason other than a Qualifying Termination or CIC Qualifying Termination; *provided however*, if a definitive agreement relating to a Change in Control has been signed by the Company on or before the Expiration Date, then this Agreement shall remain in effect through the earlier of:

(a) The date the Executive's employment with the Company terminates for a reason other than a Qualifying Termination or CIC Qualifying Termination, or

(b) The date the Company has met all of its obligations under this Agreement following a termination of the Executive's employment with the Company due to a Qualifying Termination or CIC Qualifying Termination.

This Agreement shall renew automatically and continue in effect for one (1) year periods measured from the initial Expiration Date and each subsequent Expiration Date, unless the Company provides Executive notice of non-renewal at least two weeks prior to the date on which this Agreement would otherwise renew. For the avoidance of doubt, and notwithstanding anything to the contrary in Section 2 or 3 below, the Company's non-renewal of this Agreement shall not constitute a Qualifying Termination or CIC Qualifying Termination, as applicable.

2. **Qualifying Termination**. If the Executive is subject to a Qualifying Termination, then, subject to Sections 4, 9, and 10 below, Executive will be entitled to the following benefits:

(a) **Severance Benefits**. The Company shall pay the Executive (i) nine (9) months' worth of (x) his or her monthly base salary and (ii) the prorated portion of Executive's then-current target bonus opportunity for the portion of the current year that Executive served prior to the Separation (calculated based on the number of full or partial months to date in the bonus year multiplied by 1/12 of the annual target bonus opportunity) (or such other bonus amount that reflects the progress toward meeting goals and objectives for the target bonus for such period, as determined by the Board in its reasonable discretion). The Executive will receive his or her severance payment in a cash lump-sum in accordance with the Company's standard payroll procedures, which payment will be made no later than the first regular payroll date occurring after the sixtieth (60^{th}) day following the Separation.

(b) **Continued Employee Benefits**. If Executive timely elects continued coverage under the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**"), the Company shall pay the full amount of Executive's COBRA premiums on behalf of the Executive for the Executive's continued coverage under the Company's health, dental and vision plans, including coverage for the Executive's eligible dependents, for the same period that the Executive is paid severance benefits pursuant to Section 2(a) following the Executive's Separation or, if earlier, until Executive is eligible to be covered under another substantially equivalent medical insurance plan by a subsequent employer.

3. **CIC Qualifying Termination**. If the Executive is subject to a CIC Qualifying Termination, then, subject to Sections 4, 9, and 10 below, Executive will be entitled to the following benefits:

(a) **Severance Payments**. The Company or its successor shall pay the Executive (i) his or her annual base salary and (ii) then-current annual target bonus opportunity. Such payment shall be paid in a cash lump sum payment in accordance with the Company's standard payroll procedures, which payment will be made no later than the first regular payroll date occurring after the sixtieth (60^{th}) day following the Separation.

(b) **Continued Employee Benefits**. Continuation of COBRA on the same terms as set forth in Section 2(b) above for the same period that the Executive is paid severance benefits pursuant to Section 3(a) following the Executive's Separation or, if earlier, until Executive is eligible to be covered under another substantially equivalent medical insurance plan by a subsequent employer.

(c) **Equity**. Each of Executive's then outstanding Equity Awards, including awards that would otherwise vest only upon satisfaction of performance criteria, shall accelerate and become vested and exercisable as to 100% of the then-unvested shares subject to the Equity Award, provided, however, that the vesting of any performance-based awards shall be as if all applicable performance criteria were achieved at target levels. Subject to satisfaction of the Release Conditions, the accelerated vesting described in this Section 3(c) shall be effective as of the Separation.

4. **General Release**. Any other provision of this Agreement notwithstanding, the benefits under Section 2 and 3 shall not apply unless the Executive (i) has executed a general release of all known and unknown claims that he or she may then have against the Company or persons affiliated with the Company and such release has become effective and (ii) has agreed not to prosecute any legal action or other proceeding based upon any of such claims. The release must be in the form prescribed by the Company, without alterations (this document effecting the foregoing, the "**Release**"). The Company will deliver the form of Release to the Executive within ten (10) days after the Executive's Separation. The Executive must execute and return the Release within the time period specified in the form.

5. **Accrued Compensation and Benefits**. Notwithstanding anything to the contrary in Section 2 and Section 3 above, in connection with any termination of employment (whether or not a Qualifying Termination or CIC Qualifying Termination), the Company shall pay Executive's earned but unpaid base salary and other vested but unpaid cash entitlements for the period through and including the termination of employment, including unreimbursed documented business expenses incurred by Executive through and including the date of termination (collectively "**Accrued Compensation and Expenses**"), as required by law and the applicable Company plan or policy. In addition, Executive shall be entitled to any other vested benefits earned by Executive for the period through and including the termination date of Executive's employment under any other employee benefit plans and arrangements maintained by the Company, in accordance with the terms of such plans and arrangements, except as modified herein (collectively "**Accrued Benefits**"). Any Accrued Compensation and Expenses to which the Executive is entitled shall be paid to the Executive in cash as soon as administratively practicable after the termination and, in any event, no later than two and one-half (2-1/2) months after the end of the taxable year of the Executive in which the termination occurs or at such earlier time as may be required by Section 10 below or to such lesser extent as may be mandated by Section 9 below. Any Accrued Benefits to which the Executive is entitled shall be paid to the Executive as provided in the relevant plans and arrangements.

6. **Covenants.**

(a) **Invention Assignment and Confidentiality Agreement**. The Executive agrees and acknowledges that the Executive is bound by the Employment, Confidential Information, Invention Assignment and Arbitration Agreement entered into by and between the Executive and the Company (the "**Confidentiality Agreement**"), including but not limited to the Executive's confidentiality and non-solicitation obligations thereunder.

(b) **Non-Disparagement**. The Executive further agrees that following his or her Separation, he or she shall not in any way or by any means disparage the Company, the members of the Board or the Company's officers and employees. Notwithstanding the foregoing, the Executive is not prohibited from cooperating with a government agency or testifying truthfully in any government inquiry or other proceeding or in which Executive is required to testify pursuant to subpoena or other valid legal process.

7. **Definitions.**

(a) "**Board**" means the Company's board of directors.

(b) "**Cause**" means the Executive's (a) willful failure substantially to perform his or her duties and responsibilities to the Company or deliberate violation of a Company policy; (b) commission of any act of fraud, embezzlement, dishonesty or any other willful misconduct that has caused or is reasonably expected to result in material injury to the Company; (c) unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom the Executive owes an obligation of nondisclosure as a result of his or her relationship with the Company; (d) misappropriation of a business opportunity of the Company; (e) provision of material aid to a competitor of the Company; or (f) willful breach of any of his or her obligations under any written agreement or covenant with the Company. The determination as to whether the Executive has been terminated for Cause shall be made in good faith by the Company and shall be final and binding on the Executive. The term "Company" will be interpreted to include any subsidiary or parent of the Company, as appropriate. Notwithstanding the

foregoing, the definition of "Cause" may, in part or in whole, be modified or replaced in each individual employment agreement or agreement with the Executive governing the Executive's Equity Awards, provided that such document expressly supersedes the definition provided in this Section 7(b).

(c) "**Code**" means the Internal Revenue Code of 1986, as amended.

(d) "**Change in Control**." For all purposes under this Agreement, a Change in Control shall mean a "Corporate Transaction," as such term is defined in the Plan, provided that the transaction (including any series of transactions) also qualifies as a change in control event under U.S. Treasury Regulation 1.409A-3(i)(5).

(e) "**CIC Qualifying Termination**" means a Separation in connection with the consummation of a Change in Control, including at the request of the prospective acquirer whose proposed acquisition would constitute a Change in Control upon its completion, or within three (3) months prior to or within twelve (12) months following the consummation of a Change in Control, resulting from (A) the Company or its successor terminating the Executive's employment for any reason other than Cause or (B) the Executive voluntarily resigning his or her employment for Good Reason. A termination or resignation due to the Executive's death or disability shall not constitute a CIC Qualifying Termination.

(f) "**Equity Awards**" means all options to purchase shares of Company common stock as well as any and all other stock-based awards granted to the Executive, including but not limited to stock bonus awards, restricted stock, restricted stock units or stock appreciation rights.

(g) "**Good Reason**" means, without the Executive's consent, (i) a material diminution in the Executive's authority, duties or responsibilities, including a material change in Executive's reporting responsibilities, such that Executive is required to report to a person whose duties, responsibilities and authority are materially less than those of the person to whom Executive was reporting immediately prior to such change and/or a material reduction in the level of management to which Executive reports, (ii) a reduction in Executive's annual base salary or annual target bonus, (iii) a requirement that Executive relocate Executive's principal place of work to a location that increases the Executive's one-way commute by more than fifty (50) miles from Executive's then-current work location, or (iv) a material breach of this Agreement by the Company. For the Executive to receive the benefits under this Agreement as a result of a voluntary resignation under this subsection (g), all of the following requirements must be satisfied: (1) the Executive must provide notice to the Company of his or her intent to assert Good Reason within sixty (60) days of the initial existence of one or more of the conditions set forth in subclauses (i) through (iv); (2) the Company will have thirty (30) days (the "**Company Cure Period**") from the date of such notice to remedy the condition and, if it does so, the Executive may withdraw his or her resignation or may resign with no benefits under this Agreement; and (3) any termination of employment under this provision must occur within ten (10) days of the earlier of expiration of the Company Cure Period or written notice from the Company that it will not undertake to cure the condition set forth in subclauses (i) through (iv). Should the Company remedy the condition as set forth above and then one or more of the conditions arises again, the Executive may assert Good Reason again subject to all of the conditions set forth herein.

(h) "**Plan**" means the Company's 2018 Equity Incentive Plan, as may be amended from time to time.

(i) "**Release Conditions**" mean the following conditions occurring within sixty (60) days following the Separation: (i) the Company has received the Executive's executed Release and (ii) any rescission period applicable to the Executive's executed Release has expired.

(j) "**Qualifying Termination**" means a Separation that is not a CIC Qualifying Termination, but which results from the Company terminating the Executive's employment for any reason other than Cause. A termination or resignation due to the Executive's death or disability shall not constitute a Qualifying Termination

(k) "**Separation**" means a "separation from service," as defined in the regulations under Section 409A of the Code.

8. **Successors.**

(a) **Company's Successors**. The Company shall require any successor (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets, by an agreement in substance and form satisfactory to the Executive, to assume this Agreement and to agree expressly to perform this Agreement in the same manner and to the same extent as the Company would be required to perform it in the

absence of a succession. For all purposes under this Agreement, the term "Company" shall include any successor to the Company's business and/or assets or which becomes bound by this Agreement by operation of law.

(b) **Executive's Successors**. This Agreement and all rights of the Executive hereunder shall inure to the benefit of, and be enforceable by, the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

9. **Golden Parachute Taxes.**

(a) **Best After-Tax Result**. In the event that any payment or benefit received or to be received by Executive pursuant to this Agreement or otherwise ("**Payments**") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this subsection (a), be subject to the excise tax imposed by Section 4999 of the Code, any successor provisions, or any comparable federal, state, local or foreign excise tax ("**Excise Tax**"), then, subject to the provisions of Section 10, such Payments shall be either (A) provided in full pursuant to the terms of this Agreement or any other applicable agreement, or (B) provided as to such lesser extent which would result in the Payments being $1.00 less than the amount at which any portion of the Payments would be subject to the Excise Tax ("**Reduced Amount**"), whichever of the foregoing amounts, taking into account the applicable federal, state, local and foreign income, employment and other taxes and the Excise Tax (including, without limitation, any interest or penalties on such taxes), results in the receipt by Executive, on an after-tax basis, of the greatest amount of payments and benefits provided for hereunder or otherwise, notwithstanding that all or some portion of such Payments may be subject to the Excise Tax. Unless the Company and Executive otherwise agree in writing, any determination required under this Section shall be made by independent tax counsel designated by the Company and reasonably acceptable to Executive ("**Independent Tax Counsel**"), whose determination shall be conclusive and binding upon Executive and the Company for all purposes. For purposes of making the calculations required under this Section, Independent Tax Counsel may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code; provided that Independent Tax Counsel shall assume that Executive pays all taxes at the highest marginal rate. The Company and Executive shall furnish to Independent Tax Counsel such information and documents as Independent Tax Counsel may reasonably request in order to make a determination under this Section. The Company shall bear all costs that Independent Tax Counsel may reasonably incur in connection with any calculations contemplated by this Section. In the event that Section 9(a)(ii)(B) above applies, then based on the information provided to Executive and the Company by Independent Tax Counsel, Executive may, in Executive's sole discretion and within thirty (30) days of the date on which Executive is provided with the information prepared by Independent Tax Counsel, determine which and how much of the Payments (including the accelerated vesting of equity compensation awards) to be otherwise received by Executive shall be eliminated or reduced (as long as after such determination the value (as calculated by Independent Tax Counsel in accordance with the provisions of Sections 280G and 4999 of the Code) of the amounts payable or distributable to Executive equals the Reduced Amount). If the Internal Revenue Service (the "**IRS**") determines that any Payment is subject to the Excise Tax, then Section 9(b) hereof shall apply, and the enforcement of Section 9(b) shall be the exclusive remedy to the Company.

(b) **Adjustments**. If, notwithstanding any reduction described in Section 9(a) hereof (or in the absence of any such reduction), the IRS determines that Executive is liable for the Excise Tax as a result of the receipt of one or more Payments, then Executive shall be obligated to surrender or pay back to the Company, within one-hundred twenty (120) days after a final IRS determination, an amount of such payments or benefits equal to the "**Repayment Amount**." The Repayment Amount with respect to such Payments shall be the smallest such amount, if any, as shall be required to be surrendered or paid to the Company so that Executive's net proceeds with respect to such Payments (after taking into account the payment of the Excise Tax imposed on such Payments) shall be maximized. Notwithstanding the foregoing, the Repayment Amount with respect to such Payments shall be zero (0) if a Repayment Amount of more than zero (0) would not eliminate the Excise Tax imposed on such Payments or if a Repayment Amount of more than zero would not maximize the net amount received by Executive from the Payments. If the Excise Tax is not eliminated pursuant to this Section 9(b), Executive shall pay the Excise Tax.

10. **Miscellaneous Provisions.**

(a) **Section 409A**. To the extent (i) any payments to which Executive becomes entitled under this Agreement, or any agreement or plan referenced herein, in connection with Executive's termination of employment with the Company constitute deferred compensation subject to Section 409A of the Code and (ii) Executive is deemed at the time of such termination of employment to be a "specified" employee under Section 409A of the Code, then such payment or payments shall not be made or commence until the earlier of (i) the expiration of the six (6)-month period measured from the Executive's Separation; or (ii) the date of Executive's death following such Separation; provided, however, that such deferral shall only be effected to the extent required to avoid adverse tax treatment to Executive, including (without limitation) the additional twenty percent (20%) tax for which Executive would otherwise be liable under Section 409A(a)(1)(B) of the Code in the absence of such deferral. Upon the expiration of the applicable deferral period, any payments which would have otherwise been made during that period (whether in a single sum or in installments) in the absence of this paragraph shall be paid to Executive or Executive's beneficiary in one lump sum (without interest). Except as otherwise expressly provided herein, to the extent any expense reimbursement or the provision of any in-kind benefit under this Agreement (or otherwise referenced herein) is determined to be subject to (and not exempt from) Section 409A of the Code, the amount of any such expenses eligible for reimbursement, or the provision of any in-kind benefit, in one calendar year shall not affect the expenses eligible for reimbursement or in kind benefits to be provided in any other calendar year, in no event shall any expenses be reimbursed after the last day of the calendar year following the calendar year in which Executive incurred such expenses, and in no event shall any right to reimbursement or the provision of any in-kind benefit be subject to liquidation or exchange for another benefit. To the extent that any provision of this Agreement is ambiguous as to its exemption or compliance with Section 409A, the provision will be read in such a manner so that all payments hereunder are exempt from Section 409A to the maximum permissible extent, and for any payments where such construction is not tenable, that those payments comply with Section 409A to the maximum permissible extent. To the extent any payment under this Agreement may be classified as a "short-term deferral" within the meaning of Section 409A, such payment shall be deemed a short-term deferral, even if it may also qualify for an exemption from Section 409A under another provision of Section 409A. Payments pursuant to this Agreement (or referenced in this Agreement) are intended to constitute separate payments for purposes of Section 1.409A-2(b)(2) of the regulations under Section 409A.

(b) **Other Arrangements**. This Agreement supersedes any and all cash severance arrangements and vesting acceleration arrangements under any offer letter or employment agreement, agreement governing Equity Awards, severance and salary continuation arrangements, programs and plans which were previously offered by the Company to the Executive, including change in control severance arrangements and vesting acceleration arrangements pursuant to an agreement governing Equity Awards, employment agreement or offer letter, and Executive hereby waives Executive's rights to such other benefits. In no event shall any individual receive cash severance benefits under both this Agreement and any other severance pay or salary continuation program, plan or other arrangement with the Company or its subsidiaries. For the avoidance of doubt, in no event shall Executive receive payment under both Section 2 and Section 3 with respect to Executive's Separation.

(c) **Dispute Resolution**. To ensure rapid and economical resolution of any and all disputes that might arise in connection with this Agreement, Executive and the Company agree that any and all disputes, claims, and causes of action, in law or equity, arising from or relating to this Agreement or its enforcement, performance, breach, or interpretation, will be resolved solely and exclusively by final, binding, and confidential arbitration, by a single arbitrator, in Santa Clara County, and conducted by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") under its then-existing employment rules and procedures. Nothing in this section, however, is intended to prevent either party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Each party to an arbitration or litigation hereunder shall be responsible for the payment of its own attorneys' fees.

(d) **Notice**. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid or deposited with Federal Express Corporation, with shipping charges prepaid. In the case of the Executive, mailed notices shall be addressed to him or her at the home address which he or she most recently communicated to the

Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notices shall be directed to the attention of its Secretary.

(e) **Waiver**. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by the Executive and by an authorized officer of the Company (other than the Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(f) **Withholding Taxes**. All payments made under this Agreement shall be subject to reduction to reflect taxes or other charges required to be withheld by law.

(g) **Severability**. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(h) **No Retention Rights**. Nothing in this Agreement shall confer upon the Executive any right to continue in service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Company or any subsidiary or parent of the Company or of the Executive, which rights are hereby expressly reserved by each, to terminate his or her service at any time and for any reason, with or without Cause.

(i) **Choice of Law**. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California (other than its choice-of-law provisions).

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, as of the day and year first above written.

EXECUTIVE	BLOOM ENERGY CORPORATION
/s/ Guillermo Brooks	/s/ Shawn Soderberg
Name : Guillermo (Billy) Brooks	By: Shawn Soderberg
Date:	Title: EVP, General Counsel and Secretary
	Date:

Exhibit 10.2

THIRD AMENDMENT TO LEASE

(Bloom Energy Corporation - 4353 North First Street)

THIS THIRD AMENDMENT TO LEASE ("**Amendment**") is dated effective and for identification purposes as of June 6, 2021, and is made by and between SPUS9 237 AT FIRST STREET, LP, a Delaware limited partnership ("**Landlord**"), and BLOOM ENERGY CORPORATION, a Delaware corporation ("**Tenant**").

RECITALS:

WHEREAS, Landlord's predecessor-in-interest, 237 North First Street Holdings, LLC, a Delaware limited liability company, as Landlord, and Tenant, as Tenant, entered into that certain Net Lease Agreement dated April 4, 2018 (the "**Original Lease**"), as amended by that certain First Amendment to Net Lease Agreement dated April 18, 2018 (the "**First Amendment**"), and that Second Amendment to Net Lease Agreement dated June 24, 2019 (the "**Second Amendment**" and, collectively with the Original Lease and the First Amendment, the "**Lease**"), pertaining to the premises currently comprised of a total of approximately 102,795 rentable square feet of space located on a portion of the first (1st) floor, and the entirety of the fourth (4th), fifth (5th), and sixth (6th) floors ("**Original Premises**"), of 4353 North First Street, San Jose, California ("**Building**"); and

WHEREAS, Landlord and Tenant desire to enter into this Amendment to expand the Premises and provide for certain other matters as more fully set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree that the Lease shall be amended in accordance with the terms and conditions set forth below.

1. Definitions. The capitalized terms used herein shall have the same definitions as set forth in the Lease, unless otherwise defined herein.

2. Extension. The parties hereby acknowledge and agree that the term of the Lease expires on December 31, 2028. However, Landlord and Tenant desire to adjust and extend the term of the Lease on the terms and conditions set forth herein. Accordingly, subject to the terms and conditions set forth in this Amendment, the term of the Lease is hereby adjusted and extended for an additional period of thirty- one (31) months ("**Extension Term**"), commencing on January 1, 2029 ("**Extension Commencement Date**"), and expiring on July 31, 2031 ("**Extension Term Expiration Date**"). Except as otherwise specifically stated herein, Tenant hereby accepts the Premises in its present "as-is" condition.

3. Expansion.

(a) Expansion Premises. The term "**Expansion Premises**" is hereby defined to be and to mean (i) that certain space located on the first (1st) floor of the Building consisting of approximately 14,324 rentable square feet of space, and (ii) the entirety of the second (2nd) floor of the Building consisting of approximately 32,799 rentable square feet of space, (which is the final agreement of the parties and not subject to adjustment), as outlined on **Exhibit A**, attached hereto and incorporated herein by this reference. Accordingly, effective as of the Expansion Commencement Date, the Premises, as expanded, shall be deemed to consist of a collective total of approximately 149,918 rentable square feet of space.

(b) Delivery; Expansion Commencement Date. Landlord shall deliver the Expansion Premises to Tenant on the date that is one (1) business day after full execution and delivery of this

Amendment (the "**Delivery Date**"). From and after the Delivery Date, Tenant shall be allowed to enter the Expansion Premises for purposes of constructing the Tenant Improvements contemplated by Section 6 below. Such early entry onto the Premises shall be subject to the terms and conditions of the Lease, as hereby amended, except that Tenant shall not be required to pay rent for any period(s) prior to the Expansion Commencement Date for the Expansion Premises. The term "**Expansion Commencement Date**" is hereby defined to be and to mean August 1, 2021. In the event that the Delivery Date has not occurred on or before August 1, 2021 (as may be extended due to any delay caused by Tenant or force majeure) ("**Substantial Completion Deadline**") Tenant shall be entitled to one day of free Base Rent for every day of such delay after the Substantial Completion Deadline.

(c) Expansion Term. The term "**Expansion Term**" is hereby defined to be and to mean that period of time commencing on the Expansion Commencement Date and expiring contemporaneously on the Extension Expiration Date, as defined in Section 2 above.

(d) Acceptance. Effective on the Expansion Commencement Date, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, on the terms and conditions set forth in the Lease and herein, the Expansion Premises. Tenant shall accept the Expansion Premises in its present "as is" condition, except for the performance of Landlord's Work (as defined in Section 6 below).

4. Base Rent. During the adjusted and Expansion Term, Tenant shall pay to Landlord Base Rent for the original and Expansion Premises as follows:

ORIGINAL PREMISES (102,795 RSF)

Dates	Base Rent $/RSF/Mo.	Regular Base Rent	Monthly Amortized Allowance Repayment**	Total Monthly Base Rent
08/01/21 – 12/31/21	$2.92	$299,901.85	$25,804.26	$325,706.11
01/01/22 – 12/31/22	$3.01	$308,898.91	$25,804.26	$334,703.17
01/01/23 – 12/31/23	$3.10	$318,165.88	$25,804.26	$343,970.14
01/01/24 – 12/31/24	$3.19	$327,710.86	$25,804.26	$353,515.12
01/01/25 – 12/31/25	$3.28	$337,542.19	$25,804.26	$363,346.45
01/01/26 – 12/31/26	$3.38	$347,668.46	$25,804.26	$373,472.72
01/01/27 – 12/31/27	$3.48	$358,098.51	$25,804.26	$383,902.77
01/01/28 – 12/31/28	$3.59	$368,841.47	$25,804.26	$394,645.73
01/01/29 – 05/31/29	$4.00	$ 0.00*	$ 0.00	$ 0.00*
06/01/29 – 07/31/29	$4.00	$411,180.00	$ 0.00	$411,180.00
08/01/29 – 07/31/30	$4.12	$423,515.40	$ 0.00	$423,515.40
08/01/30 – 07/31/31	$4.24	$435,850.80	$ 0.00	$435,850.80

EXPANSION PREMISES (47,123 RSF)

Dates	Rate/RSF/Mo.	Total Monthly Base Rent
08/01/21 - 05/31/22	$3.25	$ 0.00*
06/01/22 - 07/31/22	$3.25	$153,149.75
08/01/22 - 07/31/23	$3.35	$157,862.05
08/01/23 - 07/31/24	$3.45	$162,574.35
08/01/24 - 07/31/25	$3.55	$167,286.65
08/01/25 - 07/31/26	$3.66	$172,470.18

08/01/26 - 07/31/27	$3.77	$177,653.71
08/01/27 - 07/31/28	$3.88	$182,837.24
08/01/28 - 07/31/29	$4.00	$188,492.00
08/01/29 - 07/31/30	$4.12	$194,146.76
08/01/30 - 07/31/31	$4.24	$199,801.52

* Tenant's Base Rent for both the Original Premises and the Expansion Premises shall be abated (i) with respect to the Original Premises, for the initial five (5) months following the Extension Commencement Date, and (ii) with respect to the Expansion Premises, for the initial ten (10) months following the Expansion Commencement Date. Such abatement shall apply solely to payment of the monthly installments of Base Rent and shall not be applicable to any other charges, expenses or costs payable by Tenant under the Lease or this Amendment, including, without limitation, Tenant's obligation to pay Tenant's percentage share of Operating Expenses. Landlord and Tenant agree that the abatement of Base Rent contained in this Section is conditional so long as no Default by Tenant occurs during the Expansion Term. In the event a Default by Tenant occurs during Expansion Term, and Landlord terminates this Lease or Tenant's possession as a result thereof pursuant to Paragraph 14.1 of the Original Lease, then the unamortized portion of the abated Base Rent (which abated Base Rent shall be amortized over the one hundred twenty-five (125)- month period comprising the Expansion Term) shall become immediately due and payable following receipt of written demand of Landlord, and Landlord shall be entitled to include such unamortized portion of the abated Base Rent in the amount of rentals that it is otherwise entitled to recover from Tenant under Article 14 of the Original Lease.

** See Second Amendment to Lease for additional details regarding repayment of the Additional Improvement Allowance.

Except as otherwise expressly set forth herein, Base Rent shall be payable pursuant to the terms and conditions of Section 4 of the Original Lease.

5. Tenant's Percentage Share. Beginning on the Expansion Commencement Date, Tenant's percentage share, as defined in Paragraph 1.12 of the Summary of Lease Provisions and Section 5 of the First Amendment to Net Lease Agreement, shall be increased from 56.78% to 82.81%.

6. Tenant Improvements. Subject to the terms and conditions of the Work Letter attached hereto as **Exhibit B** and incorporated by reference herein (the "**Work Letter**"), Tenant shall accept the Expansion Premises in its present "as-is" and "where-is" condition. Pursuant to the Work Letter, Tenant shall construct certain "**Tenant Improvements**" (as defined in Section 3 of the Work Letter) in the Expansion Premises. For avoidance of doubt, Tenant shall not be obligated to remove any component of the Tenant Improvements installed in the Expansion Premises upon the expiration or earlier termination of the Lease unless (i) such component of Tenant Improvements constitutes "**Specialty Alterations**" as defined in Paragraph 13.1 of the Original Lease; and (ii) Landlord so notifies Tenant in writing at the time that Tenant requests Landlord's approval of the final Drawings (as defined in Section 5 of the Work Letter, for the Tenant Improvements. To the extent Tenant is required to remove any component of the Tenant Improvements comprising Specialty Alterations pursuant to the foregoing sentence, Tenant shall repair any damage caused by such removal.

7. Signage. Landlord will permit Tenant to (i) place its signage on the front of the Building, and, (ii) so long as Tenant is the sole occupant of the Building, to place its signage on the glass doors on the front and back of the Building and, subject to Landlord's prior written approval as to the location, size, and design, build a reception area in the common area on the first floor. If at any time Tenant is not the sole occupant of the Building, Tenant shall, at Tenant's sole cost and expense, remove the glass door signage and reception desk and repair any damage caused thereby. In addition, Landlord will reasonably cooperate

with Tenant, at no cost to Landlord, in order to advertise Tenant's hiring on the illuminated sign on Highway 237. All costs associated with the fabrication, installation, maintenance, removal and replacement of Tenant's signage shall be the sole responsibility of Tenant, and Tenant shall maintain such signage in good condition and repair. Tenant shall remove such signage and repair any damage caused thereby, at its sole cost and expense, upon the expiration or sooner termination of the Lease. The color, content, size and other specifications of any such signage shall be in accordance with the terms and conditions of the Lease, and shall be subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed. Further, Tenant shall ensure that all signage complies with any and all applicable local zoning codes and building regulations.

8. Waiver of Contraction Right. Landlord and Tenant hereby acknowledge and agree that Tenant expressly waives the Contraction Right set forth in Paragraph 50 of the Original Lease, and that such Contraction Right shall no longer be of any force or effect.

9. Security Deposit. The Security Deposit set forth in the Lease is hereby increased from $368,841.47 to $568,643.00. Accordingly, Tenant shall pay the difference of $199,801.53 to Landlord contemporaneously with Tenant's execution of this Amendment.

10. Brokers. Landlord and Tenant hereby represent and warrant to the other party that it has not dealt with any real estate brokers or leasing agents in the negotiation or execution of this Amendment other than CBRE, Inc., as the sole real estate broker or leasing agent representing Landlord ("**Broker**"). No commissions are payable to any party claiming through Tenant as a result of the consummation of the transaction contemplated by this Amendment, except to Broker, if applicable, which commission, if applicable, shall be paid by Landlord. Landlord and Tenant hereby agree to indemnify and hold the other harmless from any and all loss, costs, damages or expenses, including, without limitation, all attorneys' fees and disbursements by reason of any claim of or liability to any other broker, agent, entity or person claiming through Landlord or Tenant (other than Broker) and arising out of or in connection with the negotiation and execution of this Amendment.

11. Governing Law. This Amendment is governed by federal law, including without limitation the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §§ 7001 et seq.) and, to the extent that state law applies, the laws of the State of California without regard to its conflicts of law rules.

12. Counterparts; Electronic Signatures. This Amendment may be executed in counterparts, including both counterparts that are executed on paper and counterparts that are in the form of electronic records and are executed electronically. An electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that electronic records and electronic signatures, as well as facsimile signatures, may be used in connection with the execution of this Amendment and electronic signatures, facsimile signatures or signatures transmitted by electronic mail in so-called pdf format shall be legal and binding and shall have the same full force and effect as if a paper original of this Amendment had been delivered and had been signed using a handwritten signature. Landlord and Tenant (i) agree that an electronic signature, whether digital or encrypted, of a party to this Amendment is intended to authenticate this writing and to have the same force and effect as a manual signature, (ii) intend to be bound by the signatures (whether original, faxed or electronic) on any document sent or delivered by facsimile, electronic mail or other electronic means, (iii) are aware that the other party will rely on such signatures, and (iv) hereby waive any defenses to the enforcement of the terms of this Amendment based on the foregoing forms of signature. If this Amendment has been executed by electronic signature, all parties executing this document

are expressly consenting under the Electronic Signatures in Global and National Commerce Act ("**E- SIGN**"), and Uniform Electronic Transactions Act ("**UETA**"), that a signature by fax, email or other electronic means shall constitute an Electronic Signature to an Electronic Record under both E-SIGN and UETA with respect to this specific transaction.

13. **Amendments.** The Lease may only be amended by a writing signed by the parties hereto, or by an electronic record that has been electronically signed by the parties hereto and has been rendered tamper-evident as part of the signing process. The exchange of email or other electronic communications discussing an amendment to the Lease, even if such communications are signed, does not constitute a signed electronic record agreeing to such an amendment.

14. **Energy Star.** Within thirty (30) days after receipt of written request from Landlord, Tenant shall provide Landlord reports, either in the form of utility bills or spreadsheets, which details the Premises' electricity, steam, natural gas, fuel oil, water, and waste consumption over a given period of time (the "**Environmental Performance Data**") on a regular basis but not more frequently than quarterly. Except to the extent required per a statutory obligation of disclosure, Landlord will maintain confidential the Environmental Performance Data delivered, and will use the data only for the purposes of: (a) monitoring the environmental performance of the Premises, and/or (b) measuring the environmental performance of the Premises against any targets. If Landlord discloses any shared data to a third party, Landlord will procure that that third party is placed under a similar obligation to that set out in the above clause to keep any shared data confidential and to use it only for the purposes described herein.

15. **Miscellaneous.** With the exception of those matters set forth in this Amendment, Tenant's leasing of the Premises shall be subject to all terms, covenants and conditions of the Lease. In the event of any express conflict or inconsistency between the terms of this Amendment and the terms of the Lease, the terms of this Amendment shall control and govern. Except as expressly modified by this Amendment, all other terms and conditions of the Lease are hereby ratified and affirmed. The parties acknowledge that the Lease is a valid and enforceable agreement and that Tenant holds no claims against Landlord or its agents which might serve as the basis of any other set-off against accruing rent and other charges or any other remedy at law or in equity.

IN WITNESS WHEREOF, the foregoing Third Amendment to Lease is dated effective as of the date and year first written above.

LANDLORD:
SPUS9 237 AT FIRST STREET, LP,
a Delaware limited partnership

By: /s/ Brian Ma
Name: Brian Ma
Title: Authorized signatory

Date: 6/21/2021

By: /s/ Diann Hsueh

Name: Diann Hsueh

Title: vice President

Date:

6/21/2021

TENANT:
BLOOM ENERGY CORPORATION,
a Delaware corporation

By: /s/ Shawn M. Soderberg
Name: Shawn M. Soderberg
Title: EVP, General Counsel & Secretary Date: 6/18/2021

EXHIBIT A

EXPANSION PREMISES

EXHIBIT B

WORK LETTER

This is the Work Letter referred to in and specifically made a part of the Amendment to which this **Exhibit B** is annexed, covering the Expansion Premises (hereinafter referred to as the "**Premises**"), as more particularly described in the Amendment. Landlord and Tenant agree as follows:

1. Defined Terms. The following defined terms shall have the meaning set forth below and, unless provided to the contrary herein, the remaining defined terms shall have the meaning set forth in the Lease:

Landlord's Representative: Landlord shall designate a Landlord's Representative as its sole representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Landlord as required in this Work Letter. Landlord shall not change Landlord's Representative except upon notice to Tenant's Representative. Tenant acknowledges that neither Tenant's architect nor any contractor engaged by Tenant is Landlord's agent and neither entity has authority to enter into agreements on Landlord's behalf or otherwise bind Landlord.

Tenant's Representative: Tenant shall designate a Tenant's Representative as its representative with respect to the matters set forth in this Work Letter, who shall have full authority and responsibility to act on behalf of Tenant as required in this Work Letter. Tenant shall not change Tenant's Representative except upon prior written notice to Landlord's Representative. Landlord acknowledges that neither Landlord's architect nor any contractor engaged by Landlord is Tenant's agent and neither entity has authority to enter into agreements on Tenant's behalf or otherwise bind Tenant.

Allowance: The lesser of (a) Three Million Seven Hundred Nine Thousand Six Hundred Twenty and No/100ths Dollars ($3,709,620.00) (i.e. $30.00 per RSF in the first (1st) floor Expansion Premises, plus $100.00 per RSF in the second (2nd) floor Expansion Premises), or (b) the actual cost of Tenant's Work, as defined below. Any portion of the Allowance not used and a request therefor submitted in writing to Landlord's Representative on or before the Allowance Expiration Deadline shall be deemed to be forfeited by Tenant.

Construction Management Fee: Tenant will pay the landlord a fixed fee of Twenty Thousand and No/100 Dollars ($20,000.00) for Landlord's costs resulting from Landlord's review of the Plans, construction management costs, use of facilities and other such costs incurred by Landlord as a result of Tenant's Work.

General Contractor: To be selected by Tenant and reasonably approved by Landlord.

2. Landlord's Work. Tenant accepts the Premises in its current "AS IS" condition and acknowledges that Landlord shall have no obligation to do any work in or on the Premises to render it ready for Tenant's use or occupancy, except that Landlord shall modify the paint/decor of the wall in the elevator lobbies in the Original Premises to match the paint/decor of the wall of the elevator lobby of the third (3rd) floor of the Building ("Landlord's Work"). Landlord shall perform the Landlord's Work in compliance with all applicable law, in a good and workmanlike manner using new equipment (if any) and materials of good

quality. Landlord shall use commercially good faith efforts to complete Landlord's Work within ninety (90) days after the Expansion Commencement Date. In performing the Landlord's Work, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use of and access to the Original Premises and the Expansion Premises. Within ten (10) days after Landlord's completion of the Landlord's Work in each elevator lobby in the Original Premises and the Expansion Premises, Tenant shall have the right to submit a written "punch list" to Landlord, setting forth any defective item of construction, and Landlord shall promptly cause such items to be corrected.

3. Tenant Improvements. The "Tenant Improvements" shall mean demolition and /or installation of the interior walls, partitions, doors, door hardware, wall coverings, wall base, counters, lighting fixtures, electrical and telephone wiring, cabling for computers, metering and outlets, ceilings, floor and window coverings, HVAC system, fire sprinklers system, and other items of general applicability that Tenant desires to be installed in the interior of the Premises. Tenant shall promptly commence and diligently prosecute to full completion Tenant's Work in accordance with the Drawings. The parties agree that no demolition work or other Tenant's Work shall be commenced on the Premises until such time as Tenant's Representative has provided to Landlord's Representative copies of the demolition and building permits required to be obtained from all applicable governmental authorities and all other conditions precedent have been fully satisfied. All materials, work, installations, equipment and decorations of any nature whatsoever brought on or installed in the Premises during the Term shall be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever, excluding by reason of Landlord's gross negligence or willful or criminal misconduct, or that of its agents, employees or contractors.

4. Drawings. Tenant shall engage and pay for the services of a licensed architect to prepare a space layout, drawings and specifications for all Tenant Improvements (the "Drawings"), which architect shall be subject to Landlord's Representative's approval, which shall not be unreasonably withheld, conditioned or delayed (the "Architect"). Tenant's Representative shall devote such time in consultation with the Architect as reasonably shall be necessary to enable the Architect to develop complete and detailed architectural, mechanical and engineering drawings and specifications, as necessary, for the construction of Tenant Improvements, showing thereon all Tenant Improvements. Tenant hereby acknowledges and agrees that it is Tenant's sole and exclusive responsibility to cause the Premises and the Drawings to comply with all applicable laws, including the Americans with Disabilities Act and other ordinances, orders, rules, regulations and requirements of all governmental authorities having jurisdiction thereof.

5. Landlord's Approval. On or before the applicable Time Limit set forth below, Tenant's Representative shall submit to Landlord's Representative an electronic PDF copy, electronic CAD copy and hard copy of the complete and final Drawings for Tenant Improvements. The Drawings shall be subject to the approval of Landlord's Representative, which approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord's Representative should disapprove such Drawings, Landlord's Representative shall specify to Tenant's Representative the reasons for its disapproval and Tenant's Representative shall cause the same to be revised to meet the mutual reasonable satisfaction of Landlord's Representative and shall resubmit the same to Landlord's Representative, as so revised, on or before the applicable Time Limit set forth below.

6. Changes. Tenant's Representative may request reasonable changes in the Drawings; provided, however, that (a) no change shall be made to the Drawings without Landlord's Representative's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed; (b) no such request shall effect any structural change in the Building or otherwise render the Premises or Building in violation of applicable laws; (c) Tenant shall pay any additional costs required to implement such change, including, without limitation, loss of rents, architecture and other consultant fees, and increases in construction costs; and (d) such requests shall constitute an agreement by Tenant to any delay in completion caused by

Landlord's reviewing, and processing such change. If Tenant's Representative requests or causes any change, addition or deletion to the Premises to be necessary after approval of the Drawings, a request for the change shall be submitted to Landlord's Representative, accompanied by revised plans prepared by the Architect, all at Tenant's sole expense.

7. Tenant's Work. It is understood and agreed by the parties that, as hereinafter set forth, Tenant has elected to retain a general contractor and arrange for the construction and installation of Tenant Improvements itself in a good and workmanlike manner by labor union contractors and subcontractors ("Tenant's Work"). On or before the applicable Time Limit set forth below, Tenant's Representative shall submit to Landlord's Representative the names of the general contractor, electrical, ventilation, plumbing and heating subcontractors (hereinafter "Major Subcontractors"), as applicable, for Landlord's Representative's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. If Landlord's Representative shall reject any Major Subcontractor, Landlord's Representative shall advise Tenant's Representative of the reason(s) in writing and, Tenant's Representative shall choose another Major Subcontractor. Along with Tenant's Representative's notice of its Major Subcontractors, Tenant's Representative shall notify Landlord's Representative of its estimate of the total costs for Tenant's Work. If the final estimate of total costs exceeds the Allowance ("Excess Costs"), Tenant shall be solely responsible for payment of such Excess Costs.

8. Tenant's Construction of Tenant Improvements.

(a) Payment; Liens. Tenant shall promptly pay any and all costs and expenses in connection with or arising out of the performance of Tenant Improvements and shall furnish to Landlord's Representative reasonable evidence of such payment within thirty (30) days after receipt of written request. Landlord's Representative shall post and serve notices of non-liability in accordance with applicable laws. In the event any lien is filed against the Building or any portion thereof or against Tenant's leasehold interest therein, the provisions of Paragraph 13 of the Original Lease shall apply.

(b) Indemnity. Tenant shall indemnify, defend (with counsel reasonably satisfactory to Land- lord and Tenant) and hold Landlord harmless from and against any and all suits, claims, actions, loss, cost or expense (including claims for workers' compensation, attorneys' fees and costs) based on personal injury or property damage caused in, or contract claims (including, but not limited to claims for breach of warranty) arising from Tenant's Work. Tenant shall repair or replace (or, at Landlord's election, reimburse Landlord for the actual and reasonable cost of repairing or replacing) any portion of the Building or item of Landlord's equipment or any of Landlord's real or personal property damaged, lost or destroyed in the construction of Tenant Improvements.

(c) Contractors. The Major Subcontractors employed by Tenant and any subcontractors thereof shall be (i) duly licensed in the state in which the Premises are located, and (ii) except as otherwise approved herein, subject to Landlord's Representative's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. On or before ten (10) business days prior to the commencement of any construction activity in the Premises, Tenant and Tenant's contractors shall obtain and provide Landlord's Representative with certificates evidencing Workers' Compensation, public liability and property damage insurance in amounts and forms and with companies reasonably satisfactory to Landlord's Representative. If Landlord's Representative should disapprove such insurance, Landlord's Representative shall specify to Tenant's Representative the reasons for its disapproval within five (5) business days after delivery of such certificates. Tenant's agreement with its contractors shall require such contractors to provide daily clean up of the construction area to the extent such clean up is necessitated by the construction of Tenant Work, and to take reasonable steps to minimize interference with other tenants' use and occupancy of the Building. Nothing contained herein shall make or constitute Tenant as the agent

of Landlord. Tenant and Tenant's contractors shall comply with any other reasonable rules, regulations or requirements that Landlord's Representative may impose.

(d) Use of Common Areas. During the construction period and installation of fixtures period, Tenant shall be allowed to use, at no cost to Tenant, a freight elevator for the purpose of hoisting materials, equipment and personnel to the Premises. Also during the construction period, Tenant shall ensure that the Building and all common areas and the Premises are kept in a clean and safe condition at all times. After hours construction activities by Tenant shall require reimbursement to Landlord for its actual and reasonable costs for after-hours supervision, which amount shall be in addition to the Construction Management Fee. Further, all construction activities shall be conducted so as to use reasonable efforts to minimize interference with the use and occupancy of the Building by the tenants thereof. Such entry shall be deemed to be under all the terms, covenants, provisions and conditions of the Lease.

(e) Coordination. All work performed by Tenant shall be coordinated with Landlord's Representative. Tenant's Representative shall timely notify and invite Landlord's Representative to all construction meetings (with contractors, engineers, architects and others), and supply all documentation reasonably requested by Landlord's Representative.

(f) Assumption of Risk. All materials, work, installations, equipment and decorations of any nature whatsoever brought on or installed in the Premises pursuant to the provisions of this Work Letter before the commencement of the Term or throughout the Term shall be at Tenant's risk, and neither Landlord nor any party acting on Landlord's behalf shall be responsible for any damage thereto or loss or destruction thereof due to any reason or cause whatsoever, excluding by reason of Landlord or such other party's gross negligence or willful or criminal misconduct.

9. Time Limits. The following maximum time limits and periods shall be allowed for the indicated matters:

Action	Time Limit

Tenant’s Representative submits Drawings to Landlord’s Representative for review and approval.

No later than 45 days after the date of mutual execution of the Amendment.

Landlord’s Representative notifies Tenant’s Representative and the Architect of its approval of the Drawings with any required changes in detail.

On or before 10 business days after the date of Landlord’s Representative's receipt of the Drawings.

Tenant’s Representative notifies Landlord’s Representative of its selection of major subcontrac- tors.

On or before 10 business days after the date of that Tenant submits the Drawings to Landlord for approval.

Landlord’s Representative approves/disapproves Tenant’s major subcontractors.

On or before 5 business days after the date of Landlord’s Representative's receipt of the list of major subcontractors.

If applicable, Landlord’s Representative and Tenant’s Representative mutually approve the final revised list of major subcontractors.

On or before 5 business days after the date of Landlord’s Representative’s receipt of a revised list of major subcontractors.

If applicable, Landlord's Representative and Tenant's Representative mutually approve the final revised Drawings.

On or before 5 business days after the date of Landlord's Representative's receipt of revised Drawings.

Tenant's Representative submits Drawings for building permit, if applicable.

No later than ten (10) business days after the date Tenant's Representative and Landlord's Representative mutually approve the final, revised Drawings.

Allowance Expiration Deadline December 31, 2022

Except as may be otherwise specifically provided for herein, in all instances where either Tenant's Representative's or Landlord's Representative's approval is required, if no written notice of disapproval is given within the applicable Time Limit, at the end of such period the applicable party shall be deemed to have withheld its approval and the next succeeding time period shall commence. Any delay in any of the foregoing dates (including any "re-do", continuation or abatement of any item due to Tenant's Representative's or Landlord's Representative's disapproval thereof) shall automatically delay all subsequent deadlines by a like amount of time.

10. Allowance. Landlord shall contribute an amount not to exceed the Allowance to the cost of the Tenant's Work, including, without limitation, all costs associated with the Tenant Improvements as defined in Section 3 above, including all permits, licenses and construction fees. If the final costs for Tenant's Work exceed the Allowance, those Excess Costs shall be paid by Tenant. Provided the Lease is in full force and effect and Tenant is not in Default hereunder beyond any applicable notice and grace period, Landlord shall pay the Allowance to Tenant consistent with the terms and conditions of this Section. After Tenant's Work is Substantially Complete (as provided under Section 11 hereof), Tenant's Representative shall submit to Landlord's Representative a request in writing for the Allowance which request shall include: (a) "as-built" drawings showing all of Tenant Improvements, (b) a detailed breakdown of Tenant's final and total construction costs, together with receipted invoices showing payment thereof, (c) a certified, written statement from the Architect that all of Tenant Improvements has been completed in accordance with the Drawings, (d) all required AIA forms, supporting final lien waivers, and releases executed by the Architect, General Contractor, the Major Subcontractors and all subcontractors and suppliers in connection with Tenant Improvements, (e) a copy of a certificate of occupancy or amended certificate of occupancy required with respect to the Premises, if applicable, together with all licenses, certificates, permits and other government authorizations necessary in connection with Tenant Improvements, and (f) proof reasonably satisfactory to Landlord's Representative that Tenant has complied with all of the conditions set forth in this Work Letter and has satisfactorily completed Tenant Improvements, including, at Landlord's Representative's option, a certificate from the General Contractor and Architect after inspection of Tenant Improvements ("Draw Request"). Within thirty (30) days after Landlord's Representative's receipt and approval of the Draw Request, Landlord shall pay to Tenant all or so much of the Allowance, less the Construction Management Fee, set forth in the Draw Request within thirty (30) days after receipt thereof.

11. Failure to Disburse. If Landlord fails to timely pay or contribute any portion of the Allowance within thirty (30) days following Landlord's receipt of written notice from Tenant that such portion is past due and payable under the terms hereof, then the provisions of Paragraph 6(d) of Exhibit C to the Original Lease, "Failure to Disburse" shall apply.

12. Substantial Completion. The Tenant Improvements shall be deemed substantially complete when all work called for by the Drawings has been finished and the Premises is ready to be used and occupied by Tenant, even though minor items may remain to be installed, finished or corrected ("Substantial Completion

Date" or the "Date of Substantial Completion"). Tenant shall cause the contractors to diligently complete any items of work not completed when the Premises are substantially complete. Substantial completion shall have occurred notwithstanding punch list items.

UNDER NO CIRCUMSTANCES SHALL A DELAY IN THE SUBSTANTIAL COMPLETION DATE DELAY THE EXPANSION COMMENCEMENT DATE, RENT OR ANY OTHER APPLICABLE DATES OR OBLIGATIONS OF TENANT.

1. No Representations or Warranties. Notwithstanding anything to the contrary contained in the Lease or herein, Landlord's participation in the preparation of the Drawings, the cost estimates for Tenant and the construction of Tenant Improvements shall not constitute any representation or warranty, express or implied, that (i) the Drawings are in conformity with applicable governmental codes, regulations or rules, or (ii) the Tenant Improvements, if built in accordance with the Drawings, will be suitable for Tenant's intended purpose. Tenant acknowledges and agrees that Tenant Improvements are intended for use by Tenant and the specification and design requirements for such improvements are not within the special knowledge or experience of Landlord. Landlord's obligations shall be to review the Drawings; and any additional cost or expense required for the modification thereof to more adequately meet Tenant's use, whether during or after construction thereof, shall be borne entirely by Tenant, subject to application of the Allowance.

CERTAIN CONFIDENTIAL INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND REPLACED WITH "[…*…]" BECAUSE IT IS NOT MATERIAL AND WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

Exhibit 10.3

PURCHASE, ENGINEERING, PROCUREMENT AND CONSTRUCTION CONTRACT

between

BLOOM ENERGY CORPORATION
as Contractor

and

RAD 2021 BLOOM ESA FUND I, LLC,
RAD 2021 BLOOM ESA FUND II, LLC,
RAD 2021 BLOOM ESA FUND III, LLC,
RAD 2021 BLOOM ESA FUND IV, LLC, and
RAD 2021 BLOOM ESA FUND V, LLC
as Buyers

and

solely for purposes of Sections 5.10, 6.01(d), 6.02(I), 7.01(d), 10.04(b), 10.04(c) and 10.04(d),
RAD BLOOM PROJECT HOLDCO LLC

dated as of June 25, 2021

SCHEDULES

Schedule 1A – Project Criteria
Schedule 1B – Portfolio Credit Criteria
Schedule 2 – Scheduled Projects
Schedule 3 – Work
Schedule 4 – Milestones
Schedule 5 – Commissioning Procedures
Schedule 6 – Insurance
Schedule 7 – Ancillary Module Prices
Schedule 8 – Notice Information
Schedule 9 – Non-Scheduled Projects
Schedule 10 – **[…***…]**

EXHIBITS

Exhibit A – Form of Project Package
Exhibit B – Form of Assignment Agreement
Exhibit C – Form of Milestone Certificate
Exhibit D – Form of Bill of Sale
Exhibit E – Form of COD Package
Exhibit F – Form of Transfer Agreement
Exhibit G – Form of Mechanical Completion Certificate
Exhibit H – Form of Resignation and Release
Exhibit I-1 – Form of Independent Engineer Certificate (Deposit Milestone)
Exhibit I-2 – Form of Independent Engineer Certificate (Delivery Milestone)
Exhibit I-3 – Form of Independent Engineer Certificate (COO Milestone)
Exhibit J – Form of Customer Estoppel Certificate

APPENDICES

Appendix A -- Definitions

This Purchase, Engineering, Procurement and Construction Contract (this "Agreement" or this "EPC"), dated as of June 25, 2021 (the "Effective Date"), is entered into by and between (i) BLOOM ENERGY CORPORATION, a Delaware corporation ("Contractor"), (ii) RAD 2021 BLOOM ESA FUND I, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND II, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND III, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND IV, LLC, a Delaware limited liability company, and RAD 2021 BLOOM ESA FUND V, LLC, a Delaware limited liability company (each a "Buyer" and collectively, the "Buyers") and (iii) solely for purposes of Sections 5.10, 6.01(d), 6.02(I), 7.01(d), 10.04(b), 10.04(c) and 10.04(d), RAD BLOOM PROJECT HOLDCO LLC, a Delaware limited liability company ("Company"). Contractor and Buyers are referred to in this EPC individually, as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Contractor is in the business of fabricating, manufacturing, designing, engineering, constructing and commissioning solid oxide fuel cell power generating Facilities;

WHEREAS, Company will acquire Buyers in connection with and as a necessary step to purchasing and owning the Projects;

WHEREAS, immediately following Company's acquisition of Buyers hereunder, Buyers will be wholly owned Affiliates of Company that desire to purchase, and Contractor desires to sell, the Projects to be developed on a turnkey basis.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows.

Article I.
TERM; PORTFOLIO

Section 1.01 Definitions; Interpretation. Capitalized terms used herein shall have the meanings set forth in Appendix A. References to a "Buyer" in this Agreement shall be interpreted as a reference to the specific Buyer identified in Schedule 2 as the purchaser of the applicable Project or Facility in the Portfolio to be purchased from Contractor pursuant to this Agreement.

Section 1.02 Term. Unless terminated earlier in accordance with the terms herein, this EPC shall be for the EPC Term.

Section 1.03 Presentation.

(a) This Section 1.03 applies only to Projects other than Scheduled Projects. During the period from the Effective Date until the date that is thirty (30) days prior to the Mechanical Completion Deadline (the "Availability Period"), no more than once per calendar month, Contractor may present one or more Projects (including the Non-Scheduled Projects identified in Schedule 9) satisfying the Project Criteria and the Portfolio Credit Criteria for Buyer's review by delivery of a Project Package for each such proposed Project (a "Presentation Date").

(b) Buyer, within fifteen (15) Business Days, will deliver to Contractor a Project Package Response, notifying Contractor whether Buyer has elected, in its sole discretion, to either accept the addition of such Project to the Portfolio or reject it.

Section 1.04 Adding Projects to the Portfolio.

(a) Portfolio. Upon the acceptance by Buyer of the addition of a Project to the Portfolio pursuant to Section 1.03(b), such Project will be deemed a Scheduled Project.

(b) Scope of EPC Obligation. As soon as reasonably practicable (but in no event later than the time required under the applicable Customer Agreement), after a Project becomes a Scheduled Project, Contractor will begin the Work for such Scheduled Project. Unless removed due to a Removal Event, Contractor will perform the Work with respect to each Scheduled Project in accordance with the terms herein.

(c) References. Except in this Article I, every reference to a Project set forth in this Agreement will be deemed a reference to a Scheduled Project and every reference to a Facility, Customer, Customer Agreement, Site, and Project Documents will be deemed associated with and/or part of a Scheduled Project.

Section 1.05 Removing Projects from the Portfolio.

(a) With respect to a given Scheduled Project, any of the following events is a "Removal Event":

(i) prior to the Delivery Milestone Payment Date for a Scheduled Project, the related Customer Agreement and/or Site License is terminated without replacement;

(ii) Contractor notifies Buyer that Contractor has determined, in its sole discretion, that the related Facility will not achieve Mechanical Completion by the Mechanical Completion Deadline, and Buyer does not subsequently waive the Removal Event by written notice to Contractor;

(iii) the related Facility does not achieve Mechanical Completion by the earlier of (A) **[...***...]** following such Facility's Delivery Milestone Payment Date; and (B) the Mechanical Completion Deadline and Buyer does not subsequently waive the Removal Event by written notice to Contractor;

(iv) (A) prior to the Delivery Milestone Payment Date for a Scheduled Project, a full casualty occurs, the related Facility and/or Site is destroyed, and Contractor decides, in its sole discretion, not to restore the Facility or (B) following the Delivery Milestone Payment Date for a Scheduled Project, a full casualty occurs, the related Facility and/or Site is destroyed, and Buyer decides, in its sole discretion, not to restore the Facility;

(v) Buyer sells the Facility in accordance with Article XIII;

(vi) a Project achieves Mechanical Completion but fails to achieve COO by the Commitment Expiration Date in the circumstances expressly identified in Section 2.05; or

(vii) Contractor repurchases the Project pursuant to Section 6.11(c).

(b) Removed Project. If a Removal Event occurs for a Scheduled Project or if the energy servers with respect to a Facility forming part of a Scheduled Project are relocated pursuant to Section 2.05(e)(i) or Section 2.05(f)(B), such Scheduled Project will be deemed to no longer be part of the

Portfolio (a "Removed Project"), and, except with respect to Removal Events under Section 1.05(a)(iv), (v) and (vi):

(i) To the extent permitted by the applicable Project Documents, the Parties will promptly re-convey from Buyer to Contractor any Project Documents still in effect for such Removed Project;

(ii) Buyer's conveyance to Contractor of such Project Documents shall be "as-is" without representation or warranty concerning the Project or the Project Documents;

(iii) To the extent applicable, Contractor will remove the Facility or any parts thereof in accordance with Section 2.03 (*Facility Removal*); and

(iv) Buyer will assign and Contractor will assume all obligations and liabilities of Buyer under the Project Documents accruing after such Removal Event pursuant to an assignment and assumption agreement.

Section 1.06 Portfolio.

(a) As of the Effective Date, Schedule 2 sets forth all of the Scheduled Projects as of such date. The Scheduled Projects (including those Scheduled Projects that have not yet been assigned to the applicable Buyer) are deemed to have been accepted by Buyer as of the Effective Date (subject to Section 1.05 and the satisfaction of the conditions precedent applicable to each Scheduled Project under Section 6.01) and are not subject to the process set forth in Section 1.03. Where applicable, the applicable Buyer will cooperate with Contractor to take assignment of the applicable Customer Agreement and related Project Documents for any Scheduled Project promptly upon request by Contractor and receipt of all necessary consents.

(b) Within five (5) Business Day of the end of each month until COD of the final Scheduled Project, Contractor will deliver an updated Schedule 2 to Buyer updated solely to reflect (i) the addition of a Project accepted by Buyer to be added to the Portfolio pursuant to Section 1.03(b) as of such date or (ii) the removal of any Removed Projects as of such date.

(c) Once listed as a Scheduled Project on the updated Schedule 2, each reference to such Scheduled Project's Facility, Site, Customer, and any other Project Documents made in the remainder of this EPC will subject Contractor and Buyer to the rights and obligations in this EPC with respect to such Project.

(d) Contractor and Buyer have no obligations with respect to any Projects until they become Scheduled Projects.

(e) With respect to each Scheduled Project, from the later of (y) the Effective Date and (z) the date on which such Scheduled Project became a Scheduled Project, until the earliest of (i) the Purchase Date for such Scheduled Project, (ii) the date on which such Scheduled Project experiences a Removal Event and (iii) the date on which the EPC is terminated with respect to such Scheduled Project, Contractor will not solicit, initiate, or encourage any proposal or offer from any other Person to finance such Scheduled Project.

Section 1.07 Non-Scheduled Projects.

(a) The Sites and related Customer Agreements identified as "Non-Scheduled Projects" in Schedule 9 attached hereto are "Non-Scheduled Projects". Such Non-Scheduled Projects shall be kept in reserve to replace Scheduled Projects that are terminated for any reason prior to Mechanical Completion or fail to timely achieve COO in accordance with Section 2.5. Until each Scheduled Project in the Portfolio has achieved COO, Contractor shall not Transfer, install, operate or otherwise deal with (including termination of the Customer Agreement, negotiation and/or execution of an additional or replacement Customer Agreement with respect to the applicable Project or Site, reallocating any portion of the System Capacity or adjusting the System Capacity) a Non-Scheduled Project or its associated Facility without Buyer's express written consent or except as directed in accordance with Section 2.5(e). For the avoidance of doubt, nothing in the Section prohibits Contractor from entering into Customer Agreements with the Customer of a Non-Scheduled Project in respect of other projects or sites.

(b) Contractor and Buyer hereby agree that, until Buyer provides its written consent pursuant to Section 1.07(a): (1) title to and risk of loss with respect to any Non-Scheduled Project, or any equipment in connection therewith, shall not at any time pass to Buyer, (2) to the extent Buyer has any obligations with respect to such Non-Scheduled Project under the applicable Customer Agreement, Contractor shall perform such obligations for no additional consideration hereunder in accordance with (i) the requirements set forth therein, which shall include any obligations of Buyer under any such Customer Agreement in respect of such Non-Scheduled Project to make any payments to the applicable Customer Agreement Customer and (ii) the Performance Standards and (3) Buyer shall have no obligations in connection the Non-Scheduled Projects hereunder.

(c) Contractor shall defend, indemnify and hold Buyer Indemnitees harmless from any Losses, incurred by Buyer Indemnitees caused by or arising out of any breach by Contractor of its obligations in relation to Non-Scheduled Projects under this Section 1.07, except to the extent such amounts, damages, or Losses result from any action or inaction of Buyer or any Buyer Person. In the event that Buyer recovers any amount from a third party relating to any Losses reimbursed to Buyer by Contractor under this Section 1.07(c), Buyer shall promptly remit such amounts to Contractor.

Article II.
DELIVERY AND INSTALLATION

Section 2.01 The Work.

(a) Subject to Section 2.02, with respect to each Scheduled Project, Contractor shall be solely responsible for (i) all work and services required in connection with the building, development, design, engineering, permitting, procurement, fabrication, manufacture, construction, installation, interconnection, testing, start-up, commissioning, and completion of the applicable Facility, and (ii) procuring and providing the equipment, spare parts, labor, utilities, chemicals, delivery, storage, transportation, administration, and all other services and items required for and related to the foregoing, and without limitation of the foregoing, as further described in Schedule 3 and in the Facility's Design (the "Work").

(b) The Work includes Contractor's obligation to (i) perform all of the Work contemplated to be performed by the "Supplier" by each of the Customer Agreements, and (ii) provide any other incidental services or incidental items not specifically described in this EPC if it may be reasonably inferred that such additional work or incidental item is reasonably necessary to make the related Facility operable and capable of performing in accordance with the Performance Standards.

Section 2.02 Exceptions.

(a) For any given Scheduled Project, the Work does not include (i) work expressly allocated to Customer, if any, or for which Buyer as "Supplier" (under the Customer Agreement) is entitled to additional compensation or reimbursement by Customer, under its Customer Agreement, (ii) any work that is outside of the scope of the obligations of Buyer under such Customer Agreement, or (iii) any obligation of any Project Party under the Project Documents. If a Customer requests or requires work that is not within the scope of Buyer's obligations under the Customer Agreement, Buyer will notify Contractor of such work and provide Contractor the right, but not the obligation, to perform such work for the Customer pursuant to Section 5.02(e).

(b) Contractor shall have no liability for any failure to perform the Work to the extent attributable to (i) a breach by Buyer of its obligations under any Transaction Document, or (ii) a breach by a Project Party under any Project Document; *provided*, *however*, that Contractor shall continue to perform its other obligations under this EPC that are not affected by such breach.

(c) The activities that make up part of the Work may occur in a different order than as listed on Schedule 3; *provided, however*, in no event shall any portion of the Facility be Placed in Service before the Delivery Milestone Payment is made.

Section 2.03 Facility Removal. If a Facility is to be removed by Contractor under this EPC, then Contractor will:

(a) remove the Facility from the Site (not including the concrete pad or bollards unless required under the applicable Project Documents); and

(b) restore such Site to the condition required under the applicable Project Documents, including closing all utility connections and properly sealing all Site penetrations.

Section 2.04 Construction Schedule.

(a) **Contractor Force Majeure Events**. With respect to each Facility, if Contractor is rendered wholly or partially unable to perform any of the Work in accordance with the terms of this EPC by reason of a Force Majeure Event, then Contractor will be excused from the Work to the extent so prevented; provided, however, that (a) Contractor, no later than **[…***…]** after Contractor's Knowledge of such Force Majeure Event, provides Buyer notice in writing describing the particulars of such event, including its expected duration; (b) the applicable suspension of the Work shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) Contractor shall not be relieved of any liability for an event that arose before the occurrence of the Force Majeure Event; (d) Contractor shall exercise commercially reasonable efforts to correct or cure (and at all times minimize) the event or condition excusing performance and resume the Work; and (e) when Contractor is able to resume performance of the Work, it shall promptly give the Buyer notice in writing thereof and resume performance.

(b) **Mechanical Completion**. When Contractor has achieved Mechanical Completion of a Facility, Contractor shall provide Buyer a Mechanical Completion Certificate substantially in the form of Exhibit G that is signed by Contractor and confirms that all items required for Mechanical Completion of the Facility have been satisfied as of the date of the Certificate.

Section 2.05 Failure to Timely Achieve COO.

(a) If Contractor fails to achieve COO with respect to a Facility within **[…***…]** after the date the Facility achieves Mechanical Completion, as indicated on the Mechanical Completion Certificate, Contractor shall, **[…***…]**.

(b) **[…***…]**.

(c) **[…***…]**.

(d) **[…***…]**:

(i) **[…***…]**;

(ii) **[…***…]**:

(A) **[…***…]**

(B) **[…***…]**; and

(C) **[…***…]**; or

(iii) **[…***…]**.

(e) **[…***…]**:

(i) **[…***…]**;

(ii) **[…***…]**; and

(iii) Either:

(A) **[…***…]**; or

(B) **[…***…]**.

Section 2.06 Breach of Portfolio Credit Criteria. If at any time the concentration of Facilities in the Portfolio does not meet the Portfolio Credit Criteria, **[…***…]**.

Article III.
CONTRACTOR'S OTHER OBLIGATIONS

Section 3.01 Performance Standards. Contractor shall perform the Work in accordance with the Performance Standards.

Section 3.02 Labor and Personnel.

(a) Contractor shall provide and be responsible for the services of its Personnel in connection with the Work. Contractor has, and shall ensure that each Subcontractor has, the necessary skill, experience, and qualified Personnel required to perform the Work in accordance with the Performance Standards. All of Contractor's and each Subcontractor's Personnel shall be licensed and insured to perform the Work to the extent required by the Performance Standards.

(b) Contractor shall at all times maintain discipline, safety, and good order at the Site and in the performance of the Work, including as necessary the removal and replacement of any of its Personnel failing to maintain discipline, safety, and good order in Contractor's reasonable judgment.

(c) Contractor shall be responsible for all labor relations matters relating to the Work or Contractor's other obligations hereunder, including wages, salaries, hours of work, employee benefits, labor contracts, safety, and related matters.

(d) Contractor shall cause all of its Personnel to be trained in and made aware of any applicable Performance Standards related to the Site or pertaining to any part of the Work performed by such Personnel, including instruction of all such Personnel regarding conditions at the Site.

Section 3.03 Subcontractors.

(a) Contractor may subcontract any portion of the Work to one or more Subcontractors. Contractor shall cause and ensure that each Subcontractor complies with the applicable Performance Standards. Entry into any Subcontract shall not relieve Contractor of any of its obligations under this EPC. Contractor is responsible for any Subcontractor's performance of any part of the Work as if it had been performed by Contractor itself and engaging Subcontractor shall not relieve Contractor of any liability, obligation, or responsibility under this EPC.

(b) Contractor shall not engage or hire any Subcontractor that (i) is listed on any debarment list by a Governmental Authority having jurisdiction over the Facility, (ii) does not hold all certifications and licenses required by Applicable Law to perform the obligations for which it is engaged or contracted (if required by Applicable Law), or (iii) is otherwise to Contractor's Knowledge not in good standing under Applicable Law.

(c) Contractor will indemnify and hold Buyer harmless from any disputes arising out of any failure by Contractor to pay all amounts owed to its Subcontractors and Suppliers with respect to the Work on a timely basis.

(d) No Subcontractor is intended to be or will be a third-party beneficiary of this EPC. Nothing contained herein shall create any contractual relationship between any Subcontractor and Buyer or obligate Buyer to pay or cause the payment of any amounts to any Subcontractors.

Section 3.04 Permitting.

(a) With respect to each Scheduled Project, Contractor shall at its own expense timely obtain and maintain in effect (including by timely meeting all application, filing, and other reporting requirements and providing performance assurance or other credit support as required) (i) the applicable Permits necessary for the performance of its obligations hereunder, whether in the name of Contractor, "Supplier" under the Customer Agreement, or a Customer, as applicable and (ii) the applicable Permits necessary for the operation of the Projects whether in the name of Contractor or Buyer; *provided*, Contractor's obligation to obtain and maintain any Permit in the name of "Buyer" will be limited to those Permits required for the operation of a single Project as of Project COD, and, unless and until a change order is executed by the Parties, Contractor will have no obligation to obtain, maintain or otherwise comply with any Permit or any change in a Permit (A) occurring after Project COD; or (B) in the name of Buyer the requirement of which is conditional upon the equity or asset holdings of Buyer or any of its Affiliates or any of their respective regulatory statuses. For those Permits that must be obtained and maintained in the name of Buyer or Customer prior to Project COD, Buyer shall, and shall exercise its

reasonable commercial efforts to ensure that Customer shall, comply with such requirement and Contractor will offer all reasonable assistance to Customer and Buyer, as applicable, in obtaining such Permits, including timely executing relevant instruments and applications.

(b) Notwithstanding Section 3.04(a), Contractor shall have no liability for any failure to obtain or maintain any Permit to the extent attributable to a breach by Buyer of its obligations hereunder, its express refusal to obtain a Permit, or a breach by a Project Party under its respective Project Document; *provided* that Contractor shall continue to maintain in effect any Permit that is not affected by such breach.

Section 3.05 Insurance. Contractor shall obtain and maintain the insurance described in Schedule 6 and, solely to the extent the requirements are more stringent, the insurance required under any given Customer Agreement.

Section 3.06 IP. If Contractor grants, bargains, sells, conveys, mortgages, assigns, pledges, warrants, or transfers any Intellectual Property or Software, Contractor shall ensure the grant of the System License and Software License under this EPC remains enforceable.

Section 3.07 Project Documents. With respect to each Facility:

(a) Contractor shall perform the Work in accordance with the Facility's Project Documents, including any standards in addition to those set forth herein and any restrictions or prohibitions thereunder; and

(b) Contractor shall deliver to Buyer any and all approvals and notices required to be delivered by Buyer to any Project Party under the Project Documents in connection with performing the Work.

Section 3.08 Notifications, Reporting and Record Keeping.

(a) Notifications. With respect to any Facility, Contractor shall notify Buyer of any event that would be reasonably likely to lead to a material delay in the Work for the Facility.

(b) Reporting.

(i) Within 90 days of the Facility's COD but in no event after the Commitment Expiration Date, Contractor shall deliver a COD Package to Buyer.

(ii) At any time the Contractor Safety Plan is updated, Contractor will provide a copy of such updated Contractor Safety Plan.

(iii) Contractor will provide quarterly construction update by teleconference, including progress with respect to Milestones.

(c) Additional Information. Upon Buyer's reasonable request Contractor shall promptly provide:

(i) any documentation necessary to evidence the Facility's eligibility as energy property or the Facility's placement in service in each case for purposes of Section 48 of the Code;

(ii) subject to Contractor's confidentiality and intellectual property restrictions and requirements, any information in connection with any insurance claim filed by Buyer with respect to a Facility, and any information Buyer or its insurance provider may reasonably request in connection with such claim; and

(iii) to the extent not already delivered, any Construction Records requested or any other information in Contractor's possession or reasonably available to Contractor regarding the Work.

(d) Record-Keeping. With respect to each Project, Contractor shall keep in electronic format and securely stored at one or more of Contractor's offices, the following records and documentation for each such Facility ("Construction Records"):

(i) evidence of its satisfaction of each Milestone and each of the criteria in the definition of "Placed in Service" and COD Package;

(ii) evidence of the associated Facility's eligibility for the ITC; and

(iii) **[…***…]**.

(e) Insurance Certificates. At least once a year, Contractor shall deliver to Buyer certificates of insurance evidencing its compliance with Section 3.05.

(f) The delivery of any records under this Section 3.08 shall be subject to any third-party confidentiality obligations. Contractor may redact any proprietary information in information provided under this Section 3.08 in Contractor's reasonable discretion and Contractor shall have no obligation to disclose such redacted information unless required by Applicable Law or legal compulsion by a Governmental Authority.

Section 3.09 Contractor Cooperation.

(a) **[…***…]**.

(b) **[…***…]**.

Section 3.10 Incentives. Contractor shall use commercially reasonable efforts to take the actions necessary to cause the applicable Buyer to receive the state incentives reflected in the Project Model with respect to each Project.

Article IV.
BUYER'S RIGHTS AND RESPONSIBILITIES

Section 4.01 Observation of Commissioning. Upon Buyer's request, Contractor will inform Buyer of the date on which it expects to Commission each Facility and cooperate with Buyer to provide Buyer with the opportunity to observe such commissioning to the extent practicable; *provided*, in no event shall Contractor be required to delay any Commissioning in order to allow Buyer to witness it (irrespective of whether Commissioning occurs prior to the projected date notified to Buyer).

Section 4.02 Buyer Cooperation. Buyer will use commercially reasonable efforts and in good faith cooperate and assist Contractor, at Contractor's sole cost and expense, if necessary, in performing the

Work, including the acquisition and maintenance of Permits, System Attributes, Incentive Agreements and Interconnection Agreements.

Section 4.03 Access. With respect to each Project, as the counter-party to the Site License, Buyer hereby grants the same access to the Site provided under the Site License to Contractor, as its representative, in order to perform the Work.

Section 4.04 Limitation on Export. Buyer will not export, re-export, resell, ship, or divert directly or indirectly any Facility, Module, or component thereof in any form or technical data, or any Software furnished hereunder to any country prohibited by the United States Government or any other Governmental Authority, or for which an export license or other Governmental Approval is required, without first obtaining such license or approval.

Section 4.05 Regulatory Approvals. To the extent required under Applicable Law, Buyer will obtain all necessary approvals from FERC and state public utilities commissions sufficient to operate the Facility before the Facility achieves Mechanical Completion.

Section 4.06 Project Document Modifications. Buyer will not amend, modify, supplement, or otherwise change any Project Document to which it is a party in a manner that would increase Contractor's obligations or liabilities without Contractor's prior written consent thereto. Buyer will provide Contractor with written notice of all proposed Project Document amendments, including a copy of each such amendment, and a reasonable opportunity to provide comments prior to execution thereof.

Section 4.07 Force Majeure. If Buyer is rendered wholly or partially unable to perform any of its obligations hereunder by reason of a Force Majeure Event, then Buyer will be excused from the performance of such obligation to the extent so prevented; provided, however, that (a) Buyer, no later than three (3) days after Buyer's Knowledge of such Force Majeure Event, provides Contractor notice in writing describing the particulars of such event, including its expected duration; (b) the applicable suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) Buyer shall not be relieved of any liability for an event that arose before the occurrence of the Force Majeure Event; (d) Buyer shall exercise commercially reasonable efforts to correct or cure (and at all times minimize) the event or condition excusing performance and resume performance; and (e) when Buyer is able to resume performance, it shall promptly give Contractor notice in writing thereof and resume performance.

Article V.
PAYMENT

Section 5.01 Cost of Work.

(a) Purchase Price. Buyer will pay Contractor the Purchase Price for completion of the Work for each Project. The Purchase Price of each Project shall be adjusted pursuant to Section 5.05 (*Purchase Price Adjustment*). For the avoidance of doubt, the Purchase Price is inclusive of the Ancillary Module Price where applicable to the Project. The Purchase Price is Contractor's entire consideration for performing the Work.

(b) Exclusions from Purchase Price. With respect to each Project, any work expressly excluded from the Work in Section 2.02 is not included in the Purchase Price for such Project.

(c) Taxes. For each Project, the Purchase Price is inclusive of any and all Taxes imposed under Applicable Law except for (i) Property Taxes, and (ii) any Taxes in the nature of income or franchise taxes, whether imposed on Contractor or Buyer by any Governmental Authority under Applicable Law (the Taxes set forth in clauses (i) and (ii), "Excluded Taxes"). Except for income or franchise Taxes imposed directly on Contractor (which shall remain Contractor's responsibility), Excluded Taxes shall be the responsibility of Buyer. Contractor shall be responsible for its own income taxes. Contractor shall pay all Taxes imposed on Contractor that are included in the Purchase Price and timely furnish to the appropriate taxing authorities all required information and reports in connection with such Taxes. Contractor shall be obligated to cooperate with Buyer to minimize the tax liability of Buyer to the extent legally permissible, including supplying resale and exemption certificates with each invoice, if applicable, delivering Buyer's resale and exemption certificates to Subcontractors and Suppliers, and supplying other information as reasonably requested in all cases by taxing authorities. In addition, to the extent any other exemptions, abatements, credits against or deferrals of any taxes may be available to Buyer under applicable law including property tax exemptions, the Parties shall reasonably cooperate in order to secure any such exemptions, abatements, credits against, or deferrals of, such taxes.

Section 5.02 Invoicing.

(a) Invoicing Amounts. Contractor will issue invoices to Buyer for the following amounts and in respect of the following Milestone Payments:

(i) for the Deposit kWs for which Contractor has achieved the Deposit Milestone and the Deposit Milestone Payment Conditions have otherwise been met during such month, an amount equal to (A) **[...***...]** based on such Deposit kWs (the "Deposit Milestone Payment");

(ii) for each Facility that has reached the Delivery Milestone during such month and the Delivery Milestone Payment Conditions have otherwise been met, an amount equal to the sum of (A) **[...***...]** based on the System Capacity and (B) the Ancillary Module Price, if any, for such Facility (the "Delivery Milestone Payment); and

(iii) for each Facility that has reached the COO Milestone and the COO Milestone Payment Conditions have otherwise been met during such month, an amount equal to the remainder of the Purchase Price not previously paid, including Taxes under Section 5.01(c), as may be adjusted in accordance with Section 5.05 (the "COO Milestone Payment").

(b) Invoice Timing. Except in respect of payments for Project milestones completed and for which payment will be made on the Effective Date, Contractor may issue invoices to Buyer on a monthly basis during the Availability Period and during the period commencing at the end of the Availability Period and ending on the Commitment Expiration Date (the "Monthly Invoices"). The Monthly Invoices shall be issued no later than five (5) Business Days before the end of each month (the date of such invoices, the "Invoice Date").

(c) Milestone Certificates.

(i) With respect to each Facility listed in a Monthly Invoice, Contractor will also deliver a Milestone Certificate for each Milestone achieved by such Facility.

(ii) On the first Business Day of each month, Contractor will deliver to Buyer a draft Monthly Invoice and the associated draft Milestone Certificates.

(d) Buyer will pay Contractor for any work it requests that is not included in the Work ("Reimbursable Work"). Upon Buyer's and Contractor's agreement regarding the terms of any Reimbursable Work, Buyer will issue a purchase order to Supplier as soon as possible, but in no event later than thirty (30) days from such request. Upon completion of the Reimbursable Work, Contractor will invoice Buyer for such Reimbursable Work. Invoices for Reimbursable are due and payable within 30 days of the date of such invoice.

(e) Payment. Subject to the following sentence, Buyer shall pay the Deposit Milestone Payment, Delivery Milestone Payment, and COO Milestone Payment, as applicable, on the Payment Due Date for each such Milestone reached by each Facility as set forth therein (a "Milestone Payment"). Notwithstanding anything herein to the contrary, Buyer's obligation to make any payment under a Monthly Invoice shall be subject to (i) in the case of any Deposit Milestone Payment, satisfaction of each of the Deposit Milestone Payment Date Conditions, (ii) in the case of any Delivery Milestone Payment, satisfaction of each of the conditions precedent set forth in Section 6.01(b) and (iii) in the case of any COO Milestone Payment, satisfaction of each of the conditions precedent set forth in Section 6.01(c).

(f) Payment Default. If a Party fails to make any payment under this Agreement in whole or in part when due, unless being contested in good faith, the non-defaulting Party may, on not less than five (5) Business Days' notice to the Defaulting Party, at its option, without liability, and without prejudice to any of its other remedies under this Agreement (until all such outstanding payment defaults have been cured) charge interest on the undisputed amounts, to accrue daily at the lesser of a monthly rate of 1% or the highest rate permissible by law.

(g) **[…***…]**.

(h) Reserved.

(i) Payment Disputes. If Buyer disputes any amount invoiced under this Section 5.02, then Buyer must pay any undisputed portion of the invoiced amount in accordance with the terms herein and liability for the disputed portion of such invoice will be determined in accordance with the dispute resolution procedure set out in Article XI (*Dispute Resolution*). Upon resolution of such Dispute, any amounts determined to be owed by Buyer to Contractor shall be paid within ten (10) days of such determination, plus, if it is determined that such Dispute was not in good faith, interest thereon at the rate set forth above.

Section 5.03 Refunds. With respect to a given Project, if (a) a Removal Event under Section 1.05(a)(iii) occurs; or (b) Contractor fails to achieve the Delivery Milestone within ninety (90) days after the Deposit Payment Date, Contractor will refund all Milestone Payments made for such Project in full within thirty (30) days of the occurrence of such event; *provided, however*, Contractor has no obligation to refund Buyer for any Milestone Payments to the extent the aforementioned events are caused by or are in connection with Buyer's representation in a Transaction Document failing to be true and accurate when made or Buyer's breach of any of its obligations under a Transaction Document.

Section 5.04 Irrevocable Payment. Without limiting any right or remedy of Buyer under this Agreement, at law or in equity, whether in tort, contract or otherwise, with respect to each Project, as of the date the associated Facility achieves Mechanical Completion, all Milestone Payments paid towards the Purchase Price for such Project shall be irrevocable, non-refundable, and non-cancellable as of such date.

Section 5.05 Purchase Price Adjustment.

(a) **[…***…]**:

(i) the addition and removal of any Scheduled Projects to the Portfolio;

(ii) the increase or decrease in a Tolling Rate under the Customer Agreement for a Scheduled Project;

(iii) the (A) addition, removal or adjustment of any Owner Incentives to a Scheduled Project or (B) a change in the scheduled timing of receipt of any Owner Incentives to a Scheduled Project;

(iv) a change in the percentage of basis eligible for ITC for a Scheduled Project; and

(v) for each Scheduled Project (A) each Milestone Date that has occurred, (B) the estimated future Milestone Dates that have not yet occurred, (C) the dates on and amounts for Milestone Payments made;

(vi) revised Output Percentages for the Output Specifications, if any; and

(vii) any refunds received by Buyer pursuant to Section 5.03.

(b) **[…***…]**.

(c) **[…***…]**.

(d) **[…***…]**.

(e) **[…***…]**.

Section 5.06 [Reserved].

Section 5.07 Reimbursable Credit Support. If any Credit Support posted by Contractor is returned to Buyer, Buyer shall hold such amounts in escrow until it promptly remits such amounts to Contractor.

Section 5.08 Consideration. With respect to each Project, the Purchase Price is Contractor's entire consideration and sole compensation for each such Project, including performing the Work.

Section 5.09 Mechanics' Liens. In performing its obligations hereunder, Contractor shall keep each Project and Facility free and clear of all Liens, other than Permitted Liens, and shall inform Buyer promptly after having Knowledge of a Lien filed by reason of Contractor's acts or its failure to pay or perform any obligation under this EPC, or the Project Documents, or upon obtaining written notice of a Lien, other than a Permitted Lien, filed against the Project or related Facility for any other reason. If Contractor receives notice that a Lien, other than a Permitted Lien, on any Facility or Project exists, Contractor shall promptly discharge such Lien or else Contractor may, at its own cost and expense, contest any disputed Lien, other than a Permitted Lien, by all appropriate proceedings, provided that Contractor shall provide a bond in an amount and from a surety acceptable to Buyer to protect against such Lien. Buyer may, but shall have no obligation to, pay, discharge, or obtain a bond or security for any such Lien, and upon such payment, discharge, or posting of security therefor, shall be entitled immediately to recover from Contractor the amount thereof, together with all reasonable and necessary expenses actually incurred by Buyer in connection therewith.

Section 5.10 Company Guaranty. Company hereby guarantees to Contractor the timely payment in full when due of the obligations of Buyers under this Agreement in each case strictly in accordance with their terms. Any suretyship defenses are hereby waived by Company with respect to its obligations under this Section 5.10. Notwithstanding the foregoing and except with respect to Contractor's termination rights under Section 9.04(b), nothing in this Agreement shall be construed as creating any joint liability between any of the Buyers in respect of a Buyer Default committed hereunder by an individual Buyer.

Article VI.
CONDITIONS PRECEDENT; SALE

Section 6.01 Conditions Precedent.

(a) Conditions Precedent to Buyer's Obligations. The obligations of each Buyer hereunder shall be subject to the satisfaction of each of the following conditions precedent:

(i) Company and the Investors have received duly executed and complete copies of this Agreement, the O&M and **[…***…]**, each of which is in form and substance acceptable to each Investor;

(ii) **[…***…]**;

(iii) **[…***…]**;

(iv) Each of the representations and warranties of Contractor in Section 7.01 made as of the Effective Date that is qualified as to materiality or by Material Adverse Effect are true and correct, and such representations that are not so qualified are true and correct in all material respects, in each case as of the Effective Date;

(v) No claims, disputes, governmental investigations, suits, actions (including non-judicial real or personal property foreclosure actions), arbitrations, legal, administrative or other proceedings of any nature, domestic or foreign, criminal or civil, at law or in equity, have been instituted or threatened in writing and remain pending, that could be reasonably expected to impair, restrain or prohibit the consummation of the transactions contemplated by any Transaction Document **[…***…]**;

(vi) Company and each Investor have received the Base Case Model in form and substance acceptable to each Investor;

(vii) (A) Company and each Investor have received (I) an audited consolidated financial statement of the Contractor for the most recently available fiscal year, and (II) the most recent unaudited quarterly consolidated financial statements of the Contractor, in each case to the extent such statements are not publicly available, and (B) **[…***…]**;

(viii) (A) Company and each Investor have received legal opinions of Stoel Rives LLP with respect to (I) the enforceability of the Transaction Documents to which Contractor is a party, and as to such other matters relating to corporate formation and governance as are customarily included in similar opinions, and (II) federal energy regulatory matters, in each case in form and substance reasonably satisfactory to each Investor, (B) **[…***…]**, and (C) **[…***…]**;

(ix) **[…***…]**;

(x) (A) Company and each Investor have received a certificate from an authorized signatory of Contractor, certifying as of the Effective Date to Contractor's incumbent authorized signatories, organizational documents, good standing, and due authorization, and (B) **[…***…]**;

(xi) Company and each Investor have received an independent engineering report prepared by the Independent Engineer and, unless such report is addressed to Company and each Investor, a reliance letter from the Independent Engineer, each in form and substance reasonably satisfactory to each Investor;

(xii) Company and each Investor have received a report prepared by the Insurance Consultant and, unless such report is addressed to the Company and each Investor, a reliance letter from the Insurance Consultant, each in form and substance reasonably satisfactory to each Investor;

(xiii) Company and each Investor has received the Appraisal prepared by the Appraiser, in form and substance satisfactory to each Investor;

(xiv) Company and each Investor have **[…***…]**;

(xv) Each Investor **[…***…]**;

(xvi) All consents, approvals and filings required to consummate the transactions contemplated by this Agreement, the O&M, **[…***…]** and **[…***…]**, have been obtained;

(xvii) **[…***…]** has received from **[…***…]** the documentation and other information reasonably requested by Tax Equity Investor in connection with applicable "know your customer" rules and other Anti-Terrorism and Money Laundering Laws and Regulations (including, if requested by **[…***…]**);

(xviii) (A) Contractor has paid in full, or has made arrangements satisfactory **[…***…]**and (B) Contractor has paid in full, or has made arrangements satisfactory to **[…***…]**; and

(xix) The Project Company Transfer Date with respect to such Buyer has occurred.

(b) Conditions Precedent to Delivery Milestone Payment. The obligations of Buyer to pay the Delivery Milestone Payment with respect to a Project shall be subject to the satisfaction of each of the following conditions precedent with respect to such Project (the Parties acknowledge that any of the items listed that may occur after the Purchase Date with respect to a Project are ministerial):

(i) The Project is a Scheduled Project;

(ii) Each of the Deposit Milestone and the Delivery Milestone with respect to the applicable Project has been achieved;

(iii) The applicable Buyer has received the applicable Monthly Invoice and Milestone Certificate, each in form and substance satisfactory to each Investor;

(iv) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, Contractor reasonably expected that COO will occur within three

(3) months from the applicable Purchase Date or, if such date is earlier, not later than the Commitment Expiration Date;

(v) (A) Contractor has executed and delivered to the applicable Buyer a Bill of Sale with respect to the applicable Project, dated as of the Purchase Date, and (B) if Contractor, BDI and/or any other Affiliate of Contractor is party to any Project Document with respect to the applicable Project, Contractor, BDI and/or such other Affiliate of Contractor that is party to the Project Documents with respect to the applicable Project has executed and delivered to the applicable Buyer an Assignment Agreement with respect to the applicable Project Documents, effective as of the Purchase Date;

(vi) The applicable Buyer has received a certificate from the Independent Engineer, dated on or following the Purchase Date substantially in the form of Exhibit I-2;

(vii) As of the Purchase Date, no Material Adverse Effect with respect to the Contractor or the applicable Project has occurred and is continuing;

(viii) Each of the representations and warranties of Contractor in Sections 7.01 and 7.02 made as of the Purchase Date for the applicable Project is true and correct in all material respects as of such Purchase Date (or if such representation and warranty relates solely to earlier date, as of such earlier date), except for any representation and warranty qualified by materiality (or similarly qualified), which representation or warranty is true and correct in all respects as of such Purchase Date (or if such representation and warranty relates solely to earlier date, as of such earlier date);

(ix) (A) Each Transaction Document executed prior to the applicable Purchase Date is in full force and effect, and (B) the Contractor is not in breach of its material obligations under the Transaction Documents to which it is party, and no event or circumstance has occurred that would, with the giving of notice and/or the lapse of time, reasonably be expected to result in an event of default thereunder;

(x) As of the Purchase Date, (A) each Project Document with respect to the applicable Project is in form and substance satisfactory to Company and each Investor and is in full force and effect, and (B) the applicable Buyer has performed in all material respects its obligations under each such Project Document to be performed prior to the applicable Purchase Date and is not in default of any material obligations under any such Project Document;

(xi) With respect to the applicable Facility or Project being invoiced, as of the Purchase Date, **[...***...]**;

(xii) [Reserved];

(xiii) The production insurance requirements**[...***...]**;

(xiv) If the applicable Project has **[...***...]** acceptable to the Buyer and each Investor and, unless such report is addressed to such Buyer and each Investor, a reliance letter from the applicable environmental consultant, each in form and substance reasonably satisfactory to each Investor;

(xv) Either (A) **[...***...]**; or (B) **[...***...]**;

(xvi) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, (A) there are no judgments or lawsuits, pending or, to Contractor's Knowledge, threatened in writing, against any of the Contractor, Company or the applicable Buyer, and (B) to Contractor's Knowledge, there are no judgments or lawsuits, pending or threatened in writing, against the applicable Customer, in each case of clause (A) or (B) hereof, that could reasonably be expected to materially impede the construction or operation of the applicable Project in accordance with any of its Project Documents or any of the Transaction Documents;

(xvii) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, (A) to Contractor's Knowledge, the applicable Customer has not materially breached the applicable Customer Agreement where such breach remains uncured, and (B) all required financial security required to be provided under such Customer Agreement as of the applicable Purchase Date has been delivered in accordance with such Customer Agreement;

(xviii) The Purchase Date of the applicable Scheduled Project is not later than the Mechanical Completion Deadline;

(xix) As of the Purchase Date, **[…***…]**;

(xx) After giving effect to the transactions on the applicable Purchase Date, the Portfolio Credit Criteria are satisfied;

(xxi) As of the Purchase Date, **[…***…]**;

(xxii) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, the applicable Project has received all third party consents and approvals, and has made all filings with Governmental Authorities, in each case, necessary to be obtained or made in connection with the transactions contemplated to occur as of the applicable Purchase Date;

(xxiii) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, no condemnation of any portion of the applicable Project has occurred or, to Contractor's Knowledge, is pending, no unrepaired casualty exists with respect to such Project and no Force Majeure Event has occurred and is continuing with respect to such Project;

(xxiv) For the first Purchase Date, Contractor has delivered to Company (A) a certificate in form and substance satisfactory to the Company and each Investor, certifying that the transactions contemplated by this Agreement are exempt from withholding under Section 1445 of the Code or (B) a duly executed and properly completed IRS Form W-9 of Contractor;

(xxv) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, the applicable Buyer's title to the applicable Project is free and clear of all Liens other than Permitted Liens;

(xxvi) (A) Contractor has paid in full, or has made arrangements **[…***…]** and (B) Contractor has paid in full, or has made arrangements **[…***…]**;

(xxvii) Contractor has represented and warranted in the applicable Milestone Certificate that, as of the Purchase Date, no undisputed breach of the Output Warranties exists with respect to the applicable Facility; and

(xxviii) If the applicable Facility has a **[…***…]** in aggregate (i.e., **[…***…]**), Contractor has submitted **[…***…]** and provided Buyer an electronic version of the completed pre-filed draft of the form.

(c) Conditions Precedent to COO Milestone Payment. The obligations of Buyer to pay the COO Milestone Payment with respect to a Project shall be subject to the satisfaction of each of the following conditions precedent with respect to such Project:

(i) The COO Milestone with respect to the applicable Project has been achieved;

(ii) The applicable Buyer has received the applicable Monthly Invoice, Milestone Certificate and Project Model, each in form and substance satisfactory to each Investor;

(iii) The applicable Buyer has received a certificate from the Independent Engineer substantially in the form of Exhibit I-3;

(iv) Contractor has represented and warranted in the applicable Milestone Certificate that no Material Adverse Effect with respect to the Contractor, the Company, the applicable Buyer or the applicable Project has occurred and is continuing;

(v) **[…***…]**;

(vi) Contractor is not in breach of any of its material obligations under the Transaction Documents to which it is party, and no event or circumstance has occurred that would, with the giving of notice and/or the lapse of time, reasonably be expected to result in an event of default thereunder;

(vii) [Reserved];

(viii) **[…***…]**;

(ix) [Reserved];

(x) Contractor has represented and warranted in the applicable Milestone Certificate that, (A) to Contractor's Knowledge, the applicable Customer has not materially breached the applicable Customer Agreement where such breach remains uncured, and (B) delivery of energy under such Customer Agreement has begun;

(xi) The applicable COO Milestone Payment Date is not later than the Commitment Expiration Date;

(xii) **[…***…]**;

(xiii) [Reserved];

(xiv) [Reserved];

(xv) Contractor has represented and warranted in the applicable Milestone Certificate that no condemnation of any portion of the applicable Project has occurred or, to Contractor's Knowledge, is pending, no unrepaired casualty exists with respect to such Project and no force majeure event has occurred and is continuing with respect to such Project;

(xvi) Contractor has represented and warranted in the applicable Milestone Certificate that applicable Project is free and clear of all Liens other than Permitted Liens;

(xvii) Contractor has represented and warranted in the applicable Milestone Certificate that all due and payable payment obligations incurred in connection with the development and construction of the applicable Project have been paid in full; and

(xviii) Contractor has represented and warranted in the applicable Milestone Certificate that no undisputed breach of the Output Warranties exists with respect to the applicable Facility;

(xix) Contractor has represented and warranted in the applicable Milestone Certificate that the applicable Facility is eligible to claim the full amount of state incentives reflected in the Project Model with respect to such Project; and

(xx) **[…***…]**.

(d) Conditions Precedent to Project Company Transfer Date. The obligations of Company to acquire a Buyer shall be subject to the satisfaction of each of the following conditions precedent with respect to such Buyer:

(i) Company has received duly executed and complete copies of (A) this Agreement, (B) a membership interest assignment agreement, dated as of the applicable Project Company Transfer Date, between Contractor and Company, with respect to such Buyer, (C) a resignation and release substantially in the form of Exhibit H with respect to such Buyer, (D) the Project Documents to which such Buyer is a party, and (E) any Tax Returns of or in respect of the assets or activities of such Buyer that are due on or before the applicable Project Company Transfer Date, each of which is in form and substance acceptable to each Investor; and

(ii) Each of the representations and warranties of Contractor in Section 7.04 with respect to such Buyer that is qualified as to materiality or by Material Adverse Effect are true and correct, and such representations that are not so qualified are true and correct in all material respects, in each case as of the applicable Project Company Transfer Date.

(e) Conditions Precedent to Contract Execution. It is the intent of the Parties that the Parties shall execute the Transactions Documents upon the last to occur of (1) the satisfaction of all of the conditions precedent to Buyer's obligations set forth in Section 6.01(a); and (2) the satisfaction of all of the conditions precedent to Company Transfer Date set forth in Section 6.01(d) for each of the Project Companies. It is further contemplated that Contractor shall satisfy the conditions precedent to Delivery Milestone Payment and sale of Project for some of the Scheduled Projects in the Portfolio on the Effective Date of this Agreement.

Section 6.02 Transfer. (I) With respect to each Buyer, upon satisfaction of the conditions precedent set forth in Section 6.01(d) (the date of satisfaction of such conditions precedent, the "Project Company Transfer Date"), title to the applicable Buyer will automatically and without further action transfer from Contractor to Company, and (II) with respect to each Scheduled Project, upon satisfaction of Delivery

Milestone (the date of satisfaction of such conditions precedent, the "Purchase Date"), title to the applicable Facility will automatically and without further action transfer from Contractor to Buyer as follows:

(a) **Title**.

(i) Contractor shall sell, assign, convey, transfer, and deliver to Buyer, and Buyer shall purchase, assume, and acquire from Contractor, all of Contractor's right, title, and interest in and to the Project and, unless expressly provided otherwise in the Bill of Sale, any and all System Attributes arising under and in connection with the Facility, free and clear of any and all Liens except Permitted Liens;

(ii) Contractor will assign to Buyer all of its right title and interest in and under any, to the extent assignable, Third Party Warranties related to the Facility;

(iii) all risk of loss or damage to the Facility shall shift to and be borne by Buyer; and

(iv) Contractor shall deliver to Buyer an executed Milestone Certificate for the Delivery Milestone and an executed Bill of Sale.

(b) **System License to Use.** Contractor hereby grants to Buyer a limited, non-exclusive, royalty-free, irrevocable license to use the Intellectual Property contained in the Facility including any software part thereof (the "System License") necessary for the purchase and ownership of the Facility.

(c) **Third Party Software License**. Contractor hereby grants to Buyer a limited, non-exclusive, royalty-free, irrevocable license to use any third party Software (the "Software License") necessary for the purchase and ownership of the Facility.

(d) **Data Ownership and Licenses**.

(i) Buyer shall own all aggregated Facility-level data collected through Contractor's internal proprietary software and accessible to Buyer on the BloomConnect portal upon its creation (the "Buyer-Owned Data"). Buyer hereby grants Contractor a non-exclusive, royalty-free license to use the Buyer-Owned Data to the extent required for Contractor to exercise its rights and perform its obligations under the Transaction Documents and for research and development, product development, fleet management and other internal purposes.

(ii) Contractor shall own all data other than the Buyer-Owned Data generated by a Facility or portion or component thereof upon its creation (the "Contractor-Owned Data").

(iii) Contractor shall not disclose to any third party any Buyer-Owned Data or Contractor-Owned Data (collectively, the "Data") without Buyer's prior consent, unless such disclosure is (A) on an aggregated, anonymized basis such that such Data cannot be reasonably identifiable as relating to Buyer's Facilities; (B) requested under a Project Document; or (C) necessary for Contractor to exercise its rights and perform its obligations under the Transaction Documents.

(e) **EPC Warranties.** Contractor hereby grants to Buyer the General Product Warranty and Infringement Warranty under this EPC as of the Purchase Date.

(f) **Permits.** To the extent assignable and not yet assigned, Contractor shall transfer, convey, and assign to Buyer all Permits necessary for the ownership of the Facility.

(g) **Effective Date of Licenses**. For each Project, the System License and Software License granted or assigned by Contractor under this Section 6.02 shall be effective as of the Purchase Date and shall survive expiration or termination of the EPC and O&M except in the case of (i) a termination of the EPC due to a default of Buyer under Section 6.03(a) or (b), 8.01 (solely with respect to breaches regarding Contractor's Intellectual Property), 8.04 (solely with respect to breaches regarding Contractor's Intellectual Property), 13.01(a)(iii), 13.01(c) (solely with respect to breaches that result in any of the Person(s) controlling Buyer being a Competitor) or (ii) a termination of the O&M due to a default of Owner under Sections 10.01(c) and (d) of the O&M or under Section 8.01 (solely with respect to breaches regarding Contractor's Intellectual Property) or 8.04 (solely with respect to breaches regarding Contractor's Intellectual Property) of the EPC as incorporated by reference to the O&M pursuant to Section 9.01 of the O&M or, in which case the licenses shall terminate on the date of termination of the applicable agreement.

Section 6.03 Exceptions.

(a) Buyer acknowledges and agrees that the purchase of a Project from Contractor does not convey any license, expressly or by implication, to manufacture, reverse engineer, duplicate, or otherwise copy or reproduce any part of the Facility or Software without Contractor's express advance written consent. Neither Buyer or any Buyer Person will open any Module, remove the covering of any Module, access the interior, reverse engineer, nor cause or knowingly allow any third party to open, access the interior, or reverse engineer any Module, Facility, or Software ("Prohibited Activities"). Only Contractor or expressly authorized Contractor Persons may open or access the interior of the Facility; the following actions shall not be deemed to be a breach of this Section 6.03 (including the Ownership Covenant): (1) actions taken by applicable authorities such as police and fire personnel, (2) actions by Customer without Buyer's advance Knowledge and consent, (3) actions by service contractors that are not Buyer Persons, and (4) **[…***…]**.

(b) Buyer covenants, except as otherwise provided herein, that neither it, nor any Buyer Person, will (i) engage in any Prohibited Activity nor (ii) modify, network, rent, lease, loan, sell, distribute, nor create derivative works based upon Contractor's Intellectual Property in whole or part, or cause or knowingly allow any third party to do so. (the "Ownership Covenant").

(c) Contractor retains all right, title, and ownership of any and all (i) Intellectual Property, (ii) any Software (including any Intellectual Property contained therein), and (iii) Data, in each case licensed by Contractor to Buyer hereunder. No right, title, or interest in any such Intellectual Property, Software, or Data is granted, transferred, or otherwise conveyed to Buyer under this EPC except as set forth in the System License and Software License, and as otherwise expressly set forth herein.

Section 6.04 [Reserved].

Section 6.05 Licenses. For each Project, the System License and the Software License are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code and of any similar provisions of applicable laws under any other jurisdiction, licenses of rights to "intellectual property" as defined under the Bankruptcy Laws. Neither the System License nor the Software License are transferable to any third Person except in the event of Buyer's transfer of a Project or Facility pursuant to and in compliance with Article XIII; *provided*, that in the event of a Bankruptcy of Contractor,

Contractor hereby expressly consents to the assumption and assignment of the System License and Software License by Buyer as necessary to allow Buyer's continued use of the associated Facility as contemplated by the Facility's Project Documents and the Transaction Documents.

Section 6.06 Product Warranty. With respect to each Scheduled Project, Contractor warrants to Buyer that, during the period from the associated Facility's COD until the first anniversary thereof, the associated Facility will conform to the Specifications and will be free from defects in design, materials, and workmanship (the "General Product Warranty").

Section 6.07 Warranty Exclusions. The General Product Warranty shall not cover any failure to conform to the Specifications or any defects in design, materials, or workmanship to the extent such failure is caused by the following:

(a) conditions caused by movement in the physical environment in which the Facility are installed that Contractor, after reasonable care and diligence, could not have foreseen;

(b) actions or omissions, accidents, abuse, or improper testing, in each case caused by a third party;

(c) Force Majeure Event affecting the Project or Facility;

(d) changes in Applicable Law following the applicable Facility achieving COD;

(e) installation, operation, repair, unauthorized removal of safety devices, or modification of the Facility by anyone who is not Contractor Person;

(f) any interruption in the supply of natural gas or interconnection services or a failure of the natural gas or interconnection services supplied to the applicable Facility to comply with the specifications for natural gas or power, respectively, of the applicable local distribution utility; and

(g) a Project Party's breach under a Project Document;

provided, however, the foregoing exclusions shall not apply under this Section 6.07 to the extent such exclusions arose in connection with the act of a Contractor Person.

Section 6.08 Warranty Claims. If, during the EPC Term, a Facility does not comply with the General Product Warranty, Buyer shall notify Contractor of such failure by delivery of written notice in all events no later than ninety (90) days after the expiration of the EPC Term.

Section 6.09 Repair of Defective Work. With respect to any notice of claim delivered under Section 6.06 for a given Facility, Contractor will, at its sole cost and expense, promptly correct, replace or repair any failure to conform to the Specifications or any defect in design, materials or workmanship, subject to the operational requirements of the applicable Customer. Contractor shall initiate and pursue to completion such warranty correction, replacement or repair within no later than thirty (30) days following receipt of such notice of claim, *provided*, that if due to the nature of the defect it is not possible to complete such correction, repair or replacement within such thirty (30) day period, Contractor shall initiate such repair promptly after receipt of notice of claim and continue to diligently pursue such correction, repair or replacement to completion. Any such warranty correction, replacement or repair shall again be subject to the General Product Warranty until the first anniversary of the completion of such correction, repair or replacement, irrespective of the expiration of the EPC Term.

Section 6.10 Infringement Warranty. Contractor warrants that it owns or has the right to use all Intellectual Property necessary for the performance of its obligations hereunder and that the Work performed, each Facility, Buyer's purchase, ownership and use of any Facility, and all other technology, drawings, designs, details, databases, data, software and property delivered by Contractor hereunder shall not infringe on any trademark, patent or copyright, or misappropriate or misuse any trade secret (the "Infringement Warranty").

Section 6.11 Infringement Claims.

(a) Contractor shall indemnify, hold harmless, and defend Buyer Indemnitees from and against any and all Losses arising out of or in connection with Contractor's breach of the Infringement Warranty (an "Infringement Claim").

(b) Buyer shall deliver written notice to Contractor of any claim arising in connection with Contractor's breach of the Infringement Warranty (an "Infringement Claim"). Contractor shall be entitled to participate in, and, unless a conflict of interest between the Parties exists with respect to such claim, assume control of the defense of such claim with counsel reasonably acceptable to Buyer. Buyer authorizes Contractor to settle or defend such claims in its sole discretion on Buyer's behalf, without imposing any monetary or other obligation, restriction, admission, or liability on Buyer and subject to Buyer's participation rights herein. Buyer shall assist Contractor upon reasonable request by Contractor and, at Contractor's reasonable expense, in defending any such claim. If Contractor does not assume the defense of such claim, or if a conflict precludes Contractor from assuming the defense, then Contractor shall reimburse Buyer on a monthly basis for Buyer's reasonable and documented defense expenses of such claim through separate counsel of Buyer's choice reasonably acceptable to Contractor.

(c) Should Buyer be enjoined from using any Module or Facility as a result of an Infringement Claim, Contractor will, at its sole option and discretion (and at its own expense) either:

(i) procure or otherwise obtain for Buyer the right to own or use such Module or Facility;

(ii) modify the Module or Facility so that it becomes non-infringing but still substantially meets its original functional requirements;

(iii) replace the Module or Facility with a non-infringing Module or Facility that substantially meets its original functional requirements; or

(iv) repurchase the infringing Facility in accordance with Section 6.11(e) below.

[...*...]**.

(d) [Reserved].

(e) If Contractor elects to repurchase an infringing Facility pursuant to clause (c)(iv) above, then, in addition to Contractor's indemnity obligations under Section 6.11(a):

(i) Contractor will pay to Buyer the Repurchase Value of such Facility;

(ii) title to such Facility will automatically transfer back to Contractor on an AS IS basis upon Buyer's receipt of such payment and Buyer will deliver a Bill of Sale to Contractor evidencing such transfer of title;

(iii) upon Buyer's request, Contractor will use commercially reasonable efforts to assist Buyer in securing a release in writing of all of Buyer's obligations and liabilities with respect to the Facility from the related Third Parties under the applicable Project Documents;

(iv) such Facility will no longer be deemed a part of the Portfolio; and

(v) Contractor and Buyer's rights and obligations with respect to such Facility under this EPC shall terminate in full, except for those provisions that expressly survive by their terms.

Notwithstanding the foregoing, Contractor shall not have any obligations in connection with an Infringement Claim resulting from any (A) combination made by Buyer or on behalf of Buyer of any Facility with any other product or products (B) any modification by Buyer or on behalf of Buyer to any part of a Module or Facility, (C) a Module or Facility that is custom designed by Buyer, unless, in each case, such combination or modification was made in accordance with Contractor's express specifications, was pursuant to Contractor's express request or was performed by Contractor.

Section 6.12 Liquidated Damages; Estoppel.

(a) The Parties acknowledge and agree that it would be impracticable or impossible to determine with precision the amount of damages that would or may be incurred by Buyer as a result of Contractor's breach of the Infringement Warranty. It is therefore understood and agreed by the Parties that: (a) Buyer may be damaged by Contractor's failure to satisfy the Infringement Warranty; (b) it would be impractical or impossible to fix the actual damages to Buyer resulting therefrom; and (c) payment of a the Repurchase Value for Contractor's breach of the Infringement Warranty are in the nature of liquidated damages and not a penalty and are fair and reasonable estimate of compensation for the losses that Buyer may reasonably be anticipated to incur by such breach.

(b) Contractor hereby (i) waives any argument that its breach of the Infringement Warranty would not cause Buyer irreparable harm, (ii) agrees that it shall be estopped from arguing the invalidity, or otherwise questioning the reasonableness, of the liquidated damages provided for herein, and (iii) agrees that it will consent to the entry of judgment ordering payment of such liquidated damages in any court of competent jurisdiction.

Section 6.13 Transfer. The General Product Warranty and the Infringement Warranty are not transferable to any third Person unless pursuant to and in compliance with Article XIII.

Section 6.14 LIMITATION OF LIABILITY. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR (I) A BREACH OF THE GENERAL PRODUCT WARRANTY IS SET FORTH IN SECTION 6.09 AND (II) A BREACH OF THE INFRINGEMENT WARRANTY IS SET FORTH IN SECTIONS 6.11.

Section 6.15 Customer Agreements. With respect to a given Project, Contractor shall pay to Customer directly on behalf of Buyer any liquidated damages, amounts paid in connection with indemnity claims or other Losses or expenses that arise under any Project Document to the extent such amounts are a result of Contractor's breach of this EPC, the relocation of a Facility in accordance with the terms of Section 2.05(e)(i) or Section 2.05(f)(B) or other action or inaction of Contractor and shall otherwise defend, indemnify and hold Buyer harmless from any such damages or Losses, except to the extent such

amounts, damages, or Losses result from any action or inaction of Buyer or any Buyer Person. In the event that Buyer recovers any amount from a third party relating to any Losses or expenses reimbursed by Contractor under this Section 6.15, Buyer shall promptly remit such amounts to Contractor.

Section 6.16 DISCLAIMERS.

(a) IF A FACILITY IS OPENED OR MODIFIED BY BUYER OR ANY BUYER PERSON (EXCLUDING CUSTOMERS AND EMERGENCY RESPONDERS) FOR ANY REASON OTHER THAN IN RESPONSE TO AN EMERGENCY POSING IMMINANT RISK TO PERSONS OR PROPERTY OR IN RESPONSE TO AN INJUCTION OR OTHER LEGALLY COMPELLED OR MANDATED ACTION (IN WHICH CASE BUYER SHALL PROVIDE IMMEDIATE NOTICE TO CONTRACTOR OF THE EXISTENCE OF SUCH ACTION), THEN, AS OF THE DATE SUCH FACILITY WAS OPENED OR MODIFIED, THE GENERAL PRODUCT WARRANTY AND THE INFRINGEMENT WARRANTY FOR ALL PROJECTS SHALL BE NULL AND VOID.

(b) EXCEPT AS STATED IN SECTION 2 OF THE ASSIGNMENT AGREEMENT, THE GENERAL PRODUCT WARRANTY AND THE INFRINGEMENT WARRANTY (I) EACH PROJECT AND ITS ASSOCIATED FACILITY IS TRANSFERRED "AS IS, WHERE IS" AND CONTRACTOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, COMPLETENESS, USEFUL LIFE, OR FUTURE ECONOMIC VIABILITY OF THE PROJECT OR ITS ASSOCIATED FACILITY, THE WORK, OR ANY OTHER SERVICE PROVIDED HEREUNDER. NO PERSON OTHER THAN CONTRACTOR IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING ANY PROJECT, ANY FACILITY OR THE WORK.

(c) THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY OF ANY KIND. CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED**.**

Article VII. REPRESENTATIONS AND WARRANTIES

Section 7.01 General Representations by Contractor. Contractor represents and warrants to Buyer as of the Effective Date, each Purchase Date and the COO Milestone Payment Date as follows:

(a) Incorporation; Qualification. Contractor is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own and operate its business as currently conducted. Contractor is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction that its business, as currently being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Material Adverse Effect.

(b) Authority. Contractor has full corporate power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Contractor of the Transaction Documents to which it is a party and the consummation by Contractor of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Contractor and the Transaction Documents to which Contractor is a party have been duly and validly executed and delivered by Contractor.

(c) Enforceability. Each of the Transaction Documents to which Contractor is a party constitutes the legal, valid, and binding agreement of Contractor, enforceable against Contractor in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(d) Consents and Approvals; No Violation. Neither the execution, delivery and performance of the Transaction Documents to which Contractor is a party nor the consummation by Contractor of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the certificate of incorporation or bylaws of Contractor, (ii) with or without the giving of notice or lapse of time or both, materially conflict with, result in any material violation or material breach of, constitute a default under, result in any right to accelerate, or create any right of termination under the conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Contractor is a party that would individually or in the aggregate result in a Material Adverse Effect, or (iii) constitute material violations of any law, regulation, order, judgment or decree applicable to Contractor or the transactions contemplated hereby.

(e) Legal Proceedings. There are no pending or, to Contractor's Knowledge, threatened claims, disputes, governmental investigations, suits, actions, arbitrations, legal, administrative, or other proceedings, domestic or foreign, criminal or civil, at law or in equity, by or against Contractor that challenge the enforceability of the Transaction Documents to which Contractor is a party or the ability of Contractor to consummate the transactions contemplated hereby or thereby, in each case, that could reasonably be expected to result in a Material Adverse Effect on Contractor or its ability to perform its obligations hereunder.

(f) Intellectual Property. Contractor owns the legal right to use all Intellectual Property necessary for (A) the performance by Contractor and its Subcontractors, as applicable, under this EPC, the other Transaction Documents to which it is a party, and the transactions contemplated hereby and thereby, (B) the continued operation and maintenance of the Projects as contemplated by the Transaction Documents and Project Documents, and (C) to grant Buyer the rights in the System License, Software License and data as set forth herein. The sale and installation of the Facility associated with the Project contemplated hereunder does not infringe, misappropriate or otherwise violate the Intellectual Property rights of any Person.

(g) Qualification. Contractor (including, where applicable, through its relationships with its Affiliates and Subcontractors) possess the know-how to oversee the design, engineering, permitting, procurement, and construction work needed to perform under this EPC.

(h) Insurance. Contractor has obtained the insurance described in Schedule 6, it is in full force and effect, and all insurance premiums that are due and payable thereunder have been paid in full with no premium overdue.

(i) General Tax Representations.

(i) Contractor is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code and has provided a Certificate of Non-Foreign Status in the form and substance required by Section 1445 of the Code and the regulations thereunder.

(ii) No private letter ruling has been obtained for the transactions contemplated hereunder from the IRS.

(j) No Bankruptcy Event has occurred with respect to Contractor.

Section 7.02 Contractor Representations about the Facility. Contractor represents and warrants with respect to each Project, including the associated Facility, Customer, and Project Documents, as of such Project's Purchase Date, immediately before title thereto has been transferred in accordance with Article VI, as follows:

(a) Title; Liens.

(i) Immediately before title to the Facility has been transferred as contemplated by Section 6.02 (*Transfer*), Contractor has good and marketable title to the Facility except for any Permitted Liens. Immediately upon the transfer of title to the Facility as contemplated by Section 6.02 (*Transfer*), Buyer shall have good and marketable title to the Facility, free and clear of all Liens except Permitted Liens.

(ii) Contractor has not pledged or granted any Liens on the Facilities.

(b) Real Property. The real property referred to in the Project's Project Documents is all the real property that is necessary for Contractor to perform under the Transaction Documents with respect to the Project. The applicable Site has been licensed to Buyer pursuant to the terms of the applicable Site License. No Site has been leased to Buyer.

(c) Facility Tax Representations.

(i) The Facility is a fuel cell power plant with a Nameplate Capacity of at least 0.5 kilowatts of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent. The Facility will function independently of each other Facility in the Portfolio to generate electricity for transmission and sale to a Customer and is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that has all the necessary components to convert fuel into electricity using electrochemical means.

(ii) Contractor has not claimed any federal, state, or local Tax credit (including the ITC) with respect to any property that is part of the Facility.

(iii) No portion of the Facility has been Placed in Service prior to the applicable Purchase Date.

(iv) The Facility is not comprised of any property that (A) is "used predominately outside of the United States" within the meaning of Code Section 168(g), (B) is imported property of the kind described in Code Section 168(g)(6), (C) is "tax-exempt use property" within the meaning of Code Section 168(h), or (D) is property described in Code Section 50(b).

(v) Other than de minimis property, material or parts, the Facility consists of property, materials or parts not used by any Person prior to having been first placed in a state of readiness and availability for their specifically assigned function as part of the Facility.

(vi) No portion of the basis of the Facility is attributable to "qualified rehabilitation expenditures" within the meaning of Section 47(c)(2)(A) of the Code.

(vii) Contractor is not related to the applicable Customer within the meaning of Code Section 267 or Code Section 707.

(viii) **[…***…]**.

(ix) **[…***…]**.

(x) **[…***…]**.

(d) Governmental Approvals. Contractor has obtained as and when required all Governmental Approvals required to perform its obligations hereunder, as of the date of this representation, with respect to the Project and the associated Facility. Each of such Governmental Approvals obtained (i) is validly issued, final and in full force and effect and is not subject to any current legal proceeding and (ii) is in the name of or for the benefit of the applicable Buyer which owns the applicable Project. Contractor is in compliance in all material respects with such applicable Governmental Approvals and has not received any written notice from a Governmental Authority of an actual or potential violation of any such Governmental Approval.

(e) Project Documents. Subject to Section 7.05, each of the Project Documents related to the applicable Project is in full force and effect and is enforceable by the Buyer owning such Project against the counterparty thereto in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law), (B) neither the applicable Buyer that is party to such Project Document nor, to Contractor's Knowledge, any other party thereto has breached, or defaulted with respect to, any material obligations in such Project Document, which such breach or default remains uncured, no event or circumstance has occurred that would, with the giving of notice and/or the lapse of time, result in a breach or default of any material obligations of such party, and to Contractor's Knowledge, no event of force majeure exists thereunder, and (C) neither Contractor nor any of its Affiliates is a party to any contract, instrument, commitment, agreement or other legally binding arrangement with respect to such Project except as disclosed in writing prior to the Purchase Date, other than the Transaction Documents.

(f) Assets. Subject to Section 7.05, after giving effect to the transactions contemplated on the Purchase Date for the applicable Project, (i) the assets owned by the applicable Buyer and the services, materials and rights available or to be provided under the Project Documents for such Project are, collectively, reasonably sufficient for such Buyer (A) to perform all obligations under the Customer Agreement for such Project, and (B) to own, operate and maintain such Project in accordance with the Project Documents for such Project **[…***…]**, and (ii) all Project Documents with respect to such Project, other than the **[…***…]**, have been transferred to and are in the name of the applicable Buyer which owns such Project.

(g) Compliance.

(i) With respect to the Facility and the Project, as of the date of this representation, Contractor has performed in all respects all obligations required to be performed hereunder, and has complied in all material respects with Applicable Law and Project Documents; provided, however, that compliance with applicable Economic Sanctions Laws and Regulations shall be in all respects.

(ii) Neither Contractor nor any of its subsidiaries or any of their respective directors, officers or, to Contractor's Knowledge, employees, agents or Affiliates (A) are Sanctioned Persons or (B) in connection with the Project, are or have been, in the past five (5) years, the subject of any investigation, claim, action, proceeding or litigation by any Governmental Authority with regard to any violation of applicable Economic Sanctions Laws and Regulations, applicable Trade Controls Laws and Regulations, applicable Anti-Bribery and Anti-Corruption Laws and Regulations or applicable Anti-Terrorism and Money Laundering Laws and Regulations.

(h) COVID-19 Delays. No Force Majeure Event or material adverse effect attributable to COVID-19 has occurred under any Customer Agreement to Contractor's knowledge, or the EPC or O&M, which would reasonably be expected to delay COO of a Project beyond the Commitment Expiration Date.

(i) Legal Proceedings. As of the Purchase Date or the COO Milestone Payment Date for a Project, there are no pending or, to Contractor's Knowledge, threatened in writing, claims, disputes, governmental investigations, suits, actions (including non-judicial real or personal property foreclosure actions), arbitrations, legal, administrative or other proceedings of any nature, domestic or foreign, criminal or civil, at law or in equity, by or against or otherwise affecting, such Project.

(j) Information. The written information (other than projections, forward looking information, estimates, budgets, pro forma financial information, or other expressions of view as to future circumstances (collectively, "Forward-Looking Information")) (i) furnished by Contractor and its Affiliates to Buyers, Company and/or any Investor, their respective consultants, advisors and attorneys, in the Transaction Documents or any other certificates or reports delivered pursuant to the terms of this Agreement, in each case in connection with the Scheduled Projects or the transactions contemplated by the Transaction Documents, and (ii) furnished by Contractor or its Affiliates to the independent consultants in connection with the respective reports prepared by each such consultant, is true, complete and correct in all material respects and does not omit any material information necessary to make such information not adversely misleading when taken as a whole in light of the circumstances under which it is provided and as of the date when made or provided; provided, that, no representation or warranty is made with regard to Forward-Looking Information provided by or on behalf of Contractor or any of its Affiliates (including the Base Case Model, any Project Model, and the assumptions set forth in each such models).

(k) Intellectual Property. (i) The Buyer owning the applicable Project owns or has a valid license to all intellectual property that is reasonably necessary to install, operate and maintain such Project, and (ii) there are no pending or, to Contractor's Knowledge, threatened in writing, claims, actions, judicial or other adversary proceedings, or disputes concerning any such intellectual property.

(l) Environmental Matters. (i) Contractor is in compliance with all Environmental Laws with respect to the applicable Project in all material respects, (ii) to Contractor's Knowledge, the applicable Project is not located on any premises where Hazardous Substances are present or have been released, in any case in a manner or condition that would reasonably be expected to require such Project, or the applicable Buyer to undertake material remedial action pursuant to any Environmental Law, (iii) neither Contractor nor any of its Affiliates has received written notice from any Governmental Authority of an actual or potential material violation of or material liability under any Environmental Laws with respect to the applicable Project, and (iv) (A) there is no material pending litigation, claim, suit, proceeding or, to Contractor's Knowledge, governmental investigation and (B) to Contractor's

Knowledge, there is no threatened in writing litigation, claim, suit, proceeding or governmental investigation, in each case, pursuant to Environmental Law with respect to such Project.

(m) No Condemnation. No condemnation has occurred or, to Contractor's Knowledge, is pending or threatened in writing, with respect to any portion of the applicable Project, and no unrepaired casualty exists with respect to such Project.

(n) Energy Regulatory Matters. The applicable Facility is a qualifying cogeneration facility under 18 C.F.R. Part 292 and the Public Utility Regulatory Policies Act of 1978 and is eligible for the exemptions from regulation as set forth in 18 C.F.R. §§ 292.601(c) (including exemption from Federal Power Act Sections 203, 205, and 206), 292.602(b) and 292.602(c). The consummation of the transactions contemplated by the Transaction Documents **[...***...]** will not, solely as a result thereof, cause any Buyer, the Company or any Investor to become subject to, or not exempt from, (i) rate regulation as a "public utility" under Section 205 or 206 of the Federal Power Act, (ii) regulation as an "electric utility" under the Public Utility Regulatory Policies Act of 1978 or (iii) regulation as an "electric utility company" or a "holding company" under the Public Utility Holding Company Act of 2005, other than as a "holding company" that qualifies for an exemption from FERC's regulations under the Public Utility Holding Company Act of 2005 pursuant to 18 C.F.R. 366.3(a).

(o) [Reserved].

(p) QF Factual Matters. As of each Purchase Date other than the first Purchase Date:

(i) The applicable Facility is a topping-cycle cogeneration facility with a maximum net power production capacity of less than or equal to 1 MW AC, and is located at the address provided in the applicable Milestone Certificate.

(ii) The thermal energy output of such Facility will be used by a fuel cell system with an integrated steam hydrocarbon reformation process for production of hydrogen fuel for electricity generation.

(iii) The thermal energy output of such Facility is designed to be no less than 15 percent of the total energy output of such Facility on an annualized basis.

(iv) The power output of such Facility plus one-half of the thermal energy output of such Project is designed to be no less than 42.5 percent of the total energy input of natural gas and oil to such Facility on an annualized basis.

(v) Such Facility is not selling, and will not sell, electric energy for resale under Section 210 of the Public Utility Regulatory Policies Act of 1978.

(vi) Such Facility has not commenced generating electric energy and none of the Projects' interconnection facilities has been energized.

Section 7.03 General Representations by Buyer. Each Buyer represents and warrants to Contractor as of the Effective Date, with respect to itself, as follows:

(a) Incorporation; Qualification. Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite organizational power and authority to own and operate its business as currently conducted. Buyer is duly qualified to do

business as a foreign corporation and is in good standing under the laws of each jurisdiction that its business, as currently being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Material Adverse Effect on the Facilities being sold under this EPC.

(b) Authority. Buyer has full limited liability company power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of the Transaction Documents to which it is a party and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Buyer and the Transaction Documents to which Buyer is a party have been duly and validly executed and delivered by Buyer.

(c) Enforceability. Each of the Transaction Documents to which Buyer is a party constitutes the legal, valid, and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(d) Consents and Approvals; No Violation. Neither the execution, delivery and performance of the Transaction Documents to which Buyer is a party nor the consummation by Buyer of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the organization documents of Buyer, (ii) with or without the giving of notice or lapse of time or both, materially conflict with, result in any material violation or material breach of, constitute a default under, result in any right to accelerate, or create any right of termination under the conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Buyer is a party that would individually or in the aggregate result in a Material Adverse Effect, or (iii) constitute material violations of any law, regulation, order, judgment or decree applicable to Buyer or the transactions contemplated hereby.

(e) Legal Proceedings. There are no pending or, to Buyer's Knowledge, threatened claims, disputes, governmental investigations, suits, actions, arbitrations, legal, administrative, or other proceedings, domestic or foreign, criminal or civil, at law or in equity, by or against Buyer that challenge the enforceability of the Transaction Documents to which Buyer is a party or the ability of Buyer to consummate the transactions contemplated hereby or thereby, in each case, that could reasonably be expected to result in a Material Adverse Effect on Buyer or its ability to perform its obligations hereunder.

(f) U.S. Person. Buyer is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code and has provided a Certificate of Non-Foreign Status in the form and substance required by Section 1445 of the Code and the regulations thereunder.

Section 7.04 Contractor Representations about the Buyers. Contractor represents and warrants to Company on the Project Company Transfer Date, with respect to each Buyer, as follows:

(a) Organization and Good Standing. The Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all limited liability company power and authority to own, lease, and operate its properties and to carry on its business as now being conducted. The Buyer is duly qualified to do business and is in good standing under the laws of each jurisdiction that its business, as currently being conducted, shall require it to be so qualified.

(b) No Violation. The sale by Contractor and acquisition by Company of the Buyer contemplated hereunder will not (i) violate any Applicable Law to which the Buyer is subject, (ii) conflict with or cause a breach of any provision in the organizational documents of the Buyer, or (iii) cause a breach of, constitute a default under, cause the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any authorization, consent, waiver or approval under any contract, license, instrument, decree, judgment or other arrangement to which the Buyer is a party.

(c) Legal Proceedings. The Buyer is not subject to any outstanding injunction, judgment, order, decree or ruling or, to Contractor's Knowledge, is threatened with being made a party to any action, suit, proceeding, hearing or investigation of, in, or before any Governmental Authority or before any arbitrator.

(d) Sole Purpose. Since the Buyer's formation (i) the Buyer has been engaged solely in entering into the applicable Project Documents and this Agreement and effecting the transactions contemplated thereby and hereby, (ii) the Buyer has not incurred any liabilities, and (iii) the Buyer is not a party to any agreement or contract other than the applicable Project Documents and this Agreement.

(e) Title to Property. The Buyer has good and marketable title to the applicable Project Documents and this Agreement, in each case free and clear of Liens (other than Permitted Liens).

(f) Subsidiaries; Non-Related Liabilities. The Buyer has no, and has never had any, assets or liabilities that do not arise from or otherwise relate to entering into the applicable Project Documents or this Agreement. The Buyer has no, and has never had any, subsidiaries and has never owned or controlled, directly or indirectly, any interest (or any option, warrant, security or other right convertible, exchangeable or exercisable therefor) in any other Person.

(g) Compliance with Applicable Laws. The Buyer is in compliance with all Applicable Laws required to perform under this Agreement in all material respects; provided, however, that compliance with applicable Economic Sanctions Laws and Regulations shall be in all respects. None of the Buyer, the Contractor or any Affiliate of the Contractor has received any notice from any Governmental Authority or other communication from any other Person regarding (i) any actual, alleged or potential violation of, or failure to comply with, any Applicable Law by the Buyer or with respect to the development of the Facilities or (ii) any obligation on the part of the Buyer to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. Neither the Buyer nor any of its directors, officers or, to Contractor's Knowledge, employees, agents or Affiliates (A) are Sanctioned Persons or (B) in connection with any Project, are or have been, in the past five (5) years, the subject of any investigation, claim, action, proceeding or litigation by any Governmental Authority with regard to any violation of applicable Economic Sanctions Laws and Regulations, applicable Trade Controls Laws and Regulations, applicable Anti-Bribery and Anti-Corruption Laws and Regulations or applicable Anti-Terrorism and Money Laundering Laws and Regulations.

(h) Employees. The Buyer has not, and has never had, employees or has maintained, sponsored, administered or participated in any employee benefit plan or arrangement.

(i) Intellectual Property. The Buyer owns or has a valid license to all intellectual property that is necessary to conduct its business as currently conducted. There are no pending claims, actions, judicial or other adversary proceedings, disputes or disagreements concerning any item of such intellectual property, and to Contractor's Knowledge, no such action, proceeding, dispute or disagreement is threatened.

(j) General Tax Matters.

(i) The Buyer is, and has at all times since its formation been, a "disregarded entity" for federal and other applicable income tax purposes. The Buyer is not a corporation nor has it ever been a corporation. The Buyer has not filed Internal Revenue Service Form 8832 (or any alternative or successor form) to elect to have, or taken any other action which would result in, the Buyer being classified as a corporation for federal income tax purposes under Treasury Regulation Section 301.7701-3.

(ii) All Tax Returns of the Buyer that were required to be filed have been timely and properly filed. All such Tax Returns were true, correct and complete in all material respects as they refer to the Buyer. All Taxes (whether or not shown on any Tax Return) for which the Buyer may be liable, that are due and payable have been timely and properly paid (taking into account all valid extensions), unless being contested in good faith. The Buyer does not have any Taxes which are currently due and payable (unless being contested in good faith).

(iii) The Buyer is not currently the subject of any audit, assessment, claim, examination, or administrative or court proceeding with respect to Taxes.

(iv) The Buyer has not received any written notice or inquiry from any jurisdiction where Tax Returns have not been filed that Tax Returns may be required.

(v) The Buyer has not received any notice of any special assessments, levies or Taxes imposed or to be imposed affecting any of its assets and, to Contractor's Knowledge, no such special assessments, levies or Taxes have been threatened by any Governmental Authority.

(vi) No grants (for purposes of this paragraph, "grants" shall not include any credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, attributable to the generation from the Facilities, and its respective avoided emission of pollutants) have been provided by the United States, a state, a political subdivision of a state, or any other Governmental Authority for use in constructing or financing any Facility or with respect to which the Buyer is the beneficiary. No proceeds of any issue of state or local government obligations have been used to provide financing for any Facility the interest on which is exempt from tax under Code Section 103. No subsidized energy financing (within the meaning of Code Section 45(b)(3)) has been provided, directly or indirectly, under a federal, state, or local program provided in connection with any Facility.

(vii) The Buyer is not related to any Customer within the meaning of Code Section 267 or Code Section 707.

(k) Disclosure. To Contractor's Knowledge, there is no fact relating specifically to the Buyer that would reasonably be expected to result in a Material Adverse Effect with respect to the Buyer.

(l) Indebtedness. The Buyer does not have any outstanding Indebtedness.

(m) Investment Company. The Buyer is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(n) Bankruptcy. No Bankruptcy Event has occurred with respect to the Buyer and no Bankruptcy Event is contemplated. No receiver, trustee, custodian or similar fiduciary has been

appointed over the whole or any part of the Buyer's assets or income. The Buyer has not received any written notice that any other Person has any plan or intention of filing, making or obtaining any such petition, notice, order or resolution or of seeking the appointment of any such receiver, trustee, custodian or similar fiduciary.

(o) Maintenance of Separateness.

(i) The Buyer has not (A) failed to satisfy the following customary entity formalities (I) the maintenance of separate records and (I) the maintenance of separate bank accounts in its own name, (B) failed to act solely in its name and through its authorized officers and agents; or (C) commingled any of its money or other assets with any money or other assets of any other Person.

(ii) Except for this Agreement, there are no existing contracts or agreements between the Buyer, on the one hand, and Contractor or any Affiliate of Contractor, on the other hand.

Section 7.05 Contractor Representations about Certain Interconnection Agreements.

[…*…]**.

Article VIII.
CONFIDENTIALITY

Section 8.01 Confidential Information. Each Party shall, and shall cause its Affiliates and its respective stockholders, members, subsidiaries, and Representatives to, hold confidential the terms of this EPC and the other Transaction Documents and all information it has obtained or obtains from the other Party in connection herewith and therewith and concerning the Parties and their respective assets, business, operations, or prospects (the "Confidential Information"), including all materials and information furnished by Contractor in performance of this EPC and the other Transaction Documents, regardless of form conveyed or whether financial or technical in nature, including any trade secrets and proprietary know how and Software whether such information bears a marking indicating that they are proprietary or confidential or not; provided, however, that Confidential Information shall not include information that (x) is or becomes generally available to the public other than as a result of any fault, act, or omission by a Party or any of its Representatives, (y) is or becomes available to a Party or any of its Representatives on a non-confidential basis from a source other than the other Party or its Representatives, provided that such source was not and is not bound by any contractual, legal, or fiduciary obligation of confidentiality with respect to such information or (z) was or is independently developed or conceived by a Party or its Representatives without use of or reliance upon the Confidential Information of the other Party, as evidenced by sufficient written record.

Section 8.02 Permitted Disclosures. Notwithstanding the foregoing Section 8.01, Confidential Information may be disclosed:

(a) to a Party's or its Affiliates' actual or potential investors or financing parties and its and their Representatives; provided that (i) in the case of a disclosure to an actual or potential investor or financing party, such party is subject to a Similar Confidentiality Agreement, and (ii) in the case of disclosure to any Representative, such Party informs such Representative of the confidential nature of such Confidential Information, the terms of this EPC, and that such terms apply to them. The Parties shall use commercially reasonable efforts to ensure that each such Person complies with the terms of this EPC and that any Confidential Information received by such Person is kept confidential.

(b) as an exhibit to any relevant filing with the Securities Exchange Commission (or equivalent foreign agency) if required under Applicable Law; provided, the Party making such filing will exercise commercially reasonable efforts to obtain confidential treatment of the Agreement from the Securities Exchange Commission (or equivalent foreign agency);

(c) as required or requested to be disclosed by a Party or any of its Affiliates or their respective stockholders, members, subsidiaries, or Representatives as a result of any Applicable Law or rule or regulation of any regulatory authority or self-regulatory authority having jurisdiction over such Party, such as a stock exchange;

(d) if legally compelled by any Applicable Law or Governmental Authority, including as required or requested by the IRS or the U.S. Department of Justice in connection with the Project, Project Documents, Facility, or Tax credits relating thereto in connection with a request for any private letter ruling, any determination letter or any audit;

(e) any disclosure required to be made pursuant to the terms of any Interconnection Agreement or any other Project Document;

(f) any disclosures related to the tax treatment or tax structure of any transaction contemplated by this EPC (the "Transaction"), without limitation of any kind, the tax treatment and tax structure of a Transaction and all other materials of any kind (including opinions or other tax analyses) that are provided to any Party to the extent relating to such tax treatment and tax structure (this Section 8.02(f) is intended to prevent the Transaction from being treated as a "reportable transaction" as a result of it being a transaction offered to a taxpayer under conditions of confidentiality within the meaning of Sections 6011, 6111 and 6112 of the Code (or any successor provision) and the regulations thereunder (as clarified by Notice 2004-80 and Notice 2005-22) and shall be construed in a manner consistent with such purpose);

(g) in connection with any of the following, provided the potential financing party or purchaser, as applicable, has entered into a Similar Confidentiality Agreement on customary terms used in confidentiality agreements in connection with corporate financings or acquisitions, covering such disclosure:

(i) a financing or proposed financing by Contractor or Buyer or their respective Affiliates;

(ii) a disposition or proposed disposition by any direct or indirect Affiliate of Buyer of all or a portion of such Person's equity interests in Buyer; or

(iii) a disposition or proposed disposition by Buyer of any Facility.

(h) any disclosure required to be made to a Project Party under a Project Document; and

(i) in connection with (i) any claim against the other Party or (ii) any exercise by a Party hereunder of any of its rights hereunder.

(j) **[...***...]**, if a Party becomes compelled pursuant to the foregoing clause (c) or (d) to disclose any Confidential Information, such Party shall, to the extent permitted under Applicable Law, provide the other Party with prompt notice so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the non-disclosure provisions of this Article VIII with

respect to the information required to be disclosed. If such protective order or other remedy is not obtained, or such other Party waives compliance with the non-disclosure provisions of this Article VIII with respect to the information required to be disclosed, the first Party shall (A) furnish only that portion of such information that it is advised by counsel is legally is required to be furnished and (B) exercise reasonable efforts, at the other Party's expense, to obtain reliable assurance that confidential treatment will be accorded such information, including, if applicable, that such information will not be made available for public inspection pursuant to Section 6110 of the Code. Either Party may, without the consent of the other Party, describe the transaction contemplated herein as required by Legal Requirements pursuant to the filing of a form 8-K, 10-K, 10-Q, or similar filing with the Securities and Exchange Commission.

(k) Buyer shall have no liability to Contractor hereunder in respect of disclosures made to a Project Party required under a Project Document or for any breach by a Project Party of the confidentiality obligations to which it is bound in the applicable Project Document or Similar Confidentiality Agreement, as the case may be, as long as Buyer uses its commercially reasonable efforts to enforce such confidentiality obligations.

Section 8.03 Press Releases. Any public announcement, press release or similar publicity with respect to this EPC and the transactions contemplated hereby will be issued at the time and in the manner mutually agreed in writing by the Buyer and the Contractor.

Section 8.04 Restricted Access.

(a) Buyer agrees that each Facility contains Contractor's valuable trade secrets. Buyer agrees to restrict the use and access of such information to matters relating to each such Facility in accordance with this Article VIII.

(b) Contractor's Confidential Information will not be reproduced without its prior written consent. If Buyer does not continue to own any Facility following termination of this EPC, all copies of Contractor's Confidential Information will be returned to Contractor upon written request or shall be certified by Buyer as having been destroyed, unless otherwise agreed by the Parties. Notwithstanding the foregoing, Buyer may retain archival copies of any Confidential Information to the extent required by law, regulation, or professional standards or copies of Confidential Information created pursuant to the automatic backing-up of electronic files where the delivery or destruction of such files would cause undue hardship to Buyer, so long as (i) any such archival or electronic file back-up copies are accessible only to legal or information technology personnel and (ii) such archival or electronic file back-up copies continue to be subject to the terms of this Section 8.04.

Article IX. DEFAULTS AND REMEDIES

Section 9.01 Contractor Default. The occurrence at any time of any of the following events shall constitute a "Contractor Default":

(a) Failure to Pay. The failure of Contractor to pay any undisputed amounts due and payable to Buyer under the terms of this EPC and such failure is not cured within ten (10) Business Days of Contractor's receipt of notice thereof.

(b) Failure to Perform. The failure of Contractor to perform or cause to be performed any material obligation required to be performed by Contractor under this EPC (other than Section 6.06 (*General Product Warranty*), Section 6.10 (*Infringement Warranty*) or the obligations contemplated in

Section 9.01(a) (*Failure to Pay*)); *provided, however*, that if such failure by its nature can be cured, then Contractor shall have a period of thirty (30) days after receipt of written notice of such failure to cure the same and a Contractor Default shall not be deemed to exist during such period; provided, further, that if Contractor commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days.

(c) Failure to Remedy Warranty Claims. The failure of Contractor to perform or cause to be performed its obligations under Section 6.09 (*General Product Warranty*) or Section 6.11(c) *(Infringement Warranty*); *provided, however*, that if such failure by its nature can be cured, then Contractor shall have a period of thirty (30) days after receipt of written notice of such failure to cure the same and a Contractor Default shall not be deemed to exist during such period; provided, further, that if Contractor commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days.

(d) Misrepresentation. A representation and warranty made in this EPC by Contractor shall have been inaccurate in a material way when made and Contract shall have not cured such misrepresentation within thirty (30) days after receipt of written notice thereof; *provided*, (i) rectifying such inaccurate representation so that it is true, if possible, and Buyer has not suffered any Loss as a result thereof, or (ii) if such false representation caused a Loss, payment by Contractor of such Loss arising in connection with such inaccurate representation or warranty shall, in either case be deemed to have cured such inaccurate representation.

(e) Bankruptcy. The occurrence of a Bankruptcy Event with respect to Contractor.

(f) Breach of insurance obligations. **[…***…]**.

(g) Assignment. Contractor makes a Transfer or assignment of this EPC other than in accordance with Article XIII.

Section 9.02 Buyer's Remedies. For a Contractor Default that has occurred and is continuing related to a given Project, Buyer may (i) terminate this EPC solely with respect to the Project for which such Contractor Default has occurred and is continuing by written notice, (ii) if such Project has not yet reached Mechanical Completion, demand a refund in accordance with Section 5.03, and (iii) assert all rights and remedies available to Buyer under Applicable Law. For a Contractor Default that has occurred and is continuing that is Portfolio-wide (in that it meets the threshold set forth in Section 12.02(a)(viii)), Buyer may, but shall not be obligated to (i) terminate this EPC in full in accordance with Section 12.02(a)(viii), (ii) cease payment of any further payments to Contractor, (iii) suspend Contractor's Work on all Projects until such Contractor Default is cured, and/or assert all rights and remedies available to Buyer under Applicable Law.

Section 9.03 Buyer Default. The occurrence at any time of the following events with respect to Buyer shall constitute a "Buyer Default":

(a) Failure to Pay. The failure of Buyer to pay any undisputed amounts due and payable to Contractor under the terms of this EPC and such failure is not cured within ten (10) Business Days of Buyer's receipt of notice thereof.

(b) Failure to Perform Other Obligations. The failure of Buyer to perform or cause to be performed any material obligation required to be performed by Buyer under this EPC (other than monetary payment obligations contemplated in Section 9.03(a)); provided, however, that if such failure by its nature can be cured, then Buyer shall have a period of thirty (30) days after receipt of written notice

of such failure to cure the same and a Buyer Default shall not be deemed to exist during such period; provided, further, that if Buyer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days.

(c) Misrepresentation. A representation and warranty made in this EPC by Buyer shall have been inaccurate in a material way when made and Buyer shall have not cured such misrepresentation within thirty (30) days after receipt of written notice thereof; *provided*, (i) rectifying such inaccurate representation so that it is true, if possible, and Contractor has not suffered any Loss as a result thereof, or (ii) if such false representation caused a Loss, payment by Buyer of such Loss arising in connection with such inaccurate representation or warranty shall, in either case be deemed to have cured such inaccurate representation.

(d) Change of Control. Buyer effects a Buyer Change of Control other than in accordance with Section 13.01(c).

(e) Bankruptcy. The occurrence of a Bankruptcy Event with respect to Buyer.

Section 9.04 Contractor's Remedies. If a Buyer Default has occurred and is continuing, Contractor may:

(a) for a Buyer Default under Sections 9.03(a), (b), or (c) related to a given Project, (i) terminate this EPC with respect to such Project, (ii) retain any prior Milestone Payments made with respect to the Project, (iii) suspend the Work on all Projects until such Buyer Default is cured, (iv) for any Facility part of a Scheduled Project for which Shipment has not yet occurred, require payment of all Milestone Payments for such Facility as a condition precedent to such Shipment, and/or (v) and assert all rights and remedies available to Contractor under Applicable Law; **[...***...]**;

(b) For a Buyer Default under Section 9.03(d) or (e), Contractor may, but shall not be obligated to (i) terminate this EPC in full as to the applicable Buyer(s) without liability (ii) retain any and all prior payments made under this EPC, (iii) suspend the Work on all Projects until such Buyer Default is cured, and/or (iv) assert all rights and remedies available to Contractor under Applicable Law.

Section 9.05 Preservation of Rights. Termination of this EPC shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

Section 9.06 Mitigation. In exercising any of the foregoing remedies, each Party shall use reasonable efforts to mitigate its damages.

Section 9.07 Rights Cumulative. Except as expressly otherwise provided herein, the rights of each of the parties under this EPC are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under this EPC, any of the agreements related thereto or under applicable law. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right, unless expressly otherwise provided.

Article X.
INDEMNIFICATION

Section 10.01 General Indemnification.

(a) Contractor shall indemnify, defend, and hold harmless Buyer, its officers, directors, employees, members, Affiliates, and agents (each, an "Buyer Indemnitee") from and against any and all Losses (other than Losses addressed elsewhere in this Article X) asserted against or suffered by any Buyer Indemnitee to the extent arising out of or in connection with (i) Contractor's negligence, willful misconduct or fraud, (ii) a representation made by Contractor hereunder or under any other Transaction Document that was materially inaccurate or untrue at the time it was made, (iii) a breach by Contractor of its obligations or covenants hereunder or under any other Transaction Document, (iv) **[…***…]**, or (vi) **[…***…]**; provided that Contractor shall have no obligation to indemnify Buyer under this Section 10.01 solely to the extent such Loss is caused by or arising out of (i) the negligence, willful misconduct, or fraud of Buyer or any Buyer Person, (ii) a representation made by Buyer under any Transaction Document that was inaccurate or untrue at the time it was made, (iii) a breach of any of Buyer's obligations under any Transaction Document, or (iv) the operation or modification of the Facility or any part thereof by any Person that is not a Contractor Person.

(b) Buyer shall indemnify, defend, and hold harmless Contractor, its officers, directors, employees, shareholders, Affiliates, and agents (each, a "Contractor Indemnitee") from and against any and all Losses asserted against or suffered by any Contractor Indemnitee to the extent arising out of or in connection with (i) Buyer's negligence, willful misconduct, or fraud and (ii) a representation made by Buyer hereunder or under any other Transaction Document that was inaccurate or untrue at the time it was made or (iii) a breach by Buyer of its obligations or covenants hereunder or under any other Transaction Document; provided that Buyer shall have no obligation to indemnify Contractor under this Section 10.01 to the extent caused by or arising out of (x) the negligence, willful misconduct, or fraud of Contractor or any Contractor Person, (y) a representation made by Contractor under any Transaction Document that was inaccurate or untrue at the time it was made, or (z) a breach of any of Contractor's obligations under any Transaction Document.

Section 10.02 Lien Indemnification. Except to the extent arising as a result of a Buyer's failure to make any payment hereunder when due and payable, Contractor shall indemnify, defend, and hold harmless Buyer Indemnitees from any Loss caused by or arising out of any Lien, other than a Permitted Lien, brought against Buyer or against the Facility by Contractor or any Contractor Person in connection with the Work.

Section 10.03 Indemnity Claims Procedure.

(a) Notice. Any Indemnitee entitled to indemnification under Sections 10.01 and 10.02 will deliver written notice to the Indemnitor of any matters giving rise to a Loss; provided, the failure of any Indemnitee to provide notice shall not relieve the Indemnitor of its obligations under Sections 10.01 and 10.02 except to the extent that the Indemnitor is actually prejudiced by such failure to deliver notice.

(b) Assumption. Indemnitor shall be entitled to participate in and, unless in the reasonable judgment of the Indemnitee a conflict of interest between it and the Indemnitor may exist with respect of such matter, assume the defense thereof, with counsel reasonably satisfactory to the Indemnitee. In the event that the Indemnitor advises an Indemnitee that it will contest such a claim for indemnification hereunder, or fails, within thirty (30) days of receipt of any indemnification notice to notify, in writing, such Person of its election to defend, settle, or compromise, at its sole cost and expense, any action, proceeding, or claim (or discontinues its defense at any time after it commences such defense), then the Indemnitee may, at its option, defend, settle, or otherwise compromise or pay such action or claim. In any event, unless and until the Indemnitor elects in writing to assume and does so assume the defense of any such claim, proceeding, or action, the Indemnitee's costs and expenses arising out of the defense,

settlement, or compromise of any such action, claim or proceeding shall be losses subject to indemnification hereunder.

(c) Cooperation. The Indemnitee shall cooperate fully with the Indemnitor in connection with any negotiation or defense of any such action or claim by the Indemnitor and shall furnish to the Indemnitor all information reasonably available to the Indemnitee which relates to such action or claim. The Indemnitor shall keep the Indemnitee fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. If the Indemnitor elects to defend any such action or claim, then the Indemnitee shall be entitled to participate in such defense with counsel of its choice at its sole cost and expense. The Indemnitor shall not be liable for any settlement of any action, claim or proceeding effected without its prior written consent. The Indemnitor shall not, without the Indemnitee's prior written consent, not to be unreasonably withheld, delayed or denied, settle or compromise any claim or consent to entry of any judgment in respect thereof which imposes any future obligation on the Indemnitee or which does not include, as an unconditional term thereof, the giving by the claimant or the plaintiff to the Indemnitee of a release from all liability in respect of such claim.

(d) Other Remedies. The rights and remedies of the Parties contained in this Article X shall be in addition to any other remedies the Parties have under this EPC.

(e) Project Documents. Notwithstanding the foregoing, if a Loss is brought against a Party by a Project Party under any Project Document and such Project Document provides in its indemnification procedures additional obligations that conflict with those in this Section 11.03, then the Indemnitor will comply with the most stringent indemnification procedures.

Section 10.04 Tax Indemnification; Payment.

(a) Contractor agrees to indemnify, defend, and hold harmless, each Buyer Indemnitee from and against any actual Tax Loss to the extent arising out of or in connection with (i) the failure of a representation made by Contractor under Section 7.01(i) (*General Tax Representations*), Section 7.02(c) (*Facility Tax Representations*) of Section 7.04(j) (*General Tax Matters*) to be accurate or true at the time it was made (including any time it was brought-down) with respect to a Facility and (ii) the failure of Provider to comply with Section 2.04(a) (*Replacement FRUs*) of the O&M with respect to a Facility.

(b) Contractor shall be responsible for all Taxes of each Buyer attributable to taxable periods (or portions thereof) ending on or before the applicable Project Company Transfer Date. Company shall notify Contractor of any such amounts due from Contractor, and Contractor shall remit such payment to Company no later than five (5) Business Days prior to the date such Tax is due. Company shall be responsible for all Taxes of each Buyer attributable to taxable periods (or portions thereof) ending after the applicable Project Company Transfer Date

(c) Straddle Periods.

(i) If a Buyer is permitted but not required under applicable federal, state, local or foreign income Tax laws to treat the applicable Project Company Transfer Date as the last day of a taxable period, then the Parties shall treat that day as the last day of a taxable period.

(ii) In the case of Taxes during a period that includes but does not end on the applicable Project Company Transfer Date, except as provided in sub-clause (iii) below, the allocation of such Taxes shall be made on the basis of an interim closing of the books as of the end of the applicable Project Company Transfer Date.

(iii) In the case of any Taxes imposed on a periodic basis (such as real property or personal property Taxes) that are payable for a taxable period that includes but does not end on the applicable Project Company Transfer Date, the portion of such Tax which relates to taxable period before the applicable Project Company Transfer Date shall be deemed to be only the amount of such Tax for the entire taxable period multiplied by a fraction, the numerator of which is the number of days in the portion of the taxable period ending on (and including) the Effective Date and the denominator of which is the number of days in the entire taxable period.

(d) Refunds.

(i) Contractor will be entitled to any refunds (including interest received thereon) in respect of any Taxes of each Buyer attributable to a taxable period before the applicable Project Company Transfer Date. Company shall cause such refund to be paid to Contractor promptly following its receipt. Notwithstanding the foregoing, Contractor shall not be entitled to any credits or refunds attributable to, or resulting from, any federal, state or local tax credit (including the ITC).

(ii) Except as provided in clause (c) above, Company will be entitled to any credits or refunds (including any interest received thereon) in respect of any federal, state, local, foreign or other Tax liability of each Buyer.

(iii) Company and Contractor shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the filing of Tax Returns pursuant to this Section 10.04 and any audit, litigation or other proceeding with respect to Taxes.

Section 10.05 Tax Indemnification Procedures.

(a) In the event a claim shall be made or proposed by a Governmental Authority that, if successful, would result in a Tax Loss for which the Contractor would be required to indemnify Buyer pursuant to Section 10.04 (a "Tax Claim"), Buyer hereby agrees, subject to the preservation of attorney-client and attorney work product privileges and suitable redaction to protect the confidentiality of other tax matters, to notify Contractor promptly and in writing of such claim. Buyer shall not settle or otherwise agree to resolve any such Tax Claim without the prior written consent of Contractor (which consent shall not be unreasonably withheld, conditioned or delayed) and, if so requested by Contractor within thirty (30) days after the receipt of such notice, shall in good faith contest (including by way of the appeal of any judicial determination in respect of such claim; other than an appeal to the United States Supreme Court) the validity, applicability and amount of such Tax Claim in accordance with the provisions set forth below; provided, however, that Buyer shall not be required to contest or continue to contest any such Tax Claim unless:

(i) Contractor shall have agreed to pay to Buyer all reasonable out-of-pocket costs and expenses that Buyer shall incur in contesting such Tax Claim, including, without limitation, reasonable attorney's and accountant's fees;

(ii) the maximum amount of indemnification payments that could be payable by Contractor to Buyer with respect to all claims raised in the same audit or other proceeding (together with the amount of all similar and logically related claims that have been or could be raised in any other audit or proceeding with respect to Buyer), determined on a lump-sum basis, equals or exceeds $50,000;

(iii) prior to taking such action Contractor shall have furnished Buyer with an opinion of Stoel Rives LLP, Milbank LLP, Norton Rose Fulbright LLP or other independent tax counsel selected by Contractor and reasonably acceptable to Buyer to the effect that Buyer is more likely than not to succeed in such Tax Contest;

(iv) in the event Buyer decides, at its sole option, (i) to contest such Tax Claim in the United States Tax Court or applicable state or local court of the state in which the applicable Project is located, and (ii) to make a cash deposit with the IRS or applicable state taxing authority of the state in which the applicable Project is located in accordance with section 6603 of the Code (or any successor provision) or analogous state or local Tax authority of the state in which the applicable Project is located to suspend the running of interest on any potential underpayment of tax with respect to such claim, then Contractor shall have advanced to Buyer on an interest-free basis sufficient funds for Buyer to make such deposit (together with any interest, penalties and additions to tax with respect to such underpayment to date) and shall agree to indemnify Buyer for any adverse tax consequences resulting from such advance;

(v) in the event that Buyer decides, at its sole option, to pay the tax claimed and sue for a refund, Contractor shall advance to Buyer on an interest-free basis sufficient funds to pay the tax and interest, penalties and additions to tax payable with respect thereto and agree to indemnify Buyer for any adverse tax consequences resulting from such advance;

(vi) Contractor has delivered to Buyer a written acknowledgement of Contractor's liability under this Agreement for any Tax Loss that could arise from such Tax Claim and has demonstrated to Buyer's satisfaction the ability to timely pay any such amount; provided, however, that Contractor shall not be bound by such acknowledgement of liability if the Final Determination related to such Tax Claim clearly states conclusions of fact that establish that Contractor is not liable under this Agreement with respect to such Tax Loss.

(b) Subject to the foregoing under paragraph (a) above, Buyer may forego any and all administrative appeals, proceedings, hearings and conferences with any Governmental Authority in respect of any Tax Claim and may, at its sole option, contest the Tax Claim in any permissible forum selected by Buyer after reasonably considering input from Contractor. If Contractor requests that Buyer accept a settlement of such Tax Claim offered by the IRS or the applicable state taxing authority and if such Tax Claim may be settled without prejudicing Buyer or any of its Affiliates with respect to any claims the Governmental Authority may have against Buyer with respect to matters not indemnified by Contractor, Buyer shall either accept such settlement offer or agree with Contractor that the liability of Contractor pursuant to Section 10.04 with respect to such Tax Claim shall be limited to an amount calculated on the basis of such settlement offer (increased by applicable interest, penalties and additions to tax) and that no additional liability of Contractor shall accrue with respect to such claim after fifteen (15) days following the date of such request.

Section 10.06 Limitation of Liability.

(a) No Party will be liable to the other Party under this EPC or any other Transaction Document for aggregate amounts in excess of the Maximum Liability unless such liability arises out of (A) the fraud, willful misconduct, or gross negligence of such Party, (B) either Party's indemnification obligations with respect to third party claims under Sections 10.01, or (C) Contractor's indemnification obligations under Section 6.11.

(b) Except with respect to (i) Losses for bodily injury or property damage, (ii) in connection with a Party's breach of Sections 6.03(b), 8.01, or 8.04, or (iii) claims arising from a Party's fraud or willful misconduct, in no event shall either Party (or its Subcontractors, Personnel, or Affiliates) be liable to a Contractor Indemnitee or a Buyer Indemnitee, as the case may be, for any special, incidental, indirect, consequential, exemplary, or punitive damages hereunder or under any other Transaction Document, whether (x) arising before or after the expiration or early termination of this EPC or any other Transaction Document, or (y) claimed in contract, warranty, law, equity, tort, or otherwise. This limitation shall apply irrespective of negligence, fault, duty to warn, or strict liability of contract, regardless of whether such damages were foreseeable and regardless of whether either Party was advised of the possibility of such damages. A Tax Loss is not a consequential damage.

(c) Each Party acknowledges that no adequate remedy at law exists for a breach or threatened breach of Article VIII or of the Ownership Covenant, the continuation of which un-remedied will cause the non-breaching Party to suffer irreparable harm. Accordingly, each Party shall be entitled, in addition to other remedies that may be available to such Party, to immediate injunctive relief from any breach or threatened breach of any of the provisions of Article VIII or the Ownership Covenant, and to specific performance of its rights hereunder, as well as any other remedies available at law or in equity.

(d) Any claim for Losses under this EPC or any other Transaction Document irrespective of the legal theory under which it is brought shall be reduced to the extent such Losses are recovered from the proceeds of a successful claim under a policy of insurance held by the claiming Party.

(e) The indemnification provided for in this Article X is not intended and shall not be deemed to limit, condition, reduce or supplant the primary availability of any insurance that would be available in the absence of such indemnification. The amount of any Loss or Tax Loss for which indemnification is provided under this Article X shall be net of any insurance proceeds actually received by an Indemnified Party from insurance obtained and maintained pursuant to the Transaction Documents as an offset against such Loss or Tax Loss, as applicable, after deducting any related costs and expenses, including the aggregate cost of pursuing any related insurance claims and any related increases in insurance premiums or other chargebacks.

Section 10.07 No Duplication. Neither Party may receive payment with respect to a Loss hereunder or under any other Transaction Document more than once.

Section 10.08 After-Tax Basis. Any indemnification payment made under this Article X shall be made on an After-Tax Basis, provided that, if the indemnifying Party delivers an opinion of Stoel Rives, LLP or other counsel reasonably acceptable to the Indemnified Party that the indemnification payment "should" be treated as a non-taxable return of capital for U.S. federal income tax purposes, the Parties agree to so treat the indemnification payment. If the indemnifying party delivers a requisite opinion but thereafter the indemnification payment is determined pursuant to a final determination to be taxable the indemnifying party shall pay the Indemnified Party the difference between (i) the amount originally paid to the Indemnified Party and (ii) the amount that would have been paid to such Indemnified Party had the payment been treated as taxable, grossed-up and paid on an After-Tax Basis, including any penalties and interest payable by the Indemnified Party with respect to such final determination.

Article XI.
DISPUTE RESOLUTION

Section 11.01 In General. Subject to any limitations on remedies set forth herein, all disputes arising out of or in connection with this EPC or any other Transaction Document (a "Dispute") will be settled in accordance with the provisions of this Article XI to the extent permitted by Applicable Law.

Section 11.02 Good Faith and Fair Dealing. Whenever any Transaction Document grants to a Party the right to take action, exercise discretion, or determine whether to approve a proposal of or provide consent to any other Party, the Party possessing the right shall act in good faith and deal fairly with the other Party. Each Party will exercise its good faith in the administration of the Transaction Documents and all actions of the Parties shall be designed to facilitate the successful completion of the Work by Contractor, the Services by Provider, and to promote the effective and efficient administration of this EPC and the other Transaction Documents, in each case to achieve the objective of providing efficient, reliable, and economical long term energy production in compliance with Applicable Law. The Parties further commit to act in a timely fashion, to: (a) review all documents, (b) respond to all requests for information, (c) support all applications for Permits, Incentives, Interconnection Agreements and other similar documents, Governmental Approvals; and (d) resolve all differences and Disputes in a timely fashion.

Section 11.03 Dispute Resolution.

(a) Any Dispute arising out of or in relation to this Agreement shall be resolved by the procedures set forth in the Section 11.03.

(b) If a Dispute arises between the Parties, the Parties shall in good faith attempt to settle such Dispute in the first instance by mutual discussions between Buyer and Contractor for a period of at least thirty (30) days from the date either Party gives notice to the other of such Dispute.

(c) [Reserved].

(d) If the Dispute cannot be settled for any reason (including the non-participation of a Party) within the thirty (30) day period for mutual discussions set forth in paragraph (b) above, either Party may serve a request for arbitration upon the other and the Dispute shall be resolved by arbitration conducted by one or three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The seat of the arbitration shall be the City of New York. This agreement to arbitrate and the conduct of the arbitration shall be governed by the Federal Arbitration Act. Any Dispute concerning the propriety of the commencement of the arbitration shall be finally settled by the arbitral tribunal. The arbitration award shall be final and binding on the parties, and the parties undertake to carry out any award without delay. Judgment on the award may be entered by any court having jurisdiction of the award or having jurisdiction over the relevant party or its assets.

(e) During the conduct of dispute resolution procedures hereunder, (i) the Parties shall continue to perform their respective obligations under this EPC and the other Transaction Documents, and (ii) no Party shall exercise any other remedies hereunder arising by virtue of the matters in dispute; *provided, however*, that if due to the nature of the Dispute interim measures are required to preserve rights or irreparable damage may occur and money damages may not be a sufficient remedy, then the Parties shall be entitled, without the requirement of posting a bond or the other security, to seek a preliminary injunction, temporary restraining order, or other provisional relief as a remedy. In accordance with Rule 37 of the Commercial Arbitration Rules of the American Arbitration Association, a request for interim measures addressed to a judicial authority shall not be deemed incompatible with the agreement to arbitrate herein or a waiver of the right to arbitrate. Such a request for interim measures may be made at any time provided the conditions and requirements of this Section 11.03(e) are otherwise satisfied.

(f) Each Party hereby consents to the service of process at the addresses set forth in Schedule 8 either by overnight delivery by a nationally recognized courier or by certified first class mail, return receipt requested, and hereby acknowledges that service by such means shall constitute valid and lawful service of process against the Party being served.

Article XII. TERMINATION

Section 12.01 Termination. With respect to a given Project, unless earlier terminated pursuant to the terms of Section 12.02, this EPC, with respect to each Project, will automatically expire upon the expiration of the General Product Warranty under Section 6.06, except for any terms that expressly survive such termination, including, without limitation, those set forth in Section 12.03.

Section 12.02 Right to Termination.

(a) Termination Rights. This EPC may be terminated:

(i) With respect to a Project removed in accordance with Section 1.05, solely with respect to such Project;

(ii) With respect to a Project, after payment and receipt of a full refund pursuant to Section 5.03 (*Refunds*) for such Project;

(iii) For a Contractor Default or a Buyer Default arising in connection with a Project, solely with respect to such Project;

(iv) For the repurchase of a Facility pursuant to Section 6.11 (*Infringement Claims*), solely with respect to the related Project;

(v) For a Contractor Default or Buyer Default unrelated to a specific Project, in its entirety;

(vi) Upon a Bankruptcy Event of Contractor or Buyer, in its entirety;

(vii) Upon the mutual written agreement of both Parties; and

(viii) By Buyer, if a Contractor Default has occurred and is continuing with respect to more than 6.6MW of the aggregate System Capacity of all Facilities in the Portfolio as of the Commitment Expiration Date.

(b) Upon a termination of this EPC in accordance with this Section 12.02, all rights and obligations of the Parties hereto shall be terminated and discharged in full; provided, however, such termination shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly survive termination by their terms, whether resulting from the event giving rise to termination or otherwise.

Section 12.03 Survival. Without limitation to any provision hereof that may by its terms expressly survive the termination of this Agreement, the following provisions shall survive any termination of this Agreement with respect to a Project or the termination of this Agreement in its entirety: Section 3.06 (*IP*); Section 3.08(f); Section 4.04 (*Limitation on Export*); Section 4.06 (*Project Document Modification*) for the length of the applicable Project Document; Section 5.07 (*Reimbursable Credit Support*); Section 5.09 (*Mechanic's Liens*); Section 6.02 (*Transfer*); Section 6.03 (*Exceptions*); Section 6.05 (*Licenses*);

Section 6.06 *(Product Warranty*) until the expiration of the first anniversary of the Facility's COD; Section 6.07 (Warranty Exclusions); Section 6.08 (*Warranty Claims*); Section 6.09 (*Repair of Defective Work*); Sections 6.10 (Infringement Warranty) and 6.11 (*Infringement Claims*); Section 6.13 (*Transfer*); Section 6.14 (*Limitation of Liability*); Section 6.16 (*Disclaimers*); Article VII (*Representations*) until the expiration of the applicable statutory of limitations; Sections 8.01 (*Confidential Information*), 8.02 (*Permitted Disclosures*) and 8.03 (*Press Releases*) for five years from the expiration of the EPC Term; Section 8.04 (*Restricted Access*) forever; Section 10.01 (*General Indemnification*); Section 10.02 (*Lien Indemnification*); Section 10.03 (*Indemnity Claims Procedure*); Sections 10.04 (*Tax Indemnification*) and 10.05 (*Tax Indemnification Procedures*) until the expiration of the applicable statute of limitations); Section 10.06 (*Limitation of Liability*); Article XI (*Dispute Resolutions*); Article XIII (*Assignment and Transfer*); and Article XIV (*Miscellaneous*).

Article XIII.
ASSIGNMENT AND TRANSFER

Section 13.01 Buyer Transfers and Assignment.

(a) Buyer Right to Transfer the Portfolio or a Facility.

(i) Transfer of Entire Portfolio. Buyers may, upon COO of the last Project in the Portfolio to achieve COO, Transfer the entire Portfolio to a third-party without the written consent of Contractor, so long as: (A) such third-party transferee is not a Competitor, and (B) such third-party transferee takes assignment of the O&M (unless the O&M has already terminated or expired by its terms.

(ii) Transfer of Individual Facilities within the Portfolio. Buyers may Transfer one or more individual Facilities within the Portfolio (A) to a Customer pursuant to the terms of the applicable Customer Agreement; and (B) after the Facility achieves COO, to a third party, so long as such third-party transferee is not a Competitor; (C) **[…***…]**; or (D) **[…***…]**. Under all such circumstances the O&M will automatically terminate with respect to the Facility upon the Transfer date and the Output Warranty and Output Guarantee under the O&M will be adjusted to take into account the loss of the Facility from the Portfolio in accordance with the terms of the O&M.

(iii) Sales to Competitors. If Owner proposes to consummate the sale of any Facility or component thereof to a Competitor under paragraph (D) of Section 13.01(a)(ii) above, then, prior to Owner consummating such transaction, Owner shall give notice thereof to Contractor, which notice shall specify the price offered by such Competitor and the other material terms of such proposed transaction. Upon receipt of such notice, Contractor shall have ten (10) Business Days to notify Owner of its election, in its sole discretion, to purchase the Facility from Owner. If Contractor elects to purchase the Facility, Contractor shall pay the purchase price for such Facility within thirty (30) days. If Contractor does not elect to purchase the Facility, Owner may proceed with the sale to such Competitor at a price not less than that offered to Contractor.

(b) Unless transferred in connection with the permitted Transfer of a Project or Facility under paragraph (a) above, Buyer may not transfer any Transaction Document without the express written consent of Contractor. Any Transfer of the EPC must include a Transfer of the O&M and all other Transaction Documents. Buyer may not Transfer individual Modules or any component thereof separate from a Facility.

(c) Buyer may undergo a Change of Control without the written consent of Contractor so long as (i) none of the Person(s) controlling Buyer thereafter is a Competitor, (ii) except in the case of a Change of Control occurring as a result of a foreclosure (or transfer in lieu of foreclosure) by a lender or financing party providing financing to Buyer or any of its direct or indirect equity owners (including to any Investor), such controlling Person's creditworthiness is at least substantially similar to or greater than that of Buyer's existing control Person(s) and (iii) any Person surviving a merger or consolidation with regard to Buyer or the Company (if no longer the same legal entity as Buyer or the Company, as the case may be) takes assignment of the O&M (unless the O&M has already terminated or expired by its terms). **[...***...]**.

Section 13.02 Contractor Transfers and Assignment. Upon written notice to Buyer, Contractor may assign or Transfer any Transaction Document to which it is a party in connection with a financing arrangement, mergers and acquisitions, or corporate reorganization so long as, in the case of a corporate reorganization not involving or resulting from a corporate financing or merger or acquisition resulting in change in control of one hundred percent (100%) of or the majority of the equity interest in Contractor, the assignee or transferee has financial resources, legal rights and experience sufficient to allow such assignee to perform Contractor's obligations under this EPC. Contractor may not assign its obligations under the EPC to an Affiliate without either obtaining Buyer's prior written consent or providing Buyer a guarantee from the ultimate parent entity of the Affiliate assignee. Buyer acknowledges that any lender or financing party may under certain circumstances assume interests and rights of Contractor under such Transaction Document.

Section 13.03 Permitted Transfers. Any permitted Transfer under this Article XIII must comply with the following:

(a) With respect to the Transfer of a Facility, Buyer and such transferee will execute and deliver a Bill of Sale substantially in the same form of Exhibit D;

(b) With respect to the Transfer of a Transaction Document, Buyer and such transferee will execute and deliver an instrument of assignment pursuant to which Buyer assigns all of its rights and obligations under such Transaction Document and such third-party transferee assumes all of such rights and obligations.

(c) The third-party transferee will enter into an agreement with Contractor substantially in the form of Exhibit F.

Section 13.04 Effect of Transfer.

(a) Any purported Transfer in violation of this Article XIII is automatically null and void. If any transferee of the Facility has taken title to the Facility in violation of this Article XIII, then Contractor (in its capacity as Contractor under this EPC or as Provider under the O&M), may, in its sole discretion and without liability to Customer, turn off its remote monitoring system with respect to the Facility and terminate access to BloomConnect. Upon termination of remote monitoring of the Facility, the Facility will enter "last command" mode and operate in accordance with its embedded safety protocols (including an eventual controlled shutdown).

(b) In connection with a Transfer permitted under this Article XIII, the Parties shall use commercially reasonable efforts to execute and deliver the documents and instruments necessary to effect such Transfer. Any Transfer in accordance with the terms of this Article XIII will be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

Section 13.05 Subcontractors. Nothing in this Article XIII will prohibit Contractor's ability to engage a Subcontractor or subcontract any of its obligations under any Transaction Document so long as such engagement is in accordance with Section 3.03 (*Subcontractors*) of this EPC.

Section 13.06 Competitors.

(a) No more than once a quarter Bloom may, but will not be obligated to, propose updates to the list of potential Competitors set forth in clause (2) of the definition thereof (the "Competitors List"). Buyer will have five (5) Business Days to review such list to approve or reject each proposed additional company.

(b) In the event that Contractor and Buyer cannot agree upon a proposed addition of a company name from the Competitors List, then the parties shall settle such difference of opinion pursuant to the dispute resolution process set forth in Article XI. Pending settlement of the matter, the company will be deemed to constitute a Competitor.

(c) Any Transfer of one or more Projects in the Portfolio in accordance with this Article XIII shall have no effect on the terms and conditions of this EPC and the other Transaction Documents with respect to the Projects that remain in the Portfolio.

Article XIV.
MISCELLANEOUS

Section 14.01 Governing Law, Jurisdiction, Venue. THIS EPC SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICTS OF LAW OR OTHER PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW). THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK (NEW YORK COUNTY) AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO ANY REQUEST FOR RELIEF IN AID OF ARBITRATION, A PRELIMINARY INJUNCTION, TEMPORARY RESTRAINING ORDER OR OTHER PROVISIONAL RELIEF AS A REMEDY. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING RELATING TO ANY SUCH DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

Section 14.02 Notices. All notices, provisions of documentation, reports, certifications, or other documentation, and other communications hereunder shall be in writing, shall be delivered to the applicable addresses set forth on Schedule 8, and shall be deemed given when (A) received in hand if delivered personally, (B) when sent, if by electronic mail, or (C) delivered, if mailed by overnight delivery via a nationally recognized courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its below address; provided, however, that the Parties may notify one another in writing of changes to the addresses and other recipient information in Schedule 8; such notices of changes of address and other recipient information shall be effective only upon receipt thereof. In the event the size of any attachments to a Contractor notice to Buyer prevents delivery by e-mail, Contractor may upload said attachments to the Data Room and shall give notice of any such upload to Buyer by e-mail simultaneously therewith.

Section 14.03 No Third-Party Beneficiaries. This EPC is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any (i) duty, liability, or standard of care to any Person that is not a Party, (ii) rights or interest, direct or indirect to any Person that is not a Party, (iii) in any third party as a third-party beneficiary to this EPC or the services to be provided hereunder, except that Contractor is and will be third-party beneficiary to any Ownership Covenant between the transferor and transferee of a Facility in accordance with Article XIII.

Section 14.04 Principles of Construction.

(a) Entire Agreement. The Transaction Documents embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this EPC. Each Party acknowledges that, in agreeing to enter into this EPC and the other Transaction Documents, it has not relied on any representation, warranty, collateral contract or other assurance (except those in this EPC or any Transaction Document) made by or on behalf of any other Party at any time before the signature of this EPC or any other Transaction Document. Each Party waives all rights and remedies which, but for the preceding sentence, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

(b) Interpretation. Captions or headings to Articles, Sections, clauses, sub-clauses or paragraphs of this EPC or any other Transaction Document are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this EPC or any Transaction Document.

(c) Severability. If any term or other provision of this EPC or any Transaction Document is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this EPC shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

(d) Construction of Agreement. The terms and provisions of this EPC and the other Transaction Documents represent the results of negotiations between Buyer and Contractor, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions of this EPC and the other Transaction Documents shall be interpreted and construed in accordance with their usual and customary meanings, and Buyer and Contractor hereby waive the application in connection with the interpretation and construction of this EPC and the other Transaction Documents of any rule of law to the effect that ambiguous or conflicting terms or provisions contained herein and therein shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft.

(e) Technical or Trade Usage. When words that have a well-known technical or trade meaning are used to describe materials, equipment or services, such words will be interpreted in accordance with such meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the code of any Governmental Authority, whether such references be specific or by implication, shall mean the latest standard specification, manual or code (whether or not specifically incorporated by reference in the Transaction Documents). Prudent Industry Standards, to the degree applicable, shall conform to the standards in effect at the time of performance and may change the duties and responsibilities of Contractor or Buyer, or any of their Representatives, Subcontractors or employees from those set forth in this EPC or the other Transaction Documents.

(f) Counterparts. This EPC and the other Transaction Documents may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile, portable document format or other electronic means (including, without limitation, services such as DocuSign) will be considered original signatures, and each Party shall thereafter promptly deliver original signatures to the other Party.

Section 14.05 Amendment, Modification, Waiver and Consent.

(a) Any Transaction Document may be amended, modified, or supplemented only by written agreement of all of the parties thereto.

(b) Except as otherwise provided in the Transaction Documents, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition in a Transaction Document may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but any waiver of such obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith or any other term or provision in the Transaction Documents.

Section 14.06 Independent Contractor. Contractor shall perform the Work and act at all times as an independent contractor. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures employed for execution and completion of the Work. Nothing in this EPC shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint ventures or anything other than the relationship of Customer and independent contractor. Notwithstanding Contractor's obligation to perform on behalf of Buyer certain of Buyer's obligations under some of the Project Documents, neither Contractor nor any Contractor Person shall be considered an employee, agent, subcontractor or Representative of, nor under the control of, Buyer under this EPC. Contractor shall at all times maintain supervision, direction and control over all applicable Customer Persons as is consistent with and necessary to preserve its independent contractor status. Contractor shall be responsible to Buyer for the acts and omissions of each such Contractor Person.

Section 14.07 Further Assurances. Each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this EPC and the transactions contemplated by this EPC. Each party will be responsible for its own costs and expenses incurred in connection with diligence and the drafting and negotiation of the Transaction Documents.

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IN WITNESS WHEREOF, Buyer and Contractor have caused this EPC to be signed by their respective duly authorized officers as of the Effective Date.

BUYERS:

RAD 2021 Bloom ESA Fund I, LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

RAD 2021 Bloom ESA Fund II, LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

RAD 2021 Bloom ESA Fund III, LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

RAD 2021 Bloom ESA Fund IV, LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

RAD 2021 Bloom ESA Fund V, LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

CONTRACTOR:

BLOOM ENERGY CORPORATION,
a Delaware corporation

By: /s/ Greg Cameron
Name: Greg Cameron
Title: EVP and Chief Financial Officer

Solely for purposes of Sections 5.10, 6.01(d), 6.02(I), 7.01(d), 10.04(b), 10.04(c) and 10.04(d):

RAD BLOOM PROJECT HOLDCO LLC,
a Delaware limited liability company

By: RAD Bloom Class B Borrower LLC, its managing member

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

Appendix A
Definitions
(EPC and O&M)

"Actual kWh" is defined in Section 6.01(b) of the O&M.

"Adjusted EBITDA" has the meaning, for any applicable period of determination, given to such term in Provider's most recent quarterly financial statements.

"Affected ICAs" is defined in Section 7.05 of the EPC.

"Affiliate" of any Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified, provided that notwithstanding anything in this Agreement to the contrary, Contractor is not an Affiliate of Buyer and no Customer is an Affiliate of Buyer or Contractor. For purposes of this Agreement, the direct or indirect ownership of over fifty percent (50%) of the outstanding voting securities of an entity, or the right to receive over fifty percent (50%) of the profits or earnings of an entity shall be deemed to constitute control. Such other relationships as in fact results in actual control over the management, business, and affairs of an entity, shall also be deemed to constitute control.

"After-Tax Basis" means, with respect to any payment to be actually or constructively received, the amount of such payment (the "base payment") and any further payment (the "additional payment") to such recipient so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all income taxes required to be paid by such recipient in respect of the receipt or accrual of the base payment and the additional payment, using an assumed rate equal to the Gross-up Tax Rate taking into account any income tax savings realized by the recipient as a result of the event giving rise to the payment, using an assumed rate equal to the Gross-up Tax Rate, equals the amount required to be received.

"Aggregate Actual kWh" is defined in Section 6.02(a) of the O&M.

"Aggregate Deemed kWh" is defined in Section 6.02(a) of the O&M.

"Aggregate Minimum kWh" is defined in Section 6.02(a) of the O&M.

"Aggregate Purchase Price" means, with respect to one or more Projects, the sum of all of the Purchase Prices of such Projects.

"AHJ" means with respect to a given Facility, Site, or Person, the Governmental Authority having jurisdiction over such Facility, Site, or Person.

"Ancillary Modules" means certain Modules that require additional cost. Ancillary Module may include AOMs, Batteries, Low-Pressure Gas Boosters, UPMs, and similar Modules.

"Ancillary Module Price" is defined in Schedule 7 to the EPC.

"Anti-Bribery and Anti-Corruption Laws and Regulations" means all Applicable Laws concerning or relating to bribery or corruption, including the U.S. Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010.

"Anti-Terrorism and Money Laundering Laws and Regulations" means all Applicable Laws concerning or relating to terrorism financing or money laundering, including the USA PATRIOT Act and "know your customer" rules.

"AOM" means an auxiliary output Module. It is a type of Ancillary Module.

"Applicable Law" means, as of a given date of determination, **any** applicable statute, law, regulation, ordinance, rule, determination, judgment, rule of law, order, decree, permit, approval, concession, grant, franchise, license, requirement, or any similar form of decision of, or any provision or condition of any permit, license, or other operating authorization issued by any Governmental Authority having or asserting jurisdiction over the matter or matters in question.

"Appraisal" means the Fair Market Valuation of the Portfolio, dated as of the Effective Date, as updated from time to time pursuant to Section 5.05(c)(ii) of the EPC.

"Appraiser" means DAI Management Consultants, Inc.

"As-Built Drawings" mean a revised issued for construction drawing set, including some or all of the following, as applicable: cover sheet, work site plan (work site and general arrangement drawings), Grading and drainage plan, Soil erosion and sediment control, foundation plans and details, structural plans, details and elevation, single-line electrical diagrams, electrical schematic diagrams, functional description of operation and control of the facility, network architecture drawings, power and control wiring, grounding plans, lightning and surge protection drawings, wiring diagrams, Bloom equipment Specifications, electrical schematic diagrams, and I/O list. Drawing, created after a Project is finished. As-Built Drawings are also known as record drawings and red-line drawings.

"Assignment Agreement" means an assignment and assumption agreement substantially in the form of Exhibit B to the EPC.

"Availability Period" is defined in Section 1.03 of the EPC.

"Bankruptcy Event" means, as to any Person means the filing of a petition for relief as to any such Person as debtor or bankrupt under the Bankruptcy Laws or like provision of law (except if such petition is contested by such Person and has been dismissed within ninety (90) days); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of its assets; commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, *provided*, that if such proceeding is commenced by another, such Person indicates its approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within ninety (90) days.

"Bankruptcy Laws" means 11 U.S.C. Chapter 11.

"Base Case Model" means the economic model titled "Project Yosemite Base Case model 2021.06.20 (Closing)," posted to the Data Room as of the Effective Date.

"Base Rate" is defined in Section 5.01(a) of the O&M.

"Battery" means an energy storage Module. A Battery is a type of Ancillary Module.

"BDI" means BE Development, Inc., a Delaware corporation and a wholly owned subsidiary of Contractor.

"Bill of Sale" means a bill of sale and assignment agreement substantially in the form of Exhibit D to the EPC.

"Bloom" means Bloom Energy Corporation, a Delaware corporation.

"BloomConnect" means a web-based data portal with datasets and pointers for access to such datasets through a dashboard interface that provides (i) for a period of aggregated 15-minute intervals, full-time visibility into operational status, capacity, efficiency, fuel consumption, and generation output, which may be acquired in downloadable format, and (ii) interactive graphs and animations that illustrate the benefits of sustainability, gas consumption, and energy generation, in each case tailored to the Facility.

"BOF" means, for each Site, the balance of facility items included in and integral to each Facility including, as applicable, Electrical Interconnection Facilities, the natural gas supply facilities, the water supply facilities, the data communications facilities, a water distribution module, an electric distribution module, a telemetry cabinet, the concrete foundations, and any equipment in the Facility that is not part of a Module, required on or in the vicinity of the Site, and are necessary to achieve COO and continuous operation as required under the applicable Project Documents.

"Business Day" means a day other than a Saturday, Sunday, or other day on which banks in New York, New York, or San Francisco, California, are authorized or required to close.

"Buyer" means each of the Project Companies in its capacity as a "Buyer" under the EPC.

"Buyer-Owned Data" is defined in Section 6.02(d) of the EPC.

"Buyer Default" is defined in Section 9.03 of the EPC.

"Buyer Indemnitee" is defined in Section 10.01(a) of the EPC.

"Buyer Person" means any employee, officer, consultant, agent, contractor, Subcontractor, Representative, Supplier, vendor or other representative of Buyer or any of its Affiliates, in each case while acting as such subject to Buyer's supervision, control or direction.

"Calendar Quarter" means each period of three months ending on March 31, June 30, September 30 and December 31 of each year.

"Cash Equity Investor" means RAD Bloom Class B Borrower LLC.

[...*...]**.

"Change of Control" means, with respect to a Person an event or series of events that constitute (a) a merger or consolidation of such Person with, by or into another Person; (b) any change in the ownership of more than fifty percent (50%) of the voting capital stock or equity interests of such Person in one or more related transactions; (c) the sale of all or substantially all of the assets of such Person, or (b) the transfer of management rights as to such Person.

"**[…***…]**" means:

(**[…***…]**

"Claim Notice" is a notice substantially in the form of Exhibit A to the O&M.

"COD" means, with respect to any Project, the date on which the Facility achieves COO.

"COD Package" means a certificate substantially in the form of Exhibit E to the EPC.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commission" means to do all of the activities set forth on Schedule 5 to the EPC.

[…*…]**.

"Commitment Expiration Date" means December 31, 2022.

"Company" means RAD Bloom Project Holdco LLC, a Delaware limited liability company.

"Company LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of the Company, dated as of the Effective Date, between the Investors.

"Competitor" means **[…***…]**.

"Confidential Information" is defined in Section 8.01 of the EPC.

"Construction Records" are defined in Section 3.08(d) of the EPC.

"Contractor" is defined in the preamble of the EPC.

"Contractor Default" is defined in Section 9.01 of the EPC.

"Contractor Indemnitee" is defined in 10.01(b) of the EPC.

"Contractor-Owned Data" is defined in Section 6.02(d) of the EPC.

"Contractor Person" means any employee, officer, consultant, agent, contractor, Subcontractor, Representative, Supplier, vendor or other representative of Contractor or any of its Affiliates, in each case while acting as such subject to Contractor's supervision, control or direction.

"Contractor Safety Plan" means the Customer Installations Group (CIG) Safety Program Manual, as may be updated from time to time, issued by Bloom and uploaded to the Data Room.

"COO" is defined in Schedule 4 to the EPC.

"COO Milestone" is defined in Schedule 4 of the EPC.

"COO Milestone Payment" is defined in Section 5.02(a)(iii) of the EPC.

"COO Milestone Payment Date" means the date on which the COO Milestone Payment is made.

"Credit Support" means, with respect to a given Project, the deposit, performance assurance or amounts otherwise posted by Contractor in connection with any Government Approvals, Permits, Incentive Agreements or as otherwise required, listed on such Project's Project Summary.

"Cumulative Output Warranty" is defined in Section 6.01(a) of the O&M.

"Customer" means each counter-party to a Customer Agreement.

"Customer Agreement" means collectively, an energy services agreement, power purchase agreement, or similar agreement, by and between BDI or such other Bloom Affiliate as predecessor in interest to Buyer, and a Customer, and includes any certifications required thereunder.

"Customer Agreement Day Extension" is defined in Section 1.02(b) of the O&M.

"Customer Rate" means, with respect to a given Project, the associated dollars per kilowatt rate paid by Customer in exchange for electricity generated by the related Facility.

"Customer Warranty" means, with respect to a given Project, the warranty and/or guaranty obligations made to the Customer in the Customer Agreement regarding the performance of the associated Facility. The Customer Warranties in each Project are described as "Customer Warranty" in each such Project's Project Package.

"Customer Warranty Payment" means, with respect to a given Project, a payment owed to the applicable Customer under its Customer Agreement for the associated Facility's failure to perform in accordance with a Customer Warranty.

"Data" is defined in Section 6.02(d) of the EPC.

"Data Room" means either (i) with respect to diligence and closing documents, the electronic data room available at https://wwwna.dfsvenue.com/, and (ii) with respect to ongoing delivery of Transaction Documents, the FTP site available at https://wwwna.dfsvenue.com/.

"Deemed kWh" is defined in Section 6.01(b) of the O&M.

"Delivery Milestone" is defined in Schedule 4 of the EPC.

"Delivery Milestone Payment" is defined in Section 5.02(a)(ii) of the EPC.

"Delivery Milestone Payment Date" means the date on which the Delivery Milestone Payment is made.

"Deposit kWs" is defined in Schedule 4 to the EPC.

"Deposit Milestone" is defined in Schedule 4 of the EPC.

"Deposit Milestone Payment" is defined in Section 5.02(a)(i) of the EPC.

"Deposit Milestone Payment Date" means the date on which the Deposit Milestone Payment is made.

"Deposit Milestone Payment Date Conditions" means the occurrence of each of the following with respect to a Project: (i) the Project is a Scheduled Project; (ii) the Buyer has received the Project Package;

(iii) the Buyer has executed the Project Package Response; (iv) the Buyer has received a Milestone Certificate; (v) achievement of the Deposit Milestone; and (vi) the Buyer has received a certificate from the Independent Engineer substantially in the form of Exhibit I-1 to the EPC.

"Dispute" is defined in Section 11.01 of the EPC.

"Economic Sanctions Laws and Regulations" means any and all economic and financial sanctions and trade embargoes imposed, administered or enforced by: (a) the U.S. government (including the U.S. Department of State and OFAC), (b) the United Nations Security Council, (c) the European Union or any of its member states, (d) Switzerland (including the State Secretariat for Economic Affairs), or (e) the United Kingdom (including Her Majesty's Treasury).

"Effective Date" is defined in the preamble of the EPC and the O&M.

"Electrical Interconnection Facilities" means the equipment and facilities required to safely and reliably interconnect a Facility to the transmission system of the Transmitting Utility, including the system between each Module, transformers and all switching, metering, communications, control and safety equipment, including the facilities described in any applicable Interconnection Agreement.

"Eligible Letter of Credit" means a standby, transferable, irrevocable letter of credit in form and substance acceptable to Company and Provider that is issued by a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, having a Credit Rating of "A-" or higher by S&P or "A3" or higher by Moody's.

"Energy Server" means a solid oxide fuel cell power generating system manufactured by Contractor, made up several interdependent Modules that collectively convert natural gas into electricity without combustion with a capacity of 150 to 5,000 kWac. It consists of, at a minimum, a fuel processing Module, an inverter Module and several power Modules.

"Environmental Law" means any Applicable Law which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"EPC" means Purchase, Engineering, Procurement, and Construction Agreement, dated as of the Effective Date, entered into by and between Contractor and Buyer.

"EPC Inputs" is defined in Section 5.05(a) of the EPC.

"EPC Term" is, with respect to a Facility, the period of time from the Effective Date until the expiration of the General Product Warranty period for that Facility under Section 6.06 of the EPC, unless the EPC is earlier terminated in accordance with its terms.

"Excess Electricity" is defined in Section 2.08(a) of the O&M.

"Excluded Hours" are defined in Section 6.01(b) of the O&M.

"Excluded Taxes" are defined in Section 5.01(c) of the EPC.

"Exclusions" are defined in Section 6.03 of the O&M.

"Facility" means collectively (A) one or more Energy Servers; (B) if applicable, depending on the Facility's configuration, site requirements, and relationship to the grid, additional Modules like booster blowers, standalone inverters, load buffers in the form of ultra-capacitors, auxiliary output modules, storage modules, and uninterruptible power Modules among other things; and (C) the related BOF. A Facility is interconnected at a particular Site behind a single utility meter, sharing a single COD and thereafter operated as a unified whole. Where a Customer Agreement provides for multiple "Phases" at a Site (i.e., discrete installations of Modules to be installed behind a single Transmitting Utility meter), each "Phase" shall be understood to be a separate "Facility" for purposes of this Agreement. Each Facility shall be located in an Approved State.

"Facility Records" is defined in Section 3.04(d) of the O&M.

"Facility Termination Event" is defined in Section 7.01 of the O&M.

"Fair Market Value" means, with respect to any Facility or Project, the price that could be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and a willing and able buyer, neither of whom is under compulsion to complete the transaction.

[…*…]**.

"FERC" means the Federal Energy Regulatory Commission and any successor.

"Final Determination" means the final resolution of liability for any Tax Claim for any taxable period, by or as a result of (i) a final and un-appealable decision, judgment, decree or other order by any court of competent jurisdiction; (ii) a final settlement with the IRS, a closing agreement or accepted offer in compromise under section 7121 or section 7122 of the Code, or a comparable agreement under the laws of other jurisdictions, which resolves the entire Tax Claim for any taxable period; (iii) any allowance of a refund or credit in respect of an overpayment of Tax, but only after the expiration of all periods during which such refund may be recovered by the jurisdiction imposing the Tax; or (iv) any other final disposition, including by reason of the expiration of the applicable statute of limitations.

"Final PIS Date" means the last date that any Facility in the Portfolio was Placed in Service.

"Fixed Charge Cover Ratio" means, for any applicable period of determination, the ratio of (a) the Adjusted EBITDA to (b) Provider's Fixed Charges for such period.

"Fixed Charges" means, for any applicable period of determination, the sum, without duplication, of (a) the total interest expenses on Indebtedness for such period, (b) any applicable income and other Taxes for such period, and (c) total Maintenance Capital Expenditures for such period.

"Force Majeure Event" means, with respect to a given Project or Facility, except to the extent inconsistent with the definition of "Force Majeure" or "Force Majeure Event" set forth in such Facility's Customer

Agreement (in which case the definition in the applicable Customer Agreement shall take precedence to the extent of the inconsistency): any event or circumstance that (a) prevents the performance a Party from performing its obligations under the EPC or O&M, as the case may be; (b) was not (1) within the reasonable control of such Party, (2) the result of the negligence or willful misconduct of such Party, or (3) the result of a breach of a Transaction Document by such Party; and (c) such Party is unable to reasonably mitigate, delay, avoid or cause to be avoided with the exercise of due diligence such event or circumstance.

"Form 566" means FERC *Form No. 556 - Certification of QF Status for Small Power Production and Cogeneration Facilities*.

"Forward-Looking Information" is defined in Section 7.02(i) of the EPC.

"FRU" means a field replacement unit, a component of a fuel cell Module.

"GAAP" means United States generally accepted accounting principles consistently applied.

"General Product Warranty" is defined in Section 6.06 of the EPC.

"Governmental Approvals" means (a) any authorizations, consents, approvals, licenses, rulings, permits, tariffs, rates, certifications, variances, orders, judgments, decrees by, or with, a relevant Governmental Authority, and (b) any required notice to, any declaration of, or with, or any registration or filing by, or with, any relevant Governmental Authority.

"Governmental Authority" means with respect to a given Person, any foreign, federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body, self-regulating regulatory authority, or other governmental authority, in each case having jurisdiction over such Person (including, if applicable, NERC, any Person to whom NERC has delegated its authority under the Federal Power Act, any Person that operates an interstate or other wholesale electric transmission system, and the Financial Industry Regulatory Authority, Inc.).

"Gross-up Tax Rate" means a composite rate equal to the sum of (i) the highest tax rate specified in Section 11 of the Code, plus (ii) the product of (I) the sum of (A) the highest state income rate applicable to corporations doing business in the state the Site is located and (B) the highest local income tax rate applicable to corporations doing business in the locality the Site is located and multiplied by (II), to the extent the Code permits the Buyer Indemnitee to deduct state and local income taxes, the rate specified in clause (i).

"Hazardous Material" means and includes those elements or compounds which are contained or regulated as a hazardous substance, toxic pollutant, pesticide, air pollutant, or as defined in any Environmental Law, order or decree of any Governmental Authority for the protection of human health, water, safety or the environment or is otherwise included in the definition of "Hazardous Materials," "Hazardous Substance" or a similar term in an Customer Agreement or a Site License.

"Hours" is defined in Section 6.01(b) of the O&M.

"IFC Set" means, with respect to a given Facility and its Site, an issued for construction drawing set, including some or all of the following, as applicable: Cover sheet, Work site plan (work site and general arrangement drawings), Grading and drainage plan, Soil erosion and sediment control, Foundation plans

and details, Structural plans, details and elevation, Battery Layout, Single-line electrical diagrams, Electrical schematic diagrams, Functional Description of Operation and Control of the Facility (for energy storage and/or micro grid only), Network Architecture Drawings, Power and control wiring, Grounding plans, Lightning and surge protection drawings, Wiring Diagrams, Bloom Equipment Specifications, Electrical schematic diagrams, Battery Enclosure Drawings and, I/O list.

"Incentive Agreement" mean, with respect to a given Facility, any agreement governing the sale or transfer of System Attributes.

"Indebtedness" of a Person shall mean without duplication (a) all indebtedness of that Person for borrowed money or for the deferred purchase price of property or services, (b) all reimbursement and other obligations with respect to letters of credit, bankers' acceptances and surety bonds, whether or not matured, (c) all obligations evidenced by notes, bonds, debentures or similar instruments, (d) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by that Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations under capital leases, (f) all obligations of that Person under commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (g) all obligations of that Person under any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured, (h) all obligations in respect of guaranties, reimbursement agreements and similar instruments, and (i) all indebtedness referred to above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon property or other assets owned by that Person, even though that Person has not assumed or become liable for the payment of such indebtedness.

"Indemnitee" means either a Buyer Indemnitee or a Contractor Indemnitee, as applicable.

"Indemnitor" means the indemnifying Party under Article X of the EPC.

"Independent Engineer" means Leidos Engineering, LLC.

"Independent Engineer Report" means the "Independent Engineer's Report: Distributed Generation Fuel Cell Project Yosemite, Draft No. 3" dated June 15, 2021, as such report may be updated by the Independent Engineer after the Effective Date.

"Indexed Customer Agreement" is defined in Section 2.06 of the O&M. If a Customer Agreement is an Indexed Customer Agreement, it will be identified in the related Project Package.

"Infringement Claim" is defined in Section 6.11 of the EPC with respect to the EPC.

"Infringement Warranty" is defined in Section 6.10 of the EPC.

"Insurance Consultant" means Moore-McNeil, LLC.

"Intellectual Property" shall mean any or all of the following and all rights therein, whether arising under the laws of the United States or any other jurisdiction: (i) all patents, utility models and patent applications (and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof), patent disclosures and inventions (whether patentable or

not); (ii) all trade secrets, know-how and confidential and proprietary information; (iii) all copyrights and copyrightable works (including Software and computer programs) and registrations and applications therefor and any renewals, modifications and extensions thereof; (iv) all moral and economic rights of authors and inventors, however denominated, throughout the world; (v) unregistered and registered design rights and any registrations and applications for registration thereof; (vi) trademarks, service marks, trade names, service names, brand names, trade dress, logos, slogans, corporate names, trade styles, domain names and other source or business identifiers, whether registered or not, together with all applications therefor and all extensions and renewals thereof and all goodwill associated therewith; (vii) semiconductor chip "mask" works, and registrations and applications for registration thereof, (viii) database rights; (ix) all other forms of intellectual property, including waivable or assignable rights of publicity or moral rights; and (x) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

"Interconnection Agreement" means an agreement between the Customer (or Buyer, as may be required) and the applicable Transmitting Utility granting permission to interconnect a Facility to the transmission or distribution system of such Transmitting Utility.

"Investors" means the Cash Equity Investor and the Tax Equity Investor.

[...*...]**.

"IRS" means the Internal Revenue Service.

"ITC" means an investment tax credit pursuant to Code Sections 38(b)(1), 46, and 48(a).

"Knowledge" means (a) as to any Person other than a natural person, the actual knowledge (including any knowledge that would have reasonably been obtained after due inquiry) of such Person and its managers, directors officers and employees who have responsibility for the transactions contemplated by this Agreement, and (b) in respect of any Person who is a natural Person, the actual knowledge (including any knowledge that would have reasonably been obtained after due inquiry) of such Person.

"kW" means kilowatt.

"kWh" means kilowatt-hour.

"Liens" means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

"Low-Pressure Gas Booster" means a Module designed to increase the pressure of natural gas supplied to a Facility by the applicable local natural gas distribution company. It is a type of Ancillary Module.

"Loss" or "Losses" means any and all claims, liabilities, damages, losses, causes of action, fines, interest, awards, penalties, Taxes, litigation, lawsuits, administrative proceedings, administrative investigations, costs and expenses (including reasonable attorneys' fees, court costs and other costs of suit, arbitration, dispute resolution or other proceedings).

"Maintenance Capital Expenditures" of the Provider shall mean, for any applicable period of determination, the sum of (a) the aggregate amount of all expenditures made by the Provider and its subsidiaries for fixed or capital assets during such period which, in accordance with GAAP, would be classified as capital expenditures, minus (b) any Indebtedness incurred to finance such expenditures,

minus (c) capital expenditures incurred for growing capacity and/or capability of the Provider's operations (only to the extent such capital expenditures referenced in this section (c) are supported by a company officer's certificate certifying to the amount of such growth expenditures) and Provider shall, upon Owner's written request and subject to Provider's reasonable confidentiality requirements, provide details and information outlining, to a commercially reasonable standard, how the capital expenditure amounts identified in an officer's certificate relate to growth activity.

"Material Adverse Effect" means, for any Person, Facility or Project, as applicable, any change, effect or occurrence that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to (a) the performance, results of operations, property or condition (financial or otherwise) of such Person, Facility or Project, as applicable (and in respect of a Person, only to the extent such occurrence could reasonably be expected to be materially adverse to such Person's ability to perform its obligations under any Transaction Document or any Project Document), (b) the validity or enforceability of any Transaction Document, any applicable Customer Agreement, any applicable Site License or the transactions contemplated by this Agreement, or (c) such Person's ability to perform its obligations under any Transaction Document or any Project Document.

"Maximum Liability" means, with respect to (a) claims arising with respect to any single Project, the Purchase Price for such Project, and (b) claims arising with respect to more than one Project, the Aggregate Purchase Price of the Projects with respect to which such claim arises.

"Measurement Date" is defined in Section 6.01(b) of the O&M.

"Measurement Period" is defined in Section 6.01(b) of the O&M.

"Mechanical Completion" means the following for a given Facility:

(a) the Facility is part of a Scheduled Project;

(b) the Facility has achieved the Delivery Milestone;

(c) no portion of the Facility has been Placed in Service;

(d) the Facility is mechanically complete in accordance with its design and functionally interconnected and is physically ready for startup and commissioning; and

(e) Contractor has delivered to Buyer a Mechanical Completion Certificate.

"Mechanical Completion Certificate" means a certificate substantially in the form attached as Exhibit G.

"Mechanical Completion Deadline" means September 30, 2022.

"Milestone(s)" means each of the (i) Deposit Milestone, (ii) Delivery Milestone, and (iii) COO Milestone.

"Milestone Certificate" means a certificate substantially in the form of Exhibit C to the EPC.

"Milestone Date" means the date upon which a Project achieves a Milestone.

"Milestone Payment" is defined in Section 5.02(e) of the EPC.

"Minimum Efficiency Level" means a heat rate of **[...***...]** British thermal units per kilowatt hour (Btu/kWh) at HHV (higher heating value).

"Minimum Production Insurance Policy" means **[…***…]**.

"Minimum Production Insurance Policy Provider Obligations" means **[…***…]**.

"Module" means standalone units of a Facility manufactured by Contractor that are housed in a single cabinet.

"Monthly Invoice" is defined in Section 5.02(a) of the EPC.

"Moody's" means Moody's Investors Service or any successor thereto.

"MW" means megawatt.

"Nameplate Capacity" means the maximum electrical output of a generator as rated by the Supplier determined at the normal operating conditions designated by the Supplier.

"NERC" means the North American Electric Reliability Corporation or any successor.

"Non-Scheduled Project" is defined in Section 1.07(a) of the EPC.

"O&M" means the Operations and Maintenance Agreement, dated as of the Effective Date, by and between Provider and Owner.

"O&M Reserve Account" is defined in Section 3.09 of the O&M.

"O&M Term" is defined in Section 1.02(a) of the O&M.

"Output Bank" is defined in Section 6.02(a) of the O&M.

"Output Guaranty" is defined in 6.01(a) of the O&M.

"Output Guaranty Payment" is defined in Section 6.05(a) of the O&M.

"Output Percentage" is defined in Section 6.01(a) of the O&M.

"Output Specification" is defined in Section 6.01(b) of the O&M.

"Output Warranties" is defined in Section 6.01(a) of the O&M.

"Owner" means RAD Bloom Project Holdco LLC, in its capacity as indirect owner of the Portfolio under the O&M.

"Owner Incentive" means, with respect to a given Project, any System Attribute listed in such Project's Project Package as the responsibility of Buyer as counter-party to a Customer Agreement.

"Owner Financing Parties" means (a) during the EPC Term, Silicon Valley Bank, as Administrative Agent and Collateral Agent, and the other Secured Parties under and as defined in the Credit Agreement signed on or about June 2021 between RAD Bloom Class B Borrower LLC as borrower, Silicon Valley Bank as Lender, Issuing Bank, Sole Coordinating Lead Arranger and Sole Bookrunner, Administrative Agent and Collateral Agent, Wilmington Trust, National Association as Depository Bank and the Lenders and Issuing Banks referred to therein and (b) **[…***…]**.

"Owner Person" means any employee, officer, consultant, agent, contractor, Subcontractor, Representative, Supplier, vendor or other representative of Owner or any of its Affiliates, in each case while acting as such subject to Owner's supervision, control or direction.

"Ownership Covenant" is defined in Section 6.03 of the EPC.

"Party" and "Parties" have the meanings set forth in the preamble of the EPC and O&M respectively.

"Payment Due Date" means, for the EPC, the date that is five (5) Business Days after Buyer's receipt of a Monthly Invoice for such payment, and for the O&M is the date established in Section 5.02(a) of the O&M.

"Payment Dispute" is defined in Section 5.02(c) of the O&M.

"Performance Release Event" shall mean the occurrence of any of the following: (i) the Fixed Charge Cover Ratio exceeds 2.0 for two consecutive Testing Periods; (ii) the fifth anniversary of the Final PIS Date; or (iii) the Provider replaces any FRUs in the Portfolio in accordance with its obligations under the O&M.

"Performance Standards" means:

- all Applicable Law;
- Prudent Industry Standards;
- the Contractor Safety Plan;
- a Facility's Project Documents;
- Supplier Requirements for component parts of the Facility.

"Permits" means all Governmental Approvals that are necessary under Applicable Law, the Project Documents and the Transaction Documents to have been obtained at such time in light of the stage of development of a given Project to site, construct, test, operate, maintain, repair, own, use, remove, replace or decommission the related Facility as contemplated by the Transaction Documents.

"Permitted Liens" means, with respect to a Facility and any component thereof, any (a) obligations or duties to any Governmental Authority arising in the ordinary course of business (including under licenses and Permits held by Contractor or Provider, to the extent de minimis in nature, and under Applicable Law); (b) obligations or duties under easements, leases or other property rights, in each case to the extent comprising a part of and referenced in the terms and conditions of the Site License; (c) mechanics', materialmen's, repairmen's and other similar liens arising in the ordinary course of business or incident to the construction, improvement, restoration or operation or maintenance of a Facility in respect of obligations (i) that are not yet due or (ii) that are being contested in good faith by appropriate proceedings so long as (x) such proceedings shall not involve any material risk of forfeiture, sale or loss of any part of such Facility and (y) the payment thereof is fully covered by adequate reserves in accordance with GAAP, bonds or other security reasonably acceptable to Buyer or Owner, as the case may be; (d) any other Liens agreed to in writing by Contractor and Buyer or by Provider and Owner; and (e) any Liens that are created by any breach or default of the Buyer under the EPC, or the Owner under the O&M.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or governmental entity or any department or agency thereof.

"Personnel" means, with respect to a Person, its direct and indirect employees, and agents.

"Placed in Service" means, with respect to any Facility, the completion and performance of any of the following activities: (1) acquisition of all Governmental Approvals necessary for the operation of such Facility, including permission to operate (PTO) from the applicable Transmitting Utility, (2) satisfactory completion of critical tests necessary for the proper operation of such Facility, (3) synchronization of such Facility onto the electric distribution and transmission system of the applicable Transmitting Utility, and (4) the commencement of regular, continuous, daily operation of such Facility.

"Portfolio" means, as of a given date of determination, (i) under the EPC, all of the Scheduled Projects listed in Schedule 2 of the EPC as of such date and (ii) under the O&M, all of the Scheduled Projects that have achieved COO listed in Schedule 1 of the O&M as of such date. As of the Effective Date, the Portfolio will consist of all Scheduled Projects listed on Schedule 2 to the EPC.

"Portfolio Credit Criteria" is defined in Schedule 1B to the EPC.

"Portfolio Data" is defined in Section 3.05(a) of the O&M.

"Portfolio Warranties" means the Output Guaranty, the Output Warranty, and each Customer Warranty.\

"Presentation Date" is defined in Section 1.03 of the EPC.

"Prohibited Activities" is defined in Section 6.03(a) of the EPC.

"Project" means (i) a Facility, (ii) the associated Project Documents for such Facility, (iii) the contractual access rights to the Site of such Facility, and (iv) the Customer.

"Project Company" or "Project Companies" means each of the following Delaware limited liability special purpose project companies created specifically for the purpose of owning Facilities in the Portfolio, initially wholly owned, directly or indirectly, by Bloom Energy Corporation, the membership interests of which shall be or have been sold in its entirely to the Company pursuant to the EPC: RAD 2021 Bloom ESA Fund I, LLC, RAD 2021 Bloom ESA Fund II, LLC, RAD 2021 Bloom ESA Fund III, LLC, RAD 2021 Bloom ESA Fund IV, LLC and RAD 2021 Bloom ESA Fund V, LLC, a Delaware limited liability company.

"Project Company Transfer Date" is defined in Section 6.02 of the EPC.

"Project Criteria" is defined in Schedule 1A to the EPC.

"Project Documents" means, with respect to a given Project, to the extent Buyer, as successor in interest to BDI, is a counter-party (i) the Customer Agreement, (ii) the Site License, (iii) the Interconnection Agreement (in limited jurisdictions), (iv) the Incentive Agreements, and (v) the Permits.

"Project Model" means a financial model based on the Base Case Model, updated pursuant to Section 5.05 of the EPC.

"Project Package" means, with respect to a given Project as of a given date of determination, an executed form substantially in the form of Exhibit A to the EPC and all associated contracts delivered in connection therewith as an attachment or by upload to the Data Room.

"Project Package Response" means Buyer's response to a Project Package in substantially the form set out in Exhibit A to the EPC, as executed by Buyer.

"Project Party" means any counter-party to a Project Document with Buyer.

"Property Taxes" means any real or personal property Taxes related to the Site, the Project, or any material, equipment, or other property that will be incorporated into the Project.

"**[…***…]**" means:

[…*…]**.

"Provider" means Bloom Energy Corporation, a Delaware corporation, in its capacity as operations and maintenance provider under the O&M.

"Provider Person" means any employee, officer, consultant, agent, contractor, Subcontractor, Representative, Supplier, vendor or other representative of Provider or any of its Affiliates, in each case while acting as such subject to Provider's supervision, control or direction.

"Prudent Electrical Practices" means those practices, methods, equipment, specifications, and standards of safety and performance, as the same may change from time to time, as are commonly used by a significant portion of the grid-tied fuel cell electrical generation industry operating in the United States and/or approved or recommended by the NERC as good, safe, and prudent engineering practices in connection with the design, construction, operation, maintenance, repair, and use of electrical and other equipment, facilities, and improvements of electrical generating facilities, including any applicable practices, methods, acts, guidelines, standards, and criteria of FERC and all Applicable Law.

"Prudent Industry Standards" means, at a given point in time (a) any of the practices, methods, and acts engaged in or approved by a significant portion of the United States electric power generating industry prior to such time and by constructors, operators, or maintainers of facilities similar in size and operational characteristics to the Facility, (b) with respect to electrical work specifically, Prudent Electrical Practices, or (C) any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at the lowest reasonable costs consistent with Applicable Law and the Authorizations, environmental considerations, good business practices, reliability, safety, expedition, and the Supplier's maintenance requirements, provided that "Prudent Industry Standards" is not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of the acceptable practices methods or acts generally accepted in such industry having due regard for, among other things, the Supplier's maintenance requirements, the requirements of Governmental Authorities and any applicable agreements.

"Purchase Date" is defined in Section 6.02 of the EPC.

"Purchase Price" with respect to a Project is the fair market value of the Project established in accordance with the Appraisal as the lower of the "cost" and "income" approaches.

"Purchase Price Adjustment" is defined in Section 5.05(b) of the EPC.

"Quarterly Output Warranty" is defined in Section 6.01(a) of the O&M.

"Quarterly Report" is defined in Section 3.05(b) of the O&M.

"Redeployment Agreement" is defined in Section 2.04 of the O&M.

"Reimbursable Work" is defined in Section 5.02(d) of the EPC.

"Remarketing Activities" is defined in Section 2.05 of the O&M.

"Removal Event" is defined in Section 1.05(a) of the EPC.

"Representatives" of a Party means such Party's authorized representatives, including its professional and financial advisors.

"Required Amount" is defined in Section 3.09 of the O&M.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

"Sanctioned Person" means any Person (a) identified on any list of designated Persons maintained pursuant to Economic Sanctions Laws and Regulations, including the Specially Designated Nationals and Blocked Persons List maintained by OFAC; (b) domiciled, organized or resident in, or any Governmental Authority of, a country or territory that is the subject of comprehensive Economic Sanctions Laws and Regulations; (c) owned 50% or more or controlled by, or acting for or on behalf of, directly or indirectly, any Person described in the foregoing clause (a) or (b); or (d) otherwise the subject or target of Economic Sanctions Laws and Regulations.

"Scheduled Projects" means all of the Projects that (i) are accepted by Buyer for addition to the Portfolio pursuant to Section 1.03 of the EPC or (ii) are listed on Schedule 2 to the EPC, as may be updated from time to time in accordance with the terms of the EPC during the Availability Period.

"Securities Act" means the Securities Act of 1933.

"Services" is defined in Section 2.01 of the O&M.

"Service Fees" is defined in Section 5.01(a) of the O&M.

[…*…]**.

[…*…]**.

[…*…]**.

[…*…]**.

[…*…]**.

"Shipment" means for each Facility, shipment of such Facility from Contractor's manufacturing facility to the Site.

"Similar Confidentiality Agreement" means a written non-disclosure agreement between two parties with terms and conditions similar or more stringent than those set forth in Article VIII of the EPC.

"Site License" means the license or similar contractual arrangement providing Buyer, as successor in interest to BDI, with the right of access to a Site.

"Site" means the parcel of land on which the Facility is located. The Site is identified in the Project Package.

"Software" shall mean all computer software that is necessary for Buyer to purchase, own and operate the Facilities in compliance with the terms the Transaction Documents and applicable Project Documents.

"Software License" is defined in Section 6.02(c) of the EPC.

"Specifications" means, with respect to a given Project, the specifications for such Project set forth in its Project Documents, as well as the applicable product data sheets for products manufactured by Bloom Energy Corporation and published from time to time on its website at https://www.bloomenergy.com.

"Standard Adders" means the fees set forth on Schedule 4 to the O&M for Ancillary Modules.

"Standard Cost" means the "standard cost" of replacement FRUs per unit, as determined by Bloom Energy Corporation from time to time in in accordance with its standard accounting practices and procedures.

"Subcontract" means, with respect to a Subcontractor, the contract for performing any portion of the Work.

"Subcontractor" means with respect to a particular portion of the Work or Services, the contractor, other than Contractor or Provider, performing such portion of the work, including any subcontractors of such Subcontractor.

"Sub-IG" is defined in Schedule 1A to the EPC.

"Supplier Requirements" means, with respect to a given component, the recommendations, suggestions and requirements of such component's Supplier, including Third Party Warranties, and maintenance and operating manuals, including any subsequent amendments or replacements thereof, to the extent consistent with Prudent Industry Standards.

"Supplier" shall mean a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

"System Attributes" means, with respect to a given Project, the environmental attributes, energy credits, incentives or other benefits arising in connection with the ownership and operation of the applicable Facility.

"System Capacity" means, with respect to a given Facility, the Nameplate Capacity of such Facility measured in kWs.

"System License" is defined in Section 6.02(b) of the EPC.

"Target IRR" is established in the Base Case Model.

"Tax" (and, with correlative meaning, "Taxes" and "Taxable") means any and all forms of taxation, customs, duties, imposts, charges, fees, levies, rates, penalties or other assessments whenever imposed by any Governmental Authority, including, but not limited to, transaction privileges, income, gross receipts, value added, windfall profit, severance, property, production, sales, use, license, excise, natural resources, capital, capital gains, capital transfer, inheritance, goods and services, franchise, net worth, employment, occupation, payroll, unemployment, disability, withholding, social security, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, fee, levy or other like assessment or charge of any kind whatsoever, together with any interest, penalty, fine, addition to tax, or additional amount attributable thereto.

"Tax Claim" is defined in Section 10.05 of the EPC.

"Tax Equity Investor" means **[...***...]**.

"Tax Loss" means any and all federal income tax detriments suffered by Buyer, determined at the prevailing federal income tax rate applicable to C corporations, and including, loss, in whole or in part, of the ITC, plus any penalties, interest or additions to tax relating thereto.

"Tax Return" means any return, report, declaration (including declarations of estimated tax), claim for refund, information return or similar statement relating to any Taxes (including any schedules or other attachments), including any IRS Form K-1 issued to members, and any amendments to any of the foregoing, submitted to (or required to be submitted to) a Governmental Authority.

"Termination Value" means, with respect to any Facility or Project, an amount equal to the greater of (A) the product of (i) the Purchase Price actually paid by Buyer for such Facility or Project and (ii) a fraction, the numerator of which is the number of calendar years remaining in the term of the applicable Customer Agreement, rounded up to the next integer and the denominator of which is the number of years in the original term of the applicable Customer Agreement and (B) its Fair Market Value. For the avoidance of doubt, the Termination Value shall be increased by one hundred percent (100%) of the Taxes, if any, which were paid by or on behalf of Buyer pursuant to Section 5.01(c) of the EPC for such Facility or the Facility comprising a Project and (to the extent paid or payable by Buyer) one hundred percent (100%) of any Taxes, if any, which are required to be paid by or on behalf of Contractor in connection with the return of a Facility or a Project.

"Testing Period" means each financial quarter of Provider, as determined by reference to its quarterly financial statements.

"Third Party Consent" means a consent required from a Project Party before a given Project Document can be tranched.

"Third Party Warranty" means, with respect to a given Facility, any express or implied warranties, indemnities, guaranties or other rights made by a Subcontractor or Supplier to Contractor in connection with the manufacture, service or delivery of a component to such Facility.

[…*…]**.

"Tolling Rate" means the rate due and payable under a Customer Agreement. The "Tolling Rate" may be referred to as a "usage fee", "System Operations Rate", or similar term in the Customer Agreement.

"Transaction" is defined in Section 8.02(f) of the EPC.

"Transaction Documents" means the EPC, each Assignment Agreement, each Milestone Certificate, each executed Bill of Sale, the O&M, and **[…***…]**.

"Transaction Expenses" **[…***…]**.

"Transfer" means, with respect to personal property, to sell, assign, convey, pledge, grant, or otherwise transfer an interest in and to such personal property to a third-party, either directly or by a transfer of the beneficial interest in and to such seller, assignor, conveyor, pledgor, grantor, or transferor, as the case may be.

"Transfer Agreement" means an agreement substantially in the form of Exhibit F to the EPC.

"Transmitting Utility" means, with respect to a Facility, the local electric utility company in whose territory the Facility is located.

[…*…].**

"Underperforming Facility" means with respect to the Portfolio, the Facility or Facilities determined by Provider in its reasonable discretion as most responsible for causing the Portfolio to fail to satisfy the Output Warranty.

"UPM" means an uninterruptible power Module. It is a type of Ancillary Module.

"Warranty Claim" is defined in Section 6.06 of the O&M.

"Warranty Correction" means (i) the completion of the repair or replacement of a Facility in accordance with Section 6.04(a) of the O&M, (ii) the payment of a Customer Warranty Payment or an Output Guaranty Payment in accordance with Sections 6.04(b) and 6.05(a) of the O&M respectively, or (iii) the repair or replacement of a Facility in accordance with Section 6.05(b) of the O&M.

"Warranty Correction Date" means the date Provider completes a Warranty Correction.

"Work" is defined in Section 2.01 of the EPC.

Section I.01 Other Definitional Provisions.

(1) All Schedules, Exhibits and Appendices attached to any given Transaction Document are incorporated therein by reference and made a part thereof for all purposes. References to Sections, Schedules, Exhibits and Appendices in a given Transaction Document are, unless otherwise indicated, references to Sections in, and Schedules, Exhibits and Appendices to such Transaction Document. References to a Section shall mean the referenced section and all sub-sections thereof. Any Schedule, Exhibit or Appendix defined or referred to in any Transaction Document (unless otherwise indicated)

means such Schedule, Exhibit or Appendix as from time to time amended, amended and restated, modified or supplemented.

(2) In the event of any inconsistencies between the terms and conditions of the body of a Transaction Document and any of the Schedules or Exhibits thereto, the provisions of the body of such Transaction Document shall prevail.

(3) As used in any Transaction Document and in any certificate or other documents made or delivered pursuant thereto, financial and accounting terms not defined herein or therein and financial and accounting terms partly herein or therein will have the respective meanings given to them under GAAP. To the extent that the definitions of financial and accounting terms herein or therein are inconsistent with the meanings of such terms under GAAP, the definitions contained herein or therein will control.

(4) The words “hereof”, “herein”, “hereunder”, and words of similar import when used in this Agreement will refer to the Transaction Document such word appears in as a whole and not to any particular provision of such Transaction Document.

(5) The term “including” will mean “including without limitation”.

(6) The definitions contained herein and in the Transaction Documents are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(7) Any agreement or instrument defined or referred to herein or in any Transaction Document, instrument or certificate delivered in connection herewith means (unless otherwise indicated herein) such agreement or instrument as from time to time amended, amended and restated, modified or supplemented and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein.

(8) Any references to a Person are also to its successors and permitted assigns.

(9) References to any statute, code or statutory provision are to be construed as a reference to the same as it exists as of the Effective Date or Purchase Date, as applicable, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

(10) Reference to days shall mean calendar days unless the term “Business Day” is used.

(11) The singular includes the plural and the plural includes the singular; and

(12) In the computation of periods of time from a specified date to a later specified date, the words “to” and “until” each mean to buy excluding and the word “through” means to and including.

Schedule 1

Competitors

Update Date: June 22, 2021

a. **[...***...]**
b. **[...***...]**
c. **[...***...]**
d. **[...***...]**
e. **[...***...]**
f. **[...***...]**
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ai. **[...***...]**
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ak. **[...***...]**

Schedules

Schedule 1A
Project Criteria

With respect to a given Project, the Project Criteria are as follows:

(a) the Customer for the Project meets the Credit Criteria (or if the Customer does not meet the Credit Criteria, the Portfolio continues to meet the Portfolio Credit Criteria);

(b) Either:

(i) the Customer Agreement and Site License for the Project have been executed and delivered by the parties thereto; or

(ii) the Customer Agreement and Site License for the Project are in final form and Contractor has a reasonably expectation that they will be executed by the Customer in such form;

(c) Either

(i) the Customer Agreement and Site License do not deviate materially from the standard form of Customer Agreement reviewed and approved by Buyer prior to the Effective Date; or

(ii) Buyer has reviewed and approved all material deviations in the Customer Agreement and Site License as compared to the standard form of Customer Agreement reviewed and approved by Buyer prior to the Effective Date;

(d) the Facility is eligible energy property as defined in Section 48 of the Code (except for such property expressly identified as not eligible); and

(e) the Site of the Project is located in is any United States state or commonwealth in which the Contractor originates Customer Agreements and installs Facilities.

For purposes of the Project Criteria described above:

"Credit Criteria" means the applicable Customer has a public or shadow credit rating (based on the applicable of criteria mutually-agreeable to Contractor and Buyer intended to mirror those of the rating agencies) of at least:

(i) Standard & Poor's or Fitch: **[…***…]**; or

(ii) Moody's Investor Service: **[…***…]**.

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Schedule 1B
Portfolio Credit Criteria

The Portfolio Credit Criteria are as follows:

The Concentration of Facilities in the Portfolio with Sub-IG Customers for which a Deposit Milestone Payment has been made shall not exceed the following thresholds:

(i) **[...***...]**;

(ii) **[...***...]**; and

(iii) **[...***...]**.

For purposes of the Portfolio Credit Criteria described above:

"Concentration" means the total kW of Nameplate Capacity of Facilities for which the Deposit Milestone has been invoiced by Buyers; and

"Sub-IG Customers" means Customers that have a public or shadow credit rating (based on the applicable of criteria mutually-agreeable to Contractor and Buyer intended to mirror those of the rating agencies) of less than:

(iv) Standard & Poor's or Fitch: **[...***...]**; or

(v) Moody's Investor Service: **[...***...]**.

For the purposes of these Portfolio Credit Criteria, as of the Effective Date the only Sub-IG Customer in the Portfolio (including for the avoidance of doubt, both Scheduled and Non-Scheduled Projects) is **[...***...]**. For the avoidance of doubt, if Contractor presents a Project to a Buyer pursuant to Section 1.03 that has a Customer Agreement with a new Customer (i.e. a Customer that is not a Customer in respect of a Scheduled or Non-Scheduled Project as of the Effective Date), such new Project and Customer shall be subject to the Portfolio Credit Criteria. Credit rating downgrades or changes in Customer financials following the Effective Date or the date that the Project is approved under the Section 1.03 of the EPC shall not impact whether a Customer is deemed a Sub-IG Customer.

Schedule 2
Scheduled Projects

Buyer	Site ID	Customer	Site Address	City	State
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[...***...]	[...***...]	[...***...]	[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]	[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]	[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]	[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]	[...***...]	[...***...]	[...***...]

Schedule 2

Schedule 3
Work

In connection with the Work, Contractor will perform the following activities:

Site Preparation

Conduct initial site visits and studies to assess site suitability, including:

1 Survey of the environment around the site, soil condition and other ground conditions;

- Research with applicable AHJs and Transmitting Utilities regarding installation, permitting, interconnection and other requirements;
- Site load validation and utility locates;
- If necessary, pull title reports, test gas composition or conduct geotechnical studies.

- Perform all studies and reports and prepare and file any applications necessary for the interconnection of the Facility to the distribution and transmission facilities of the applicable Transmitting Utility;
- Produce a complete set of construction drawings, either internally or in conjunction with an external design firm, in accordance with local, state, and national codes; local electric and gas utility requirements; and site-specific and Customer requirements, if any;
- Procure all necessary permits and/or approvals as required by the applicable AHJs, necessary to design, engineer, install, commission, construct, and operate the Facility;
- Secure technical approval to interconnect with the local electric utility, and coordinate the electric interconnection agreement between the host customer and the local utility;
- Engage the local gas utility to design the gas interconnection approach, and coordinate the gas contract for gas delivery to the Facility between the host customer and the local utility;
- Secure a general contractor to build the site as designed, obtain final building department sign-off, and pass any other required inspections;
- Prepare the site, including, if required, excavation and grading and the proper disposal of all excavated materials;

Delivery

- Procure and transport all materials and Components from Suppliers necessary to conduct the Work and complete the Facility in accordance with this Contract;

- Deliver to the Site the Facility;

Installation

- during the performance of the Work, keep the Site clean and free from accumulations of waste materials, rubbish and other debris resulting from the Work;
- place the Facility's Modules on a concrete pad at the Site, ready for installation and commissioning;
- install the Facility;
- during construction, secure the portion of the Site dedicated to the installation of the Facility with all proper warning signs, lights, barricades, fences and/or all other safety protections necessary;
- engage and manage all skilled and unskilled labor, supervisory, quality assurance and support service personnel of Contractor and any Subcontractors;
- act as the interface with the Customer, securing all necessary design approvals and site access permissions, as well as coordinating construction schedules. Ensure primary personnel responsible for interfacing with Facility are educated in safety procedures.

Commissioning

- connect the Facility the applicable natural gas source, water source, supervisory control and data acquisition, and electricity systems, including to the distribution and transmission facilities of the Transmission Utility;
- Commission the Facility;
- Ensure the Facility achieves COO; and
- perform all other activities, services and items, whether or not specifically described above, if such performance, provision or procurement is necessary for the installation of a complete and operable Facility.

Post-COD

- after the Facility has achieved COO, promptly remove all waste materials and rubbish from and around the Site as well as all tools, construction equipment, machinery, and surplus materials as reasonably necessary to restore the Site to the condition required by the applicable Project Documents.

Delayed Module Commissioning

- if the Facility's Project Documents provide that one or more Modules may be installed and commissioned after such Facility's COD, using commercially reasonable efforts, complete such installation and commissioning in accordance with such Project Documents.

Schedule 4

Milestones

"Deposit Milestone" means, for a given number of kWs planned to be part of the aggregate System Capacity of the Facilities in the Portfolio ("Deposit kWs") the following has occurred:

(1) Buyer has acquired from Contractor the Customer Agreement and Site License allowing Buyer to install a Facility at the Customer's Site and to sell power from such Facility to the Customer;

(2) Contractor has delivered to Buyer one or more preliminary design sets, including site plans and single-line drawings, for Facilities planned for Scheduled Projects, that will have an aggregate Nameplate Capacity equal to or greater than the Deposit kWs, which shall have been approved by the applicable Customer(s);

(3) All necessary third-party approvals (i.e., landlord consents and Customer notice-to-proceed, if applicable) have been obtained for Facilities planned for Scheduled Projects, that will have an aggregate Nameplate Capacity equal to or greater than the Deposit kWs;

(4) All local, state and federal permits necessary to commence physical construction have been obtained for Facilities planned for Scheduled Projects, that will have an aggregate Nameplate Capacity equal to or greater than the Deposit kWs; and

(5) Contractor has in inventory all necessary raw materials, equipment and components necessary for the commencement of fabrication and manufacture of Facilities with aggregate Nameplate Capacity equal to or greater than the Deposit kWs, and reasonably expects to receive any remaining raw materials, equipment and components necessary for the completion of fabrication and manufacture of such Facilities within 90 days.

"Delivery Milestone" or "Purchase Date" means the following for a given Facility;

(1) the Facility is part of a Scheduled Project;

(2) no portion of the Facility was Placed In Service;

(3) the Facility is reasonably expected to achieve the COO Milestone within ninety (90) days;

(4) the Energy Servers, and BOF for the Facility have been physically delivered to the applicable Site for such Facility and rigging of such Energy Servers to the concrete pad for the Project has been completed;

(5) The applicable Buyer **[…***…]** has received an updated Site-level schedule dated prior to the Purchase Date confirming the fair market value and the inputs to and the analysis of the cost approach and income approach otherwise provided for in the Appraisal, provided that, if the fair market value, inputs or analysis on the have changed, the applicable Buyer **[…***…]** have received an updated Appraisal reflecting the adjusted values, inputs and/or analysis for the Projects; and

(6) The applicable Buyer **[…***…]** have received a legal opinion of Stoel Rives LLP, or such other law firm as is acceptable to Contractor, with respect to federal energy regulatory matters, in each case in form and substance reasonably satisfactory to each Investor.

"COO Milestone" or "COO" means the following for a given Facility:

(1) The Facility has achieved Mechanical Completion;

(2) the Facility has achieved all of the criteria identified in the definition of 'Placed in Service';

(3) The Facility has satisfactorily completed all necessary inspections on Permits necessary for commissioning and commercial operations; and

(4) the Facility is (i) interconnected to the Customer facility in accordance with the requirements of the applicable Transmitting Utility, (ii) has successfully produced power at 100% of the System Capacity, as measured by the revenue meter, and (iii) is operating at or above the Minimum Efficiency Level, as measured at the time the Minimum Efficiency Level was tested.

Schedule 5
Commissioning Procedures

Contractor will commission each Facility as set forth below:

- Serial number verification
- Safety check of all gas line connections
- Verify utility gas line pressure
- Measure utility gas line moisture content
- Check for gas train leaks using a combustible gas detector
- Check of phase and rotation on grid connection
- Verify circuit breaker settings
- Verify circuit breakers are labeled correctly for the piece of equipment they operate
- Megger isolation test of all bussing/cabling as appropriate
- Check wired and wireless telemetry connections
- Check water system pressures and check for leakage
- Check water system anti-freezing measures if applicable
- Measure water supply conductivity, verify DI system output conductivity
- Apply any software updates to operating system
- Test controller UPS system
- Verify all cabinet door switches are reporting correctly
- Verify fuel flow control valve calibration
- Ensure proper installation of all electrical safety covers
- Certify system is ready for operation to Service Director

Schedule 6
Insurance

Insurance. At all times during the Term, without cost to Buyer, Contractor shall maintain in force and effect the following insurance, which insurance shall not be subject to cancellation, termination or other material adverse changes unless the insurer delivers to Buyer written notice of the cancellation, termination or change at least thirty (30) days in advance of the effective date of the cancellation, termination or material adverse change or if notice from the insurer to Buyer of material adverse change is not available on commercially reasonable terms then Contractor shall provide Buyer with such notice as soon as reasonably possible after becoming aware of such change; *provided,* that, unless otherwise indicated herein, following COO for a Facility, the insurance required hereunder shall only pertain to Contractor's Facility Services (including, for clarity, any warranty work or removal or restoration services provided by Contractor):

(a) Worker's Compensation Insurance as required by the laws of the state in which Contractor's employees are performing EPC Services or Facility Services;

(b) Employer's liability insurance with limits at policy inception not less than One Million Dollars ($1,000,000.00) per occurrence;

(c) Commercial General Liability Insurance, including bodily injury and property damage liability (arising from premises, operations, contractual liability endorsements, products liability, or completed operations) with limits not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate limit at policy inception, and **[…***…]**;

(d) If there is exposure, automobile liability insurance in accordance with prudent industry practice with a limit of not less than One Million Dollars ($1,000,000.00), combined single limit per occurrence;

(e) Umbrella liability insurance acting in excess of underlying employer's liability, commercial general liability and automobile liability policies with **[…***…]** per occurrence, except that any first-tier subcontractors shall be required to maintain such insurance with limits of not less than **[…***…]**;

(f) Professional errors and omission insurance with a limit of not less than One Million Dollars ($1,000,000.00) per occurrence;

(g) Environmental/pollution liability insurance with a limit of not less than One Million Dollars ($1,000,000.00) per claim;

(h) Builder's Risk/Installation Coverage for each Facility covering replacement costs of the Systems (for avoidance of doubt, this requirement is only applicable, with respect to each Facility; and

(i) Marine Cargo - Transit coverage (including air, land and ocean cargo, as applicable) on an "all-risk" basis and a "warehouse to warehouse" basis with a per occurrence limit equal to not less than 100% of the value including transit and insurance of such shipment involving the Facility at all times for which the Contractor bears or has accepted risk of loss or has responsibility for providing insurance. Coverage shall include loading, unloading and temporary storage (as applicable). Coverage shall be maintained in accordance with prudent industry practice. For avoidance of doubt, this requirement is only applicable during installation and is not required to be maintained with respect to any Facility after the transfer of title to such Facility to Buyer.

(j) Contractor shall cause Buyer and its Financing Parties to be included as additional insured to all insurance policies required in accordance with the provisions of this Agreement except for worker's compensation and professional errors and omission insurance. The required insurance must be written as a primary policy not contributing to or in excess of any policies carried by Buyer, and each must contain a waiver of subrogation, in form and substance reasonably satisfactory to Buyer, in favor of Buyer and its Financing Parties. The Contractor, the Buyer and its Financing Parties shall be loss payees under Section 6 (h) Builder's Risk/Installation Coverage as respects its interest with a BFU 438 or its equivalent.

The insurances contemplated in this clause are primary. The Parties acknowledge that, if a claim is made under any of the insurances contemplated in this Agreement, it is their intention that the insurer cannot require the Party first to exhaust indemnities referred to in this Agreement before the insurer's obligation to perform is mature, subject to the insurer's later pursuing subrogation, in which event any recovery will be credited by such insurer *pro tanto* in favor of the policyholder. Where applicable, each of these insurances will:

(a) be effected with an insurer reasonably acceptable to Buyer;

(b) contain a waiver of subrogation in favor of Buyer;

(c) include a provision that such insurance is primary insurance with respect to the interests of Buyer and Contractor and that any other insurance maintained by Buyer is excess and not contributory insurance with the insurances required under this Agreement; and

(d) provide for notification to the Buyer and its Financing Parties if there are material changes to the coverage but in particular should the primary or excess liability insurer **[…***…]**. If the insurer cannot provide notice then the Contractor shall be obligated to provide for notification within 30 days of material change to the coverage. The Contractor shall provide information to the Buyer and its Financing Parties that coverage required is not commercially available and its reasons for not being commercially available which shall be satisfactory to the Buyer and its Financing Parties.

Contractor shall provide Buyer with certificates of insurance to evidence compliance with these insurance requirements when requested by Buyer from time to time on a reasonable basis. Upon Buyer's reasonable request, Contractor shall provide for its review specific policy language concerning additional insured endorsements and exclusions from coverage.

Schedule 7
Ancillary Module Prices

Upfront Pricing		$
[…*…]**	**[…***…]**	**[…***…]**
[…*…]**	**[…***…]**	**[…***…]**
[…*…]**	**[…***…]**	**[…***…]**
[…*…]**	**[…***…]**	**[…***…]**
[…*…]**	**[…***…]**	**[…***…]**

Schedule 8
Notice Information

Contractor

Bloom Energy Corporation
4353 North 1st Street, 4th Floor
San Jose, CA 95134
Attn: General Counsel
E-mail:
Phone:

Buyer/Owner

[RAD Bloom Project Holdco LLC/ RAD 2021 Bloom ESA Fund [I-V], LLC]
c/o RAD Energy Solutions, LLC
226 West 37th Street, 3rd Floor
New York, NY 10018Attn: **[...***...]**
E-mail: **[...***...]**
Phone: **[...***...]**

Schedule 9
Non-Scheduled Projects

Buyer	Site ID	Customer	Site Address	City	State
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]
[…***…]	[…***…]	[…***…]	[…***…]	[…***…]	[…***…]

Schedule 10

[…*…]**

Exhibits

Exhibit A

Form of Project Package (Site ID:[######]

This Project Package, dated _____, 20__, is delivered pursuant to Section 1.03(a) of the Purchase, Engineering, Procurement and Construction Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "Contractor**"**) and RAD 2021 Bloom ESA Fund I, LLC, a Delaware limited liability company, RAD 2021 Bloom ESA Fund II, LLC, a Delaware limited liability company, RAD 2021 Bloom ESA Fund III, LLC, a Delaware limited liability company, RAD 2021 Bloom ESA Fund IV, LLC, a Delaware limited liability company, and RAD 2021 Bloom ESA Fund V, LLC, a Delaware limited liability company (each a "Buyer" and collectively, the "Buyers"), dated as of June [__], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the **"**EPC**"**).

Capitalized terms used herein but undefined shall have the meanings set forth in the EPC.

The material details of the Project are set forth below.

Description	
Site ID:	
Customer Name	
Credit	[*Credit Rating*]/[*Not Rated*]
Site	[Address of Site]
System Capacity	*[__]* kWs
Select Modules	
Project Documents	
Customer Agreement	
Site License (if separate from Customer Agreement)	
Other Project Documents (if any)	
Other Agreements	
Incentive Agreements	
Interconnection Agreements	[if signed by "Supplier" under the Customer Agreement]
Consents	
Third Party Consents	Consent of [*Project Party*] pursuant to Section [__] of [*Project Document*]
Other Information	

	Attribute Recipient System Attribute
System Attributes	Customer [none]/[____]
	Buyer [none]/[____]
	Contractor [none]/[____]
Customer Warranties	Warranty % Period of Measurement Measurement Frequency Remedies
	Standard
	Efficiency [__]% [Annual]/ [Cumulative] [Quarterly]/[Annual] [Repair, Replace]/ [Bank]
	Efficiency [__]% [Annual]/[Cumulative] [Quarterly]/[Annual] [Repair, Replace]/ [Bank]
	Other
	Output [__]% [Annual]/[Cumulative] [Quarterly]/ [Annually] [Repair, Replace]/ [Bank]
	Output [__]% [Annual]/[Cumulative] [Quarterly]/ [Annually] [Repair, Replace]/ [Bank]

Credit Support	*[None] / [_____]*
Other	☐ Indexed Customer Agreement ☐ Remarketing Obligation ☐ Other: [____]

The executed version or near final form of the following available as of the date hereof have been uploaded to the Data Room:

Customer Agreement	*[Draft]/[Executed Copy]*
Site License (if separate from Customer Agreement)	*[Draft]/[Executed Copy]*
Incentive Agreements (if any)	*[Draft]/[Executed Copy]*
Other Project Documents (if any)	*[Draft]/[Executed Copy]*
Customer Economics	*MS Excel filename "__"*

Output Specification [1]

[1]To reflect Project-specific output commitment (95% for most Facilities and 93% for any that require gas boosters as an ancillary piece of equipment – will roll up to Portfolio-level output specification, which is a weighted average of all Sites.

Contractor:

BLOOM ENERGY CORPORATION, a Delaware corporation

By: _____

Name:

Title:

Exhibit A

PROJECT PACKAGE RESPONSE

By its signature below, Buyer has determined that (check appropriate box) regarding the Proposed Project (Site ID:[######]):

The Proposed Project is accepted and will be deemed to be a Scheduled Project.
The Proposed Project is rejected.

Buyer:
[BUYER], a Delaware limited liability company

By: _____
Name:
Title:

Exhibit A

Exhibit B
Form of Assignment Agreement

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Assignment**") is made and entered into on [_____ __, 20__] ("**Purchase Date**"), by and between [BE Development, Inc., a Delaware corporation][Bloom Project Company] ("**Assignor**") and [Buyer], a Delaware limited liability company ("**Assignee**"). The Assignor and the Assignee are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, Assignee is a party to the Purchase, Engineering, Procurement, and Construction Agreement, dated as of June [__], 2021 (the "EPC"), with Bloom Energy Corporation, a Delaware corporation ("Contractor");

WHEREAS, capitalized terms used herein but undefined have the definitions in the EPC;

WHEREAS, Assignor is party to the Project Documents listed on the attached Schedule 1 (the "Project Documents") for each Project identified therein by a site identification number (each, a "Purchased Project" and collectively, the "Purchased Projects");

WHEREAS, Assignor now wishes to assign to Assignee, and Assignee wishes to assume from Assignor, all of Assignor's rights, title, interest, duties, obligations and liabilities under the Project Documents; and

WHEREAS, Assignor and Assignee now desire to enter into this Assignment to evidence the transfer of the Project Documents.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Section 1 Assignment and Assumption. As of the Purchase Date, with respect to each Purchased Project, Assignor assigns to Assignee all of its right, title and interest in and to the Project Documents, solely to the extent such Project Documents relate to such Purchased Project and Assignee both (a) assumes all of the duties, obligations and liabilities of the Assignor arising under and in connection with the Project Documents and (b) is bound by the terms and the conditions of such Project Documents, in each case solely to the extent such Project Documents relate to such Purchased Project (the "Assignment"). Upon effecting the Assignment, Assignor shall be relieved of all of its duties, obligations and liabilities under the Project Documents, solely to the extent such Project Documents relate to such Purchased Project; *provided* that Assignor shall in no event be released from any such duty, obligation or liability arising or relating to any event occurring prior to the Purchase Date or any Project contemplated by the Project Documents that is not a Purchased Project.

Section 2 Representations and Warranties regarding the Project. As of the Purchase Date, Assignor represents and warranties with respect to each Purchased Project the following:

(a) the Purchased Project is a Scheduled Project;

(b) Contractor has delivered to Assignee a copy of each Project Document for the Purchased Project and each such copy is true, complete and correct in all material respects;

(c) No Project Document for the Purchased Project has been amended, assigned, revised, terminated or otherwise modified except as described on Schedule 1;

(d) Each Project Document and each Third Party Consent for the Purchased Project has been duly authorized and executed by and is a legal, valid and binding obligation of Assignor, is in full force and effect, and is enforceable against Assignor, in accordance with its respective terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity;

(e) To the knowledge of Assignor, the obligations of the Project Parties to the Project Documents for such Purchased Project are not claimed to be, nor are subject to any material claims, defenses, counterclaims or setoffs against or by Assignor. There are no outstanding indemnification claims against Assignor owed to a counterparty under any such Project Document;

(f) Contractor has not granted any Lien or similar interest in or to any Project Document for the Purchased Project; and

(g) Contractor has obtained and delivered to Assignee a copy of every Third Party Consent required to sell to Assignee such Purchased Project, executed by the parties thereto.

Section 3 Representations and Warranties of the Parties. Each Party represents and warrants to the other Party that, as the Purchase Date:

(a) Organization and Good Standing. Such Party is an entity duly formed or incorporated, as applicable, validly existing and in good standing under the laws of the State of Delaware and has all limited liability company or corporate, as applicable, power and authority to perform the Assignment.

(b) No Violation

. The execution and delivery by such Party of this Assignment and the performance by such Party of this Assignment will not (a) violate any applicable law to which such Party is subject, (b) conflict with or cause a breach of any provision in the organizational documents of such Party, or (c) cause a breach of, constitute a default under, cause the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any authorization, consent, waiver or approval under any contract, license, instrument, decree, judgment or other arrangement to which any such Party is a party.

(c) Compliance with Applicable Laws. Such Party is in compliance with all applicable laws required to perform the Assignment.

Section 4 Applicable Law; Disputes; Jurisdiction. This Assignment and any actions arising out of or relating to this Agreement shall be governed by and construed and interpreted in accordance with the laws of the state of New York and the United States of America without regard to the conflict of law provisions thereof other than Section 5-1401 and Section 5-1402 of the General Obligations Law. All

disputes arising out of or in relation to this Assignment shall be resolved by arbitration conducted by one or three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The seat of the arbitration shall be the City of New York. This agreement to arbitrate and the conduct of the arbitration shall be governed by the Federal Arbitration Act. Any Dispute concerning the propriety of the commencement of the arbitration shall be finally settled by the arbitral tribunal. The arbitration award shall be final and binding on the parties, and the parties undertake to carry out any award without delay. Judgment on the award may be entered by any court having jurisdiction of the award or having jurisdiction over the relevant party or its assets. In accordance with Rule 37 of the Commercial Arbitration Rules of the American Arbitration Association, a request for interim measures addressed to a judicial authority shall not be deemed incompatible with the agreement to arbitrate herein or a waiver of the right to arbitrate. **THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK (NEW YORK COUNTY) AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO ANY REQUEST FOR RELIEF IN AID OF ARBITRATION, A PRELIMINARY INJUNCTION, TEMPORARY RESTRAINING ORDER OR OTHER PROVISIONAL RELIEF AS A REMEDY. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING RELATING TO ANY SUCH DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.**

Section 5 Headings. The paragraph headings of this Assignment are for convenience of reference only and do not form a part of the terms and conditions of this Assignment or give full notice thereof.

Section 6 Counterparts. This Assignment may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. In lieu of the original documents, a facsimile transmission or copy of the original documents shall be as effective and enforceable as the original.

[signatures on following page]

IN WITNESS WHEREOF, the undersigned have caused this Assignment and Assumption Agreement to be signed by their respective duly authorized officers.

ASSIGNOR:
[BE Development, Inc., a Delaware corporation]

By: _____
Name:
Title:

ASSIGNEE:
[BUYER], a Delaware limited liability company

By: _____
Name:
Title:

Schedule 1 to
Assignment and Assumption Agreement

Purchased Projects and Project Documents

Project Documents [*list Project Documents for each Customer and Sites relating to each Purchased Project*]**:**

Energy Services Agreement, dated as of [_____], by and between [Supplier entity] and [Customer]

Site Identification Number	**Site Address**
ABC001.0	1 Main Street, Home Town, ST, 10000
ABC007.A	2 Center Lane, Home City, ST, 20000
ABC007.B	2 Center Lane, Home City, ST 20000

**

Project Documents [*list Project Documents for each Customer and Sites relating to each Purchased Project*]**:**

[Customer Agreement]

[Site License]

Site Identification Number (for each Purchased Project)	**Site Address**
[######.#]	[*Address*]
[######.#]	[*Address*]
[######.#]	[*Address*]

Exhibit C

Form of Milestone Certificate

To: **[Buyer]**, a [Delaware limited liability company] (the "Buyer")

This Milestone Certificate, dated _____, 20__, is given pursuant to Section 5.02(c) of that certain Purchase, Engineering, Procurement and Construction Agreement by and between the Bloom Energy Corporation, a Delaware corporation (the "Contractor**"**) and Buyer, dated as of June [__], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "EPC Agreement"). Capitalized terms used herein but undefined shall have the meanings set forth in the EPC Agreement.

Contractor hereby certifies that:

(1) With respect to amounts invoiced for the Deposit Milestone on Attachment 1 to this Milestone Certificate:.

a. Such amounts are invoiced for [__] kWs ("Deposit kWs");

b. Contractor has satisfied each of the criteria set forth in the definition of "Deposit Milestone"; and

(2) attached as Attachment 1 to this Milestone Certificate is a true and accurate list of each Facility that has achieved the Delivery Milestone or the COO Milestone since the date the last Milestone Certificate was executed and delivered.

(3) each Facility listed on Attachment 1 to this Milestone Certificate is part of a Scheduled Project;

(4) With respect to each Facility that has reached the Delivery Milestone:

a. such Facility meets the criteria set forth in the definition of "Delivery Milestone"; and

b. Contractor reasonably expected that COO will occur within three (3) months from the applicable Purchase Date or, if such date is earlier, not later than the Commitment Expiration Date;

c. Each of the representations and warranties of Contractor in Sections 7.01 and 7.02 for the applicable Project is true and correct in all material respects as of the date of this Certificate (or if such representation and warranty relates solely to earlier date, as of such earlier date), except for any representation and warranty qualified by materiality (or similarly qualified), which representation or warranty is true and correct in all respects as of the date of this Certificate (or if such representation and warranty relates solely to earlier date, as of such earlier date.

d. Contractor represents and warrants that, as of the date of this Certificate, (A) there are no judgments or lawsuits, pending or, to Contractor's Knowledge, threatened in writing, against any of the Contractor, Company or the applicable Buyer, and (B) to Contractor's

Knowledge, there are no judgments or lawsuits, pending or threatened in writing, against the applicable Customer, in each case of clause (A) or (B) hereof, that could reasonably be expected to materially impede the construction or operation of the applicable Project in accordance with any of its Project Documents or any of the Transaction Documents;

e. Contractor represents and warrants that, as of the date of this Certificate, (A) to Contractor's Knowledge, the applicable Customer has not materially breached the applicable Customer Agreement where such breach remains uncured, and (B) all required financial security required to be provided under such Customer Agreement as of the date of this Certificate has been delivered in accordance with such Customer Agreement;

f. Contractor represents and warrants that, as of the date of this Certificate that the applicable Buyer's title to the applicable Project is free and clear of all Liens other than Permitted Liens; and

g. Contractor represents and warrants that, as of the date of this Certificate, no undisputed breach of the Output Warranties exists with respect to the applicable Facility.

(5) With respect to each Facility that has reached the COO Milestone:

a. such Facility meets the criteria set forth in the definition of "COO Milestone";

b. Contractor represents and warrants that no Material Adverse Effect with respect to the Contractor, the Company, the applicable Buyer or the applicable Project has occurred and is continuing;

c. Contractor represents and warrants that, (A) to Contractor's Knowledge, the applicable Customer has not materially breached the applicable Customer Agreement where such breach remains uncured, and (B) delivery of energy under such Customer Agreement has begun;

d. Contractor represents and warrants that no condemnation of any portion of the applicable Project has occurred or, to Contractor's Knowledge, is pending, no unrepaired casualty exists with respect to such Project and no force majeure event has occurred and is continuing with respect to such Project;

e. Contractor represents and warrants that applicable Project is free and clear of all Liens other than Permitted Liens;

f. Contractor represents and warrants that all due and payable payment obligations incurred in connection with the development and construction of the applicable Project have been paid in full;

g. Contractor represents and warrants that no undisputed breach of the Output Warranties exists with respect to the applicable Facility; and

h. Contractor represents and warrants the applicable Facility is eligible to claim the full amount of state incentives reflected in the Project Model with respect to such Project.

The Payment Due Date is [____] (subject to (i) in the case of any Deposit Milestone Payment, satisfaction of each of the Deposit Milestone Payment Date Conditions, (ii) in the case of any Delivery Milestone Payment, satisfaction of each of the conditions precedent set forth in Section 6.01(b) of the EPC Agreement and (iii) in the case of any COO Milestone Payment, satisfaction of each of the conditions precedent set forth in Section 6.01(c) of the EPC Agreement)

CONTRACTOR:
Bloom Energy Corporation
a Delaware corporation

By: _____
Name:
Title:

Exhibit D

Form of Bill of Sale and Assignment

This BILL OF SALE AND ASSIGNMENT, dated as of _____ __, 20__ is made by BLOOM ENERGY CORPORATION, a Delaware corporation ("Contractor"), to [Buyer] [LLC, a Delaware limited liability company] ("Buyer"), and is delivered pursuant to Section 6.03 of the Purchase, Engineering, Procurement and Construction Agreement, by and between Buyer and Contractor, dated as of June [__], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**EPC")**, in connection with the transfer of the assets described on Attachment A attached hereto (each a "Project"). Capitalized terms used herein but undefined shall have the meanings in the EPC.

With respect to each Project, Contractor hereby assigns, conveys, sells, delivers, sets over and transfers to Buyer, for the consideration and on the terms and conditions set forth in the EPC, (i) all of Contractor's rights, title and interest in, to and under the Facility associated with such Project, (ii) to the extent assignable, any Third Party Warranties related to such Facility or any Components comprising part thereof, (iii) the System License and Software License applicable to such Facility, and (iii) all System Attributes arising in connection with the ownership or operation of such Facility, unless expressly noted in Attachment 1 (each, a "Project").

Subject to Article XIII of the EPC, this Bill of Sale shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns. Any transfer not in compliance with the foregoing shall be void.

This Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of New York.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale and Assignment to be signed by their respective duly authorized officers as of the date first written above.

CONTRACTOR:

BLOOM ENERGY CORPORATION

By: _____
Name:
Title:

Attachment 1 to Bill of Sale and Assignment

Purchase Date	Customer	Site Identification Number	Site	Facility
[##/##/####]	[*Name*]	[######.#]	*[Address]*	

Exhibit E
Form of COD Package

To: [Buyer], a Delaware limited liability company (the "Buyer")

This COD Package, dated _____, 202_, is given pursuant to Section 3.08(b) of the Purchase, Engineering, Procurement and Construction Agreement, by and between the Bloom Energy Corporation, a Delaware corporation (the "Contractor**"**) and Buyer, dated as of June [__], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the **"**EPC**"**). Capitalized terms used herein but undefined have the meanings set forth in the EPC. Delivery of the materials described below may be pursuant to Section 15.02 (*Notices*) of the EPC.

Customer: [_____]
Site Identification Number: [######.#]
Site:

Contractor hereby certifies that

(1) the As-Built for the above described Facility have either been delivered to Buyer or are attached to this COD Package; and

(2) attached to this COD Package for the Facility described above, or delivered in connection herewith, is the following:

(A) IFC Set, unless previously delivered;
(B) Third party vendor drawings, if any;
(C) Quality Documentation for Construction activities (if applicable);
(D) As-built drawings;
(E) Permitting documentation;
(F) Inspection cards (if applicable);
(G) Final waivers and releases of Liens from Contractor as general contractor; and
(H) Final waivers and releases of Liens from each Subcontractor providing services or equipment in excess of **[…***…]**, comprised of either:
  a. A final, unconditional Lien waiver; or
  b. A final, conditional Lien waiver and proof of payment by Contractor; or
  c. A bond from a surety acceptable to Buyer in the outstanding amount due to the applicable Subcontractor.

(3) attached to this COD Package for the Facility described above, or delivered in connection herewith, is the executed Interconnection Agreement, if available as of the date of this COD Package. If the executed Interconnection Agreement in unavailable as of the date of this COD Package, Contractor certifies that it is diligently seeking a copy of such Interconnection Agreement and will deliver same to Buyer promptly upon receipt.

IN WITNESS WHEREOF, the parties hereto have caused this COD Package to be signed by their respective duly authorized officers as of the date first written above.

CONTRACTOR:
BLOOM ENERGY CORPORATION

By: _____
Name:
Title:

Exhibit F
Form of Transfer Agreement

THIS TRANSFER AGREEMENT (this "**Agreement**") is made and entered into on [_____ __, 20__] ("**Transfer Date**"), by and between [Buyer], a [Delaware limited liability company] ("**Transferor**"), [Company] ("**Transferee**") and Bloom Energy Corporation, a Delaware corporation ("**Bloom**"). The Transferor and the Transferee are referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS:

WHEREAS, Transferor is a party to (i) the Purchase, Engineering, Procurement, and Construction Agreement, dated as of [*DATE*] (the "EPC"), with Bloom as contractor and (ii) the Operations and Maintenance Agreement, dated as of the same (the "O&M"), with Bloom as provider;

WHEREAS, capitalized terms used herein but undefined have the definitions in the EPC;

WHEREAS, Transferor wishes to [*assign/sell*] to Transferee and Transferee wishes to [*take assignment/ purchase*] all of Transferor's rights, title, interest, duties, obligations and liabilities under [*the Transaction Documents (the "Transferred Documents")/Transferor's Membership Interests/ and/or the Facilities (the "Transferred Facilities")*] listed on the attached Schedule 1] (collectively, the "Transferred Assets");

WHEREAS, it is a condition precedent to any Transfer under the EPC and O&M that such Transfer comply with the requirements of Article XIII of the EPC;

WHEREAS, both Parties desire to enter into this Agreement to comply with such requirements.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

Section 1 **Representations and Warranties**. Each of Transferor and Transferee represent and warrant to Bloom as of the Transfer Date:

(a) Transferee is not a Competitor of Bloom;

(b) [*If the EPC has not yet expired*,] the EPC [and O&M is/are] Transferred Assets and both have been assigned in full from Transferor to Transferee and assumed in full from Transferee to Transferor;

(c) [*If one or more Facilities are being sold*]:

(i) simultaneously with the purchase of the Facilities listed on Schedule 1, Transferee has [*taken assignment of the O&M]/[entered into an agreement substantially similar to the O&M with Bloom*] for the operations and maintenance of the Facilities that are part of the Transferred Assets;

(ii) Transferee has not engaged any third party to provide any operations and maintenance services with respect to the Transferred Facilities except Bloom;

(iii) The Transferred Facilities are entire Facilities and Transferor is not conveying any individual Modules separate from the Facility.

Section 2 **Ownership Covenant**. Transferee covenants that it will not, nor will any Transferee Person:

(a) open any Module, remove the covering of any Module, access the interior, reverse engineer, or cause or knowingly allow any third party to open, access the interior, or reverse engineer any Module, Facility, or Software (subject to the last sentence of Section 6.03(a) of the EPC, which shall apply to this Section 2(a));

(b) modify, network, rent, lease, loan, sell, distribute, or create derivative works based upon Contractor's Intellectual Property in whole or part, or cause or knowingly allow any third party to do so;

(c) Transfer any of the Transferred Assets except in compliance with the terms of Article XIII of the EPC.

Section 3 **Acknowledgement**. Transferee acknowledges that:

(a) the Transfer and the Transferred Facilities do not convey any license, expressly or by implication, to manufacture, reverse engineer, duplicate, or otherwise copy or reproduce any part of the Facility or Software without Contractor's express advance written consent;

(b) Bloom retains all right, title, and ownership of any and all (i) Intellectual Property, (ii) any Software (including any Intellectual Property contained therein), and (iii) Data, in each case licensed by Contractor to Transferor and its permitted assignees under the EPC;

(c) No right, title, or interest in any Intellectual Property, Software, or Data of Bloom is granted, transferred, or otherwise conveyed to Transferor pursuant to the Transfer except as set forth in the System License and Software License, and as otherwise expressly set forth therein;

(d) Transferee is bound by the terms and provision of Article XIII of the EPC.

Section 4 **Representations and Warranties of the Parties**. Each Party represents and warrants to the other Party that, as the Transfer Date:

(a) Such Party is a corporation, limited liability company or partnership duly formed, validly existing and in good standing under the laws of the jurisdiction in which it is organized and has all organizational power and authority to execute this Agreement.

(b) The execution and delivery by such Party of this Agreement and the performance by such Party of this Agreement will not (a) violate any applicable law to which such Party is subject, (b) conflict with or cause a breach of any provision in the organizational documents of such Party, or (c) cause a breach of, constitute a default under, cause the

acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any authorization, consent, waiver or approval under any contract, license, instrument, decree, judgment or other arrangement to which any such Party is a party.

(c) Such Party is in compliance with all applicable laws required to execute this Agreement.

Section 5 Indemnity. (a) Transferor will indemnify, defend, and hold harmless Bloom, its officers, directors, employees, members, Affiliates, and agents (each, a "Bloom Indemnitee") from any Losses to the extent arising out of or in connection with a representation made by Transferor under this Agreement that was inaccurate or untrue at the time it was made. (b) Transferee will indemnify, defend, and hold harmless each Bloom Indemnitee from any Losses to the extent arising out of or in connection with (i) a representation made by Transferee under this Agreement that was inaccurate or untrue at the time it was made, or (ii) a breach by Transferee of its obligations under this Agreement. Neither Transferor nor Transferee shall have an obligation to indemnify any Bloom Indemnitee under this Section 5 to the extent the loss is caused by or arising out of the negligence, willful misconduct, or fraud of Bloom.

Section 6 Miscellaneous.

(a) This Agreement and any actions arising out of or relating to this Agreement shall be governed by and construed and interpreted in accordance with the laws of the state of New York and the United States of America without regard to the conflict of law provisions thereof other than Section 5-1401 and Section 5-1402 of the General Obligations Law.

(b) All disputes arising out of or in relation to this Agreement shall be resolved by arbitration conducted by one or three arbitrators in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The seat of the arbitration shall be the City of New York. This agreement to arbitrate and the conduct of the arbitration shall be governed by the Federal Arbitration Act. Any Dispute concerning the propriety of the commencement of the arbitration shall be finally settled by the arbitral tribunal. The arbitration award shall be final and binding on the parties, and the parties undertake to carry out any award without delay. Judgment on the award may be entered by any court having jurisdiction of the award or having jurisdiction over the relevant party or its assets. In accordance with Rule 37 of the Commercial Arbitration Rules of the American Arbitration Association, a request for interim measures addressed to a judicial authority shall not be deemed incompatible with the agreement to arbitrate herein or a waiver of the right to arbitrate.

(c) **THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK (NEW YORK COUNTY) AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO ANY REQUEST FOR RELIEF IN AID OF ARBITRATION, A PRELIMINARY INJUNCTION, TEMPORARY RESTRAINING ORDER OR OTHER PROVISIONAL RELIEF AS A REMEDY. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING RELATING TO ANY SUCH DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.**

(d) The paragraph headings of this Agreement are for convenience of reference only and do not form a part of the terms and conditions of this Agreement or give full notice thereof.

(e) This Agreement may be executed by the parties hereto in one or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. In lieu of the original documents, a facsimile transmission or copy of the original documents shall be as effective and enforceable as the original.

[signatures on following page]

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be signed by their respective duly authorized officers.

TRANSFEROR:
[Company]
By: _____
Name:
Title:

TRANSFEREE:
[Company]
By: _____
Name:
Title:

BLOOM:
Bloom Energy Corporation
By: _____
Name:
Title:

Schedule 1
To Transfer Agreement
Transferred Assets

Exhibit G

Exhibit G
Form of Mechanical Completion Certificate

To: **[Buyer]**, a [Delaware limited liability company] (the "Buyer")

This Mechanical Completion Certificate, dated _____, 20__, is given pursuant to Section 5.02(a) of that certain Purchase, Engineering, Procurement and Construction Agreement by and between the Bloom Energy Corporation, a Delaware corporation (the "Contractor**"**) and Buyer, dated as of June [__], 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "EPC Agreement"). Capitalized terms used herein but undefined shall have the meanings set forth in the EPC Agreement.

In respect of the Facilities identified in Attachment 1 to this Certificate, Contractor hereby certifies:

(a) the Facility is part of a Scheduled Project;

(b) the Facility has achieved the Delivery Milestone;

(c) no portion of the Facility has been Placed in Service; and

(d) the Facility is mechanically complete in accordance with its design and functionally interconnected and is physically ready for startup and commissioning.

CONTRACTOR:
Bloom Energy Corporation
a Delaware corporation

By: _____
Name:
Title:

Attachment 1 to Mechanical Completion Certificate

[insert]

Exhibit H
Form of Resignation and Release

June [__], 2021

Bloom Energy Corporation, in its capacity as Sole Member of each Buyer
4353 N. 1st Street
San Jose, CA 95134

To Whom It May Concern:

Effective as of June [__], 2021,

1. I hereby resign from each manager, officer or other similar position I may hold with each of the following entities (each, a "Buyer" and together, the "Buyers"):

- RAD 2021 Bloom ESA Fund I, LLC
- RAD 2021 Bloom ESA Fund II, LLC
- RAD 2021 Bloom ESA Fund III, LLC
- RAD 2021 Bloom ESA Fund IV, LLC
- RAD 2021 Bloom ESA Fund V, LLC

For the avoidance of doubt, such resignation shall be effective as of the date mentioned above, at which time such resignation shall take effect without any further action by any party.

2. I hereby waive, release and forever discharge each Buyer, and its respective affiliates, shareholders, members, officers, directors, managers, employees, consultants, representatives, predecessors, successors and assigns (collectively, the "Buyer Parties") from any and all causes of action, suits, debts, claims, damages, expenses, penalties, losses, liabilities and demands whatsoever at law, in equity or otherwise, whether known or unknown ("Claims") that I may have against one or more of the Buyer Parties relating to such Buyer, including, but not limited to, any Claims relating to (i) any rights to indemnification or reimbursement from such Buyer, whether pursuant to its organizational documents, contract or otherwise, (ii) any past conduct of such Buyer's business or any past action taken by such Buyer or any officer, manager, member, director or employee of such Buyer, and (iii) any duties owed to me as a manager or officer of such Buyer.

Sincerely,

[_____]

Exhibit I-1
Form of Independent Engineer Certificate (Deposit Milestone)

FORM OF INDEPENDENT ENGINEER'S CERTIFICATE

[DATE]

RAD Bloom Class B Borrower, LLC
[…*…]**

[…*…]**

Silicon Valley Bank
387 Park Ave S 2nd Floor
New York, NY 10016
Attention: **[…***…]**
Email: **[…***…]**

Subject: Form of Independent Engineer's Deposit Milestone Certificate
Project Yosemite

Ladies and Gentlemen:

This certificate ("Certificate") is being delivered to Silicon Valley Bank, RAD Bloom Class B Borrower LLC, and **[…***…]** (each a "Financing Party" and collectively, the "Financing Parties"), on behalf of Leidos Engineering, LLC (the "Independent Engineer") as required by clause (d) of Section 5.02 of the Purchase, Engineering, Procurement and Construction Contract (as amended, amended and restated, supplemented or otherwise modified from time to time, the "EPC Agreement"), dated as of June 25, 2021, between RAD 2021 BLOOM ESA FUND I, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND II, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND III, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND IV, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND V, LLC, a Delaware limited liability company, and RAD BLOOM PROJECT HOLDCO LLC (each a "Buyer" and collectively, the "Buyers"), and Bloom Energy Corporation, a Delaware corporation (the "Contractor"). Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the EPC Agreement.

This Certificate was prepared with the understanding and assumption that the information provided to the Independent Engineer as to the matters covered by this Certificate is true, correct and complete, provided, however, that the Independent Engineer is not aware of any inaccuracies, misstatements or errors in the information provided. Our review and observations were performed pursuant to the scope of services under the Master Professional Services Agreement and the associated Task Authorization, both dated as of May 5, 2021, and the Task Authorization Amendment No. 1 dated June 16, 2021 (the "PSA") with the Contractor, and with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services on like projects. The Independent Engineer makes no representations or warranties to the Financing Parties regarding compliance with any other standard

except as expressly set forth in the PSA or herein. The Financing Parties entered into reliance agreements with the Independent Engineer on June 25, 2021 outlining, among other things, the terms and conditions of the Financing Parties' use of this Certificate.

As of the date of this Certificate, the Independent Engineer is of the opinion that the following conditions of the Deposit Milestone have been achieved for each Facility listed in Table 1 on Attachment A, attached hereto:

1. One or more preliminary design sets, including site plans and single-line drawings have been provided to the Buyers by the Contractor;
2. Third-party approvals, as identified by the Contractor (i.e., landlord consents and the Customer noticeto-proceed, if applicable), have been obtained; and
3. The local, state and federal permits identified by the Contractor to commence physical construction have been obtained.

This Certificate is solely for the information of, and assistance to, the signatories to the PSA and/or reliance agreement in conducting and documenting its investigation of the matters in connection with the applicable Facility and is not to be used, circulated, quoted, or otherwise referred to for any other purpose. The Independent Engineer disclaims any obligation to update this Certificate. This Certificate is not intended to, and may not, be relied upon by any party other than the signatories to the PSA and/or reliance agreement.

IN WITNESS WHEREOF, the Independent Engineer has caused this Certificate to be executed on its behalf by the undersigned on and as of the date first set forth above.

LEIDOS ENGINEERING, LLC

Name:
Title:

Name:
Title:

ATTACHMENT A

Facility List for Deposit Milestone

Facility Identification	Host	Street	City	State	Capacity (kW-AC)	Deposit Date

Exhibit I-2
Form of Independent Engineer Certificate (Delivery Milestone)

FORM OF INDEPENDENT ENGINEER'S CERTIFICATE

[DATE]

RAD Bloom Class B Borrower, LLC
[…*…]**

[…*…]**

Silicon Valley Bank
387 Park Ave S 2nd Floor
New York, NY 10016
Attention: **[…***…]**
Email: **[…***…]**

Subject: Form of Independent Engineer's Delivery Milestone Certificate
Project Yosemite

Ladies and Gentlemen:

This certificate ("Certificate") is being delivered to Silicon Valley Bank, RAD Bloom Class B Borrower LLC, and **[…***…]** (each a "Financing Party" and collectively, the "Financing Parties"), on behalf of Leidos Engineering, LLC (the "Independent Engineer") as required by clause (d) of Section 5.02 of the Purchase, Engineering, Procurement and Construction Contract (as amended, amended and restated, supplemented or otherwise modified from time to time, the "EPC Agreement"), dated as of June 25, 2021, between RAD 2021 BLOOM ESA FUND I, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND II, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND III, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND IV, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND V, LLC, a Delaware limited liability company, and RAD BLOOM PROJECT HOLDCO LLC (each a "Buyer" and collectively, the "Buyers"), and Bloom Energy Corporation, a Delaware corporation (the "Contractor"). Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the EPC Agreement.

This Certificate was prepared with the understanding and assumption that the information provided to the Independent Engineer as to the matters covered by this Certificate is true, correct and complete, provided, however, that the Independent Engineer is not aware of any inaccuracies, misstatements or errors in the information provided. Our review and observations were performed pursuant to the scope of services under the Master Professional Services Agreement and the associated Task Authorization, both dated as of May 5, 2021, and the Task Authorization Amendment No. 1 dated June 16, 2021 (the "PSA") with the Contractor, and with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services on like projects. The Independent Engineer makes no representations or warranties to the Financing Parties regarding compliance with any other standard except as expressly set forth in the PSA or herein. Financing Parties entered into reliance agreements

with the Independent Engineer on June 25, 2021 outlining, among other things, the terms and conditions of the Financing Parties' use of this Certificate.

We have not visited the Facilities to verify the representations made herein and have relied solely upon photographic and other evidence, including documentation and discussions with the Contractor, provided by others, to confirm status of those Facilities.

As of the date of this Certificate, the Independent Engineer is of the opinion that the following conditions of the Delivery Milestone have been achieved for each Facility listed in Table 1 on Attachment A, attached hereto:

1. The Energy Servers and BOF have been physically delivered to the site for each Facility, and rigging of the associated Energy Servers to the concrete pads have been completed.

Additionally, the design of the Facilities that have a capacity that is larger than 1,000 kilowatts alternating current ("kW-AC") conforms to the type of equipment and standard design approach reviewed in the Independent Engineer's Technical Review, Revision 1, dated June 1, 2021.

This Certificate is solely for the information of, and assistance to, the signatories to the PSA and/or reliance agreement in conducting and documenting its investigation of the matters in connection with the applicable Facility and is not to be used, circulated, quoted, or otherwise referred to for any other purpose. The Independent Engineer disclaims any obligation to update this Certificate. This Certificate is not intended to, and may not, be relied upon by any party other than the signatories to the PSA and/or reliance agreement.

IN WITNESS WHEREOF, the Independent Engineer has caused this Certificate to be executed on its behalf by the undersigned on and as of the date first set forth above.

LEIDOS ENGINEERING, LLC

Name:
Title:

Name:
Title:

ATTACHMENT A

Facility List for Delivery Milestone

Facility Identification	Host	Street	City	State	Capacity (kW-AC)	Delivery Date

Exhibit I-3
Form of Independent Engineer Certificate (COO Milestone)

FORM OF INDEPENDENT ENGINEER'S CERTIFICATE

[DATE]

RAD Bloom Class B Borrower, LLC
[…*…]**

[…*…]**

Silicon Valley Bank
387 Park Ave S 2nd Floor
New York, NY 10016
Attention: **[…***…]**
Email: **[…***…]**

Subject: Form of Independent Engineer's COO Milestone Certificate
Project Yosemite

Ladies and Gentlemen:

This certificate ("Certificate") is being delivered to Silicon Valley Bank, RAD Bloom Class B Borrower LLC, and **[…***…]** (each a "Financing Party" and collectively, the "Financing Parties"), on behalf of Leidos Engineering, LLC (the "Independent Engineer") as required by clause (d) of Section 5.02 of the Purchase, Engineering, Procurement and Construction Contract (as amended, amended and restated, supplemented or otherwise modified from time to time, the "EPC Agreement"), dated as of June 25, 2021, between RAD 2021 BLOOM ESA FUND I, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND II, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND III, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND IV, LLC, a Delaware limited liability company, RAD 2021 BLOOM ESA FUND V, LLC, a Delaware limited liability company, and RAD BLOOM PROJECT HOLDCO LLC (each a "Buyer" and collectively, the "Buyers"), and Bloom Energy Corporation, a Delaware corporation (the "Contractor"). Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the EPC Agreement.

This Certificate was prepared with the understanding and assumption that the information provided to the Independent Engineer as to the matters covered by this Certificate is true, correct and complete, provided, however, that the Independent Engineer is not aware of any inaccuracies, misstatements or errors in the information provided. Our review and observations were performed pursuant to the scope of services under the Master Professional Services Agreement and the associated Task Authorization, both dated as of May 5, 2021, and the Task Authorization Amendment No. 1 dated June 16, 2021 (the "PSA") with the Contractor, and with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services on like projects. The Independent Engineer makes no representations or warranties to the Financing Parties regarding compliance with any other standard

except as expressly set forth in the PSA or herein. Financing Parties entered into reliance agreements with the Independent Engineer on June 25, 2021 outlining, among other things, the terms and conditions of the Financing Parties' use of this Certificate.

We have not visited the Facilities to verify the representations made herein and have relied solely upon photographic and other evidence, including documentation and discussions with the Contractor, provided by others, to confirm status of those Facilities.

As of the date of this Certificate, the Independent Engineer is of the opinion that the following conditions of COO Milestone have been achieved for each Facility listed in Table 1 on Attachment A, attached hereto:

2. The Facility is mechanically complete in accordance with its design and functionally interconnected and is physically ready for startup and commissioning.
3. The Facility has been placed in service meaning that:
   a) Permission to operate has been received from the applicable Transmitting Utility;
   b) As evidenced by the permission to operate, we understand that the applicable Transmitting Utility has been satisfied with the testing performed to allow for proper operation of the Facility;
   c) The Facility has been interconnected and synchronized to the applicable Transmitting Utility's electric distribution and transmission system; and
   d) The commencement of regular, continuous, daily operations has occurred which means that the Facility achieved power output at 100 percent of the rated capacity.
4. The inspection requirements for commissioning and commercial operations in connection with the Facility's permits, as identified by the Contractor, have been completed; and
5. Power has been produced at 100 percent of the rated capacity, as measured by the Contractor's meter, and is operating in compliance with the Minimum Efficiency Level defined as 7,554 British thermal units per kilowatt hour ("Bty/kWh") on a higher heat value ("HHV") basis.

This Certificate is solely for the information of, and assistance to, the signatories to the PSA and/or reliance agreement in conducting and documenting its investigation of the matters in connection with the applicable Facility and is not to be used, circulated, quoted, or otherwise referred to for any other purpose. The Independent Engineer disclaims any obligation to update this Certificate. This Certificate is not intended to, and may not, be relied upon by any party other than the signatories to the PSA and/or reliance agreement.

IN WITNESS WHEREOF, the Independent Engineer has caused this Certificate to be executed on its behalf by the undersigned on and as of the date first set forth above.

LEIDOS ENGINEERING, LLC

Name:
Title:

Name:
Title:

ATTACHMENT A

Facility List for COO Milestone

Facility Identification	Host	Street	City	State	Capacity (kW-AC)	COO Date

Exhibit J
Form of Customer Estoppel Certificate

ESTOPPEL CERTIFICATE

[DATE]

Reference is made to the [__], dated as of [__][, as amended by [__]] ([as amended,] the "Agreement"), between [__], a [__] ("Customer") and [__], a Delaware limited liability company ("Supplier"). Each capitalized term used but not otherwise defined herein has the meaning assigned to such term in the Agreement.

Supplier has informed Customer that **[...***...]**, a Delaware limited liability company (together with its successors and assignees, "Tax Equity Investor") and [__], a [__] (together with its successors and assignees, "Cash Equity Investor") are relying on this certificate (this "Certificate") in connection with their respective obligations to make capital contributions to the direct owner of Supplier.

Customer hereby represents and warrants to Tax Equity Investor, Cash Equity Investor and Supplier as follows as of the date hereof:

a. The Agreement is in full force and effect, has not been amended, supplemented or modified in any way, and constitutes the entire agreement between Customer and Supplier relating to the [Systems].

b. Customer has not transferred, assigned or pledged any interest in the Agreement and has no notice of, and has not consented to, any previous transfer, assignment or pledge by Supplier of any of Supplier's rights under the Agreement.

c. Neither Customer nor, to Customer's knowledge, Supplier, is in default under the Agreement or has breached the Agreement, and to Customer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice or both, would constitute a default or breach by either Customer or Supplier under the Agreement or would allow Customer to terminate or suspend its performance under the Agreement.

d. There are no disputes or proceedings between Customer and Supplier and there exist no proceedings (including actions under the bankruptcy or similar laws of the United States or any state) pending or threatened in writing against or affecting Customer in any court or by or before any governmental authority or arbitration board or tribunal that could reasonably be expected to have a material adverse effect on the ability of Customer to perform its obligations under the Agreement.

e. Customer is not aware of any event, act, circumstance or condition constituting a [Force Majeure Event] under the Agreement.

f. Supplier does not owe any indemnity payments or any liquidated damages to Customer and Customer has no existing counterclaims, offsets or defenses against Supplier under the Agreement. Neither Customer nor Supplier has made any indemnity claim or claim for liquidated damages under the Agreement.

g. All payments, costs and expenses that are due, owing or payable by Supplier to Customer under the Agreement on or before the date hereof have been made or paid.

h. Each of the representations made by Customer in the Agreement is true and correct as of the date hereof (except to the extent any such representation expressly relates to a prior date, in which case such representation was true and correct as of such prior date).

i. Customer has the power to execute and deliver this Certificate, has taken all necessary action to authorize such execution and delivery, and has duly executed and delivered this Certificate. Such execution and delivery do not violate or conflict with any law applicable to Customer, any provisions of Customer's constitutional documents, any order or judgment of any court or other agency of governmental applicable to Customer or any of its assets or any contractual restriction binding on or affecting Customer or any of its assets.

[Signature Page Follows]

CERTAIN CONFIDENTIAL INFORMATION IN THIS EXHIBIT HAS BEEN OMITTED AND REPLACED WITH "[…*…]" BECAUSE IT IS NOT MATERIAL AND WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED.**

Exhibit 10.4

OPERATION AND MAINTENANCE AGREEMENT

between

BLOOM ENERGY CORPORATION
as Provider

and

RAD BLOOM PROJECT HOLDCO LLC
as Owner

dated as of June 25, 2021

SCHEDULES

Schedule 1 -- Portfolio Projects
Schedule 2 -- Services
Schedule 3 -- Insurance
Schedule 4 -- Service Fees and Standard Adders
Schedule 5 -- Minimum Production Insurance Policy Provider Obligations

EXHIBITS

Exhibit A -- Form of Claim Notice
Exhibit B -- Form of Quarterly Report

APPENDICES

Appendix A -- Definitions

This Operations and Maintenance Agreement (this "Agreement" or this "O&M"), dated as of June 25, 2021 (the "Effective Date"), is entered into by and between BLOOM ENERGY CORPORATION, a Delaware corporation ("Provider"), and RAD BLOOM PROJECT HOLDCO LLC, a Delaware limited liability company ("Owner"). Provider and Owner are referred to in this O&M individually, as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Provider is in the business of operating and maintaining solid oxide fuel cell power generating facilities;

WHEREAS, Owner is a company formed for the purpose of owning and operating the Projects;

WHEREAS, Owner will purchase the Projects pursuant to the EPC; and

WHEREAS, Owner desires to engage Provider to provide certain operations and maintenance services for the Facilities in the Portfolio and Provider desires to provide such operations and maintenance services.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter set forth, the Parties agree as follows.

Article I.
PROJECTS

Section 1.01 Definitions. Capitalized terms used herein shall have the meanings set forth in Appendix A.

Section 1.02 Term.

(a) With respect to each Project in the Portfolio, the term of this O&M shall commence on the COD for the associated Facility and shall end on the earliest to occur of (i) the associated Customer Agreement terminates or expires, and is not renewed, (ii) this O&M is terminated early pursuant to Article VIII, and (iii) this O&M is otherwise terminated in its entirety or with respect to the related Facility in accordance with the terms of the O&M (the "O&M Term").

(b) With respect to a given Project in the Portfolio, if the term of the applicable Customer Agreement is extended pursuant to a provision in such Customer Agreement that provides for a day-for-day extension for any period during which the Facility is not generating electricity at the Customer's election (a "Customer Agreement Day Extension"), then the O&M Term for the related Facility shall automatically be extended accordingly.

Section 1.03 Portfolio. During the Availability Period, each month Owner will deliver (or cause Contractor to deliver directly) an updated Schedule 1 (*Portfolio Projects*) to this O&M, in each case reflecting the addition of any Scheduled Projects that achieved COO, and if any, removals of Scheduled Projects from the Portfolio pursuant to the terms of this O&M or the EPC Contract, in each case during such month. If, after expiration of the Availability Period, a Project is removed from the Portfolio pursuant to the terms of the EPC or this O&M, Owner will promptly deliver to Provider an updated Schedule 1 to this O&M that reflects such removal and this O&M will terminate with respect to such removed Project.

Section 1.04 Within fifteen (15) days after the Commitment Expiration Date, Provider will notify Owner of the final Output Percentage for each of the Output Specifications for purposes of Section 5.05(a)(vi) of the EPC.

Section 1.05 The Parties acknowledge that Owner is the sole member of the "Buyers" under the EPC and Owner is entering into this O&M to secure Provider's services for the Facilities owned by the Buyers. The Parties further acknowledge that Provider is also "Contractor" under the EPC and that the circumstances giving rise to an indemnity payment from Provider under this Agreement may also give rise to an obligation payable by Contractor under the EPC. Accordingly, payment of an indemnity obligation by Provider under this Agreement may, if appropriate, be instead treated by a Buyer under the EPC as a payment by Contractor under the EPC; provided that, Provider/Contractor shall not be held liable for the same payment or obligation twice on the theory that the applicable liability is claimable under both the EPC and O&M.

Article II.
OPERATIONS AND MAINTENANCE SERVICES

Section 2.01 Services. With respect to each Project in the Portfolio, during the applicable O&M Term, Provider will (i) perform all of the ongoing operation and maintenance work contemplated by the Project Documents for such Project, including preventative and routine maintenance obligations and the obligations set forth on Schedule 2, and (ii) repair or replace the Facility associated with each Project as necessary to ensure such Facilities comply with the Portfolio Warranties and the Customer Warranties (the "Services"). Unless expressly excluded under Section 2.02, as part of the Services, Provider will perform all operation and maintenance work contemplated by each of the Customer Agreements and provide any other incidental services or incidental items not specifically described in this O&M if it may be reasonably inferred that such additional work or incidental item is reasonably necessary to provide the Services in accordance with the Performance Standards.

(a) With respect to each Project in the Portfolio, the Services also include:

(i) the periodic repair or replacement of any degraded component of the Facility to the extent required by the Customer Warranties or any Warranty Claim (including FRUs in accordance with Section 2.04 *(FRU Replacement)*);

(ii) the processing of any Warranty Claim in accordance with Section 6.05 (*Warranty Claims*);

(iii) the periodic reporting required under Section 3.04 (*Notifications, Reporting and Record-Keeping*);

(iv) the provision of access to BloomConnect; and

(v) removal of a Facility in accordance with Section 2.03 (i) upon the purchase of a Facility under Section 7.02 (*Facility Termination Event Remedies*) or (ii) in connection with an Owner termination of this O&M for a Facility under 8.01(a) (*Owner Termination*).

(b) Notwithstanding the foregoing, if a Facility is idle due to a scheduled outage, a Customer Agreement Day Extension, or any other curtailment, which idling is not due to Provider's breach of this O&M, Provider shall continue to perform the operation and maintenance services require to facilitate a safe and reliable restart of the Facility following such idle period, and all such periods (including ramp-down and ramp-up) will be excluded from the calculation of the Portfolio Warranties.

Section 2.02 Exceptions and Exclusions.

(a) For any given Project, the Services do not include and Provider will not be responsible for any of the following:

(i) any services for which the Customer expressly bears the expense under its Customer Agreement, any other applicable Project Document to which the Customer is a party, or any services that are outside of the scope of the obligations of Owner under such Customer Agreement or Project Document; *provided, that* Owner shall offer Provider the opportunity to provide such services prior to engaging any third party to perform such services for Owner; and *provided further*, that nothing in this Section 2.02(a)(i) shall detract from any obligation otherwise owed by Provider to Owner under this Agreement, including, without limitation, Provider's obligations with respect to the Portfolio Warranties;

(ii) The period during a suspension of operations of a Facility caused by a Customer Agreement Day Extension will be excluded from the calculation of the Portfolio Warranties; *provided*, Provider will be obligated to perform the activities necessary to facilitate a safe and reliable restart of the Facility at the expiration of such Customer Agreement Day Extension; and

(iii) Any services expressly stated to be performed by Provider on behalf of Owner under the Administrative Services Agreement.

(b) Provider shall have no liability for any failure to perform the Services to the extent such performance is rendered impossible by reason of (i) a breach by Owner of its obligations under any Transaction Document, (ii) a breach by a Project Party under any Project Document, or (iii) changes in Applicable Law; *provided*, *however*, that Provider shall continue to perform its other obligations under this O&M that are not affected by such breach or change.

(c) If a change in Applicable Law that would materially increase the cost to any maintenance service provider providing services that are similar in nature to the Services, **[…***…]**, and has or will materially increase the cost to Provider of performing the Services,

(i) **[…***…]**.

(ii) **[…***…]**.

(iii) **[…***…]**.

[…*…]**.

[…*…]**.

Section 2.03 Facility Removal. If Provider is required to remove a Facility in connection with Sections 2.05 (*Remarketing*), 2.07 (*Relocation*), 7.02 (*Facility Termination Event Remedies*), 8.01(d) (*Owner Termination*), or otherwise, then Provider will:

(a) remove the Facility from the Site;

(b) restore the Site to the condition required by the Project Documents; and

(c) close all utility connections and properly seal all Site penetrations.

Facility removals pursuant to Sections 7.02 (*Facility Termination Event Remedies*) and 8.01(d) are provide as part of the Services. Facility removals pursuant to Sections 2.05 (*Remarketing*) and 2.07 (*Relocation*) are excluded from the Services.

Section 2.04 Repair and Replacement of FRUs.

(a) With respect to any Facility in the Portfolio, Provider may, in its sole discretion, replace one or more FRUs included in the Facility with FRUs of a different model, so long as:

(i) the replacement model has been subjected to inspections and tests performed by Provider which indicate that it is reasonably expected to perform at least as well as the model it replaces; and

(ii) if the replacement of a FRU is made within five (5) years of the date the Facility was Placed in Service, Provider reasonably expects that, upon such replacement, the Facility will have an aggregate cost of replaced parts that is less than eighty percent (80%) of the Facility's total value (the cost of the new parts plus the value of the remaining Facility originally Placed in Service).

(b) Provider may use refurbished parts in the repair or replacement of FRUs, provided that any such refurbished parts will have passed the same inspections and tests performed by Provider on new parts of the same type.

Section 2.05 Remarketing and Redeployment Assistance. The Parties acknowledge and agree that in certain circumstances, Owner (or certain of Owner's Affiliates) may be obligated to attempt to remarket and redeploy certain Facilities in connection with the termination of one or more Customer Agreements with respect to such Facilities pursuant to the applicable Customer Agreement or an agreement between Owner (or the applicable Owner Affiliate or other predecessor-in-interest) and the applicable Customer Agreement Customer(s) ("Redeployment Agreement"). In such event, Provider agrees to assist Owner in its efforts to resell or redeploy each such Facility, using at least that degree of effort as is required of Owner (or the applicable Owner Affiliate or other predecessor-in-interest) pursuant to the applicable Redeployment Agreement; without in any way limiting the foregoing, Provider assistance shall include, without limitation, taking the following actions for Owner's benefit upon request: (a) on a nondiscriminatory basis with respect to other similar equipment of Provider, distributing to its sales organization information on the availability, location and price of such Facility, and agreeing to provide to a prospective purchaser of such unit or the output thereof, as applicable, at no cost to such purchaser a certificate of maintainability with respect to such unit, (b) causing such Facility to be reinstalled at the applicable purchaser's site at Provider's then prevailing installation rates, including procuring and installing any necessary BOF equipment related thereto, (c) causing such Facility to be refurbished or reconfigured as necessary or appropriate to facilitate such resale or redeployment, and (d) entering into an operations and maintenance agreement for all operations and maintenance services necessary to operate such Facility following resale or redeployment at Provider's then prevailing maintenance rates for similar equipment and including a scope of work, performance guaranties, and indemnification provisions similar in all material respects to the Customer Agreement pursuant to which the applicable Facility was originally installed (collectively, the "Remarketing Activities"). All of Provider's reasonable costs and expenses (including a reasonable allocation of personnel hours) incurred in connection with the actions described in this Section 2.04 shall be reimbursed by Owner, and Provider will reasonably cooperate with Owner to provide Owner with any documentation that is required pursuant to the applicable Customer Agreement or Redeployment Agreement to support such costs and expenses.

Section 2.06 Relocation or Removals of Power Modules. In the event that a Customer Agreement permits the applicable Customer to require the relocation or removal of power modules, Owner may, upon request made by such Customer pursuant to the provisions of the applicable Customer Agreement, require Provider to relocate or remove power modules pursuant to this Section 2.06.

(a) In the event that one or more power modules are to be relocated pursuant to this Section 2.06, Provider shall promptly perform all actions necessary for the removal of such power modules from the

original Site(s) and the transportation to, and reinstallation and resumption of operations of, such power modules at the relocation Site(s) determined in accordance with the applicable Customer Agreement. Provider shall bear all costs associated with such relocation unless the applicable Customer is required to bear such costs pursuant to the terms of the applicable Customer Agreement, in which case (i) Provider and Owner shall cooperate in good faith to prepare appropriate documentation of such costs, (ii) Owner shall cause the relevant Project Company to use all commercially reasonable efforts to obtain payment from the applicable Customer as permitted under the applicable Customer Agreement, and (iii) Owner will promptly remit to Provider all payments obtained from the applicable Customer in respect of such costs associated with the relocation of the applicable power modules; and

(b) In the event that one or more power modules are to be removed pursuant to this Section 2.06, Provider will promptly remove such power modules from the applicable Facility(ies), and the Parties will cooperate in good faith to identify one or more Facilities in the Portfolio at which to redeploy such power modules, either as additional power modules installed in then-empty power module cabinets or to replace operating power modules nearing the end of their useful life. In identifying such Facilities, the Parties will consider (among other things) (i) the availability of empty power module cabinets, (ii) wiring or other equipment limitations, and (iii) any restrictions or limitations imposed by Legal Requirements, the Customer Agreements, and the applicable Interconnection Agreements. Until a power module is redeployed pursuant to the terms of this Section 2.06(b), Provider shall be responsible for the handling, shipping and storage of such power module, and shall bear all risk of loss with respect thereto during such period. Provider shall bear all costs associated with the redeployment of power modules pursuant to the terms of this Section 2.06(b).

Section 2.07 Provider Cooperation. At Owner's cost and request, Provider shall use commercially reasonable efforts to assist Owner and the applicable Project Company in completing any of its or their obligations under the Project Documents and this O&M.

Section 2.08 [...*...]**.

(a) **[...***...]**.

(b) **[...***...]**.

(c) **[...***...]**.

(d) **[...***...]**.

(e) **[...***...]**.

(f) Representations.

(i) **[...***...]**; and

(ii) **[...***...]**.

Section 2.09 Re-sale under Section 210 of PURPA. Provider represents and warrants that the Services are and shall be performed so as to ensure that the Facilities are not selling, and will not sell, electric energy for resale under Section 210 of the Public Utility Regulatory Policies Act of 1978.

Section 2.10 Force Majeure. If Provider cannot perform some or all of the Services due to the occurrence of a Force Majeure Event, then Provider will be excused from the Services to the extent so prevented; provided, however, that (a) Provider, no later than five (5) Business Days after the occurrence of such Force Majeure Event, provides Owner notice in writing describing the particulars of such event, including its

expected duration; (b) the applicable suspension of the Services shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) Provider shall not be relieved of any liability for an event that arose before the occurrence of the Force Majeure Event; (d) Provider shall exercise commercially reasonable efforts to correct or cure (and at all times minimize) the event or condition excusing performance and resume the Services; and (e) when Provider is able to resume performance of the Services, it shall promptly give the Owner notice in writing thereof and resume performance.

Article III.
PROVIDER'S ADDITIONAL RIGHTS AND RESPONSIBILITIES

Section 3.01 Performance Standards. Provider shall perform the Services in accordance with the Performance Standards.

Section 3.02 Permitting. At its own cost, Provider shall obtain (to the extent not already obtained) and maintain all Permits necessary to perform and complete the Services. Provider will assist Owner in the preparation and submission of any filings or notices required to be made by Owner under the terms of any Permit held by Owner under Applicable Law in connection with the Facility.

Section 3.01 Insurance.

(a) At its own cost, Provider shall obtain and maintain the insurance described in Schedule 3. Provider is not responsible for carrying property or casualty insurance, insurance for property damage, business interruption insurance, or rent loss insurance or insuring any Facility generally. To the extent any of the foregoing is required by the Project Documents, Owner is responsible for obtaining and maintaining such insurance policies.

(b) Contractor shall undertake the obligations with respect to the Minimum Production Insurance Policy as set forth in Schedule 5 attached hereto (the "Minimum Production Insurance Policy Provider Obligations").

Section 3.04 Notifications, Reporting and Record-Keeping.

(a) Notifications. With respect to any Project, Provider shall notify Owner of any of the following:

(i) any event or circumstance which has materially delayed or prevented Provider's performance of its obligations under this O&M promptly upon Provider's Knowledge thereof or an event or circumstance which would reasonably be expected to delay or prevent Provider's performance of its obligations under this O&M promptly upon Provider's receipt of written notice in respect thereof;

(ii) the occurrence of any material damage to any Facility or a Site, including a description of such damage in reasonable detail, promptly upon Provider's Knowledge thereof;

(iii) a warranty claim is made under a Customer Warranty, promptly upon Provider's Knowledge thereof;

(iv) copies of all material documents (including in connection with Permits) furnished to Provider by a Governmental Authority in respect of any Facility in the Portfolio or any Project promptly upon Provider's receipt thereof, and a copy of such documents to the extent permitted by Applicable Law;

(v) a material dispute (evidenced in writing) between Provider and a Governmental Authority in respect of any Facility in the Portfolio or any Project, promptly upon Provider's Knowledge thereof; and

(vi) any written material challenge to the status of a Permit necessary to provide the Services, promptly upon Provider's receipt thereof.

(b) Reporting. Provider shall deliver a quarterly report substantially in the form of Exhibit B to Owner within thirty (30) days after the end of each quarter (the "Quarterly Report"), which Quarterly Report will provide the status of Provider's compliance with the Portfolio Warranties.

(c) Additional Information. Upon Owner's reasonable request, Provider shall promptly provide:

(i) any information in connection with any insurance claim filed or considered to be filed by Owner with respect to a Project, and any information such insurance providers may reasonably request in connection with such claim;

(ii) to the extent not already delivered, any Facility Records requested or any other information in Provider's possession or reasonably available to Provider regarding the Services.

(d) Record-Keeping. Provider shall keep in electronic format and securely stored at one or more of Provider's offices, the following records and documentation for each Project in the Portfolio ("Facility Records"):

(i) evidence of compliance with the Portfolio Warranties; and

(ii) any other records, reports, or other documentation related to the production and sale of energy from the Facility required under the Project Documents or Applicable Law.

(e) The delivery of any records under this Section 3.04 shall be subject to any third-party confidentiality obligations and Provider's reasonable Intellectual Property concerns; without limiting the foregoing, Provider may withhold or redact any proprietary information in information provided under this Section 3.04 in Provider's reasonable discretion and Provider shall have no obligation to disclose such redacted information unless required by Applicable Law or legal compulsion by a Governmental Authority.

Section 3.05 Data Access and ownership.

(a) Provider grants Owner access to BloomConnect and all the data available therein regarding any and all Facilities in the Portfolio (the "Portfolio Data").

(b) Ownership and use of Data shall be as prescribed in the EPC.

Section 3.06 Liens. In performing its obligations hereunder, Provider shall keep each Project and Facility free and clear of all Liens, other than Permitted Liens, and shall inform Owner promptly after having Knowledge of a Lien filed by reason of Provider's acts or its failure to pay or perform any obligation under this O&M, or the Project Documents, or upon obtaining written notice of a Lien, other than a Permitted Lien, filed against the Project or related Facility for any other reason. If Provider receives notice that a Lien, other than a Permitted Lien, on any Facility or Project exists, Contractor shall promptly discharge such Lien, or else Contractor may, at its own cost and expense, contest any disputed Lien, other than a Permitted Lien, by all appropriate proceedings, provided that Contractor shall provide a bond in an amount and from a surety acceptable to Owner to protect against such Lien. Owner may, but shall have no obligation to, pay, discharge, or obtain a bond or security for any such Lien, and upon such payment, discharge, or posting of security

therefor, shall be entitled immediately to recover from Provider the amount thereof, together with all reasonable and necessary expenses actually incurred by Owner in connection therewith.

Section 3.07 [Intentionally Omitted].

Section 3.08 Fixed Charge Cover Ratio. The Provider shall maintain a Fixed Charge Cover Ratio of at least **[…***…]** for the twelve (12) month period immediately preceding each Testing Period. The Fixed Charge Cover Ratio shall be tested on the Commitment Expiration Date and at the end of each Testing Period thereafter until the earlier to occur of (i) the fifth anniversary of the Final PIS Date; and (ii) the date the Fixed Charge Cover Ratio exceeds **[…***…]** for two consecutive Testing Periods, provided that no prior breach of the Fixed Charge Coverage Ratio has occurred, and provided further, in no event shall the testing requirements herein expire prior to the second anniversary of the Final PIS Date.

Section 3.09 Failure to Meet Fixed Charge Cover Ratio. If Provider fails to meet the Fixed Charge Cover Ratio as of the end of any applicable Testing Period, the Provider shall provide security in an amount equivalent to the next twelve (12) months of payments that would be due from Owner pursuant to Section 5.01 ("the Required Amount"). The Provider may secure the Required Amount with any one of the following methods:

(a) Provider shall establish an account in Provider's name but with control arrangements in favor of Owner (the "O&M Reserve Account") and direct Owner to make any payments due from Owner hereunder into the O&M Reserve Account, up to a maximum of the Required Amount (provided that this option will not be available to Provider in the event that a claim has been filed under the Minimum Production Insurance Policy);

(b) by depositing and holding the Required Amount in the O&M Reserve Account; or

(c) by delivery of an Eligible Letter of Credit with an available balance equivalent to the Required Amount.

Provider shall notify Owner of its chosen method of funding O&M Reserve Account within five (5) Business Days after a mutual determination has been made that it has failed to maintain the required Fixed Charge Cover Ratio. If Provider fails to notify Owner of the selected funding method within the time required hereunder, the option under paragraph (a) above shall be deemed to be the selected method. If Provider timely notifies Owner that is has selected option (b) or (c), Provider shall have thirty (30) days from the date of such notice to effect the required funding of the O&M Reserve Account.

Section 3.10 Release Events.

(a) If a Performance Release Event of a type set forth in clause (i) or clause (ii) of the definition of Performance Release Event occurs, all funds in the O&M Reserve Account shall be released to the Provider by wire transfer of immediately available funds within five (5) Business Days after the occurrence of such Performance Release Event. If a Performance Release Event of a type set forth in clause (iii) of the definition of Performance Release Event occurs, an amount equal to the lower of (I) the number of FRU's replaced multiplied by the Provider's Standard Cost for the applicable Units and (II) the maximum amount that, if withdrawn from the O&M Reserve Account, would cause the balance on the O&M Reserve Account to equal **[…***…]**, shall be released to the Provider by wire transfer of immediately available funds within five (5) Business Days after the occurrence of such Performance Release Event.

(b) All funds in the O&M Reserve Account shall be released to Owner by wire transfer of immediately available funds within one Business Day after Owner's termination of this Agreement pursuant to Section 8.01(b)(i) or Section 8.01(b)(ii); provided that, Owner may apply funds in the O&M Reserve

Account as an offset against undisputed amounts owed to Owner by Provider and not paid within the time period on which the applicable obligation is required to be paid.

Article IV.
OWNER'S RIGHTS AND RESPONSIBILITIES

Section 4.01 Inspection. Owner shall have the right no more than once during each period of six (6) months upon reasonable prior written notice to examine the records relating to the Portfolio during regular business hours in the location(s) where such records are maintained by Provider for the purposes of verifying Provider's compliance with its obligations hereunder; *provided, however*, that any such representative of Owner shall be contractually subject to the obligations set forth in Article VIII (*Confidentiality*) of the EPC. Owner shall pay the reasonable cost of its inspection except in the event Owner's inspection reveals that Provider's reporting of its compliance with the Portfolio Warranties or other parameters in the Quarterly Report deviates more than **[…***…]** percent (**[…***…]**%) to Owner's detriment from that reported in the Quarterly Report, in which case all reasonable costs of Owner's inspection shall be for the account of Provider and deducted from Provider's next invoice following receipt of Owner's documentation of such costs).

Section 4.02 Cooperation. At Provider's sole cost and expense, Owner will use commercially reasonable efforts and good faith, and will cause the applicable Project Company to use commercially reasonable efforts and good faith, to cooperate and assist Provider in performing the Services, which assistance may include, upon Provider's reasonable written request, assistance in obtaining and maintaining Permits, preparing and submitting any filings or notices required under the Project Documents or Applicable Law, complying with the Performance Standards, and any administrative tasks required in connection therewith.

Section 4.03 Access. With respect to each Project, as the counter-party to each Site License is the applicable Project Company, Owner shall cause such Project Company to grant the same access to the Site provided under the Site License to Provider, as its representative, in order to perform the Services to the extent such Project Company is permitted to do so under the applicable Transaction Document and Applicable Law.

Section 4.04 Title to Replacement Parts. Title to all replacement items, parts, materials, and equipment supplied in connection with Provider's performance of the Services shall transfer to the applicable Project Company upon installation or inclusion in a Facility. Upon replacement of an item or part as part of the Services provided hereunder, Provider shall remove such item or part, title to such item or part shall pass back to Provider, and Provider shall, subject to the Performance Standards, have the right to dispose of such replaced property in any manner that it chooses in its sole discretion.

Section 4.05 Project Document Modifications. Owner will not, and will cause the applicable Project Company to not, amend, modify, supplement, or otherwise change any Project Document to which such Project Company is a party in a manner that would increase Provider's obligations or liabilities without Provider's prior written consent thereto.

Section 4.06 Force Majeure. If Owner or the applicable Project Company is rendered wholly or partially unable to perform any of its obligations hereunder due to the occurrence of a Force Majeure Event, then Owner or such Project Company will be excused from the performance of such obligation to the extent so prevented; provided, however, that (a) Owner, no later than five (5) Business Days after Owner's Knowledge of such Force Majeure Event, provides Provider notice in writing describing the particulars of such event, including its expected duration; (b) the applicable suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) neither Owner nor the applicable Project Company shall be relieved of any liability for an event that arose before the occurrence of

the Force Majeure Event; (d) Owner shall exercise commercially reasonable efforts, or shall cause the applicable Project Company to exercise commercially reasonable efforts, to correct or cure (and at all times minimize) the event or condition excusing performance and resume performance; and (e) when Owner or, as the case may be, the applicable Project Company, is able to resume performance, it shall promptly give Provider notice in writing thereof and resume performance.

Article V.
PAYMENT

Section 5.01 Cost of Services.

(a) Services Fee. Except as set forth in clause (b) below, each calendar month, Owner will pay Provider for the Services for each Project in the Portfolio, an amount equal to the sum ("Service Fees") of:

(i) the product of (A) the rate (in $/kW) specified in Schedule 4 for the applicable year ("Base Rate"), multiplied by (B) the associated Facility's System Capacity (in kW), plus

(ii) the product of (A) the Standard Adders for Ancillary Modules, multiplied by (B) the Ancillary Modules included in the Facilities, if any.

(b) If the Services are provided by Provider for a Facility for only a portion of a calendar month, the Service Fees shall be pro-rated based on the number of days the Services were provided for such Facility during such month.

(c) Exceptions to Services Fee. Owner shall not have an obligation to pay the Services Fee for any Project during the extension of "Initial Term" (as defined in the applicable Customer Agreement) of the applicable Customer Agreement resulting from a Customer Agreement Day Extension. For the avoidance of doubt, Provider will provide the Services during such period.

(d) The Services Fee is the full consideration for the Services and only the Services; *provided*, that the foregoing shall not prevent Provider's recovery of amounts actually received by Owner or the applicable Project Company from Customer pursuant to Customer's reimbursement obligations under its Project Documents for additional services provided by Provider.

(e) Owner may set off undisputed past due amounts owed by Provider against amounts owed to Provider under this O&M. Any such set off shall count as payment of amounts owed. For the avoidance of doubt, nothing in this Agreement shall be construed as a waiver or modification of any setoff right that may be available to any of the Parties under any Applicable Law.

Section 5.02 Invoices.

(a) Invoicing; Payment. Provider will invoice Owner no later than five (5) Business Days before the end of each month for performing the Services. Provider may include in a monthly invoice for the Services any other amounts due and owing from Owner to Provider under this Agreement. Owner will pay each invoice within thirty (30) days of receipt thereof unless such invoice is disputed in good faith pursuant to the terms herein.

(b) Late Payment. For any unpaid amounts due and payable by either Owner or Provider hereunder, interest shall accrue daily on such unpaid balance at the lesser of the monthly rate of (i) one percent (1%) and (ii) the highest rate permissible by law. Provider shall be under no obligation to provide or perform the Services for any Facility for which the Service Fee has not been paid in full unless Owner in good faith disputes the amount of an invoice for a Facility delivered by Provider and pays the undisputed

portion thereof, in which case Provider shall continue to provide or perform all Services for such Facility pending the resolution of such dispute pursuant to Section 5.02(c) below. For purposes of this Section 5.02(b), an offset of amounts owed shall count as a payment at the time made.

(c) Disputes. If Owner in good faith disputes any amount invoiced under this Section 5.02 (a "Payment Dispute"), then Owner must pay any undisputed portion of the invoice amount in accordance with the terms herein, and liability for the disputed portion of such invoice will be determined in accordance Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association. Upon resolution of such Dispute, any amounts determined to be owed by Owner to Provider shall be paid within ten (10) days of such determination, plus, if it is determined that such Dispute was not in good faith, interest thereon in accordance with Section 5.02(b).

Article VI.
WARRANTIES

Section 6.01 Output Guaranty and Warranty. During the O&M Term:

(a) Output Specifications. Provider covenants that the Portfolio will:

(i) maintain a Portfolio-wide cumulative average Output Percentage not less than **[...***...]** (the "Output Guaranty") as measured each Calendar Year; and

(ii) maintain both (a) a Portfolio-wide cumulative average Output Percentage not less than **[...***...]** (the "Cumulative Output Warranty"), and (b) a Portfolio-wide quarterly Output Percentage not less than **[...***...]** (the "Quarterly Output Warranty" and, together with the Cumulative Output Warranty, the "Output Warranty(ies)"). Each Output Warranty will be measured each Calendar Quarter.

(b) For purposes of this Article VI, the following terms are defined as follows:

"Output Percentage" is calculated for a Facility over a given Measurement Period as follows:

$$\text{Output Percentage} = \frac{\text{Actual kWh} + \text{Deemed kWh}}{\text{System Capacity} \times (\text{Hours} - \text{Excluded Hours})}$$

"Measurement Date" means, (a) with respect to the Output Guaranty, the last day of each Calendar Year; and (b) with respect to each Output Warranty, the last day of each Calendar Quarter.

"Measurement Period" means (a) with respect to the Output Guaranty, the period from the Facility's COD until the applicable Measurement Date; (b) with respect to the Cumulative Output Warranty, the period from the Facility's COD until the applicable Measurement Date; and (c) with respect to the Quarterly Output Warranty, each calendar quarter.

"Actual kWh" means the number of kilowatt hours (kWh) of electricity delivered by a Facility over a given Measurement Period, as measured by the Facility's internal revenue-grade meter used for billing purposes.

"Deemed kWh" means the amount of kilowatt-hours of electricity that a given Facility would have delivered but for the occurrence of certain events caused by the related Customer for which "Supplier" under the Customer Agreement is entitled to charge such Customer (including, e.g., "Deemed Delivered Energy" and similar events).

"Hours" means the number of hours that occurred during a Measurement Period.

"Excluded Hours" means the number of hours a Facility is not delivering energy during a Measurement Period due to the occurrence of an Exclusion.

"Output Specification" means the Output Percentage guaranteed by the Output Guaranty or warranted by an Output Warranty, as may be adjusted pursuant to Section 1.04.

Section 6.02 Output Bank. Provider will maintain a ledger reflecting the Output Bank for each Output Specification.

(a) For purposes of this Article VI, the following terms are defined as follows:

"Output Bank" as of a given date of determination, is calculated for a given Output Specification over the Measurement Period as follows:

$$\text{Output Bank (kWh)} = (\text{Aggregate Actual kWh} + \text{Aggregated Deemed kWh}) - \text{Aggregate Minimum kWh}$$

"Aggregate Actual kWh" means the sum of the Actual kWh for each Facility in the Portfolio during a Measurement Period.

"Aggregate Deemed kWh" means the sum of the Deemed kWh for each Facility in the Portfolio during a Measurement Period.

"Minimum kWh" as a given date of determination, is calculated for a given Facility over a Measurement Period as follows:

$$\text{Minimum kWh} = \text{System Capacity} \times (\text{Hours} - \text{Excluded Hours}) \times \text{applicable Output Specification}$$

"Aggregate Minimum kWh" means the sum of the Minimum kWh for each Facility in the Portfolio during a Measurement Period.

(b) Output Bank for Output Guaranty. Within thirty (30) days after the last day of each Calendar Year, Provider will report the balance of the Output Bank for the Output Guaranty to Owner.

(c) Output Bank for Output Warranties. Within thirty (30) days after the last day of the Calendar Quarter, Provider will report the balance of the Output Bank for each Output Warranty to Owner.

(d) Output Bank Calculations. If Owner believes that the balance of the Output Bank for a given Output Specification has been calculated in error, the Parties will work in good faith to resolve such error. If Parties are unable to agree on the balance of the Output Bank within fifteen (15) days after Owner's notice to Provider of any potentially erroneous calculation, then the procedures in Article XI (Dispute Resolution) of the EPC will apply, *mutatis mutandis*. If Provider fails to report the balance of an Output Bank within thirty (30) calendar days of such Output Bank's Measurement Date, Owner may perform its own calculations and provide the balance to Provider.

Section 6.03 Exclusions. The Output Specifications will not apply during any period during which any of the following events occur which prevent Provider's performance under this O&M (the "Exclusions"):

(a) The acts of third-parties (including Project Parties and Owner Persons) who are not Provider Persons including:

(i) Accidents, abuse, or vandalism;

(ii) Unauthorized installation, operation, repair, modification or testing; and

(iii) removal of any safety devices;

(iv) curtailment; and

(v) in respect of Shared Equipment Projects, Shared Equipment Outages occurring after the date the Shared Equipment Tripartite Agreement has been entered into by all the parties thereto.

(b) Conditions caused by movement in the physical environment in which the Facilities are installed that Provider, after reasonable care and diligence, could not have foreseen;

(c) Force Majeure Events;

(d) changes in Applicable Law that render performance of the Services impossible;

(e) an interruption in the supply of fuel or interconnection services to the Facility or a failure of the natural gas or interconnection services to comply with the specifications for fuel or power, respectively, of the applicable local distribution utility;

(f) the breach of a Project Party under a Project Document; and

(g) any period during which the Customer Warranty for a Facility is subject to suspension under the applicable Customer Agreement.

Section 6.04 Customer Warranties.

(a) If the applicable Project Company has an obligation to repair or replace the Facility under a Customer Warranty in the applicable Customer Agreement, Provider shall perform such repair or replacement per the terms of such Customer Agreement without additional compensation from Owner.

(b) If the applicable Project Company is liable for a Customer Warranty Payment under the applicable Customer Agreement, Provider will timely make such Customer Warranty Payment on behalf of such Project Company directly to Customer in accordance with the terms of such Customer Agreement or, at Owner's election, reimburse Owner therefor.

(c) Notwithstanding the foregoing, Provider will have no liability to Owner or the applicable Project Company under clause (a) above to the extent such obligation arose out of a modification to a Project Document by Owner or the applicable Project Company in breach of Section 4.06 (*Project Document Modification*) of the EPC.

Section 6.05 Owner Warranty Claims. If an Output Specification as of a given Measurement Date for such Output Specification or a Customer Warranty is not met (a "Warranty Claim"), Owner shall notify Provider thereof by delivery of a Claim Notice.

(a) For a Warranty Claim for payment under the Output Guaranty, Provider will verify within fifteen (15) days of receipt of such Warranty Claim if the Output Bank for the Output Guaranty has a negative balance. Upon Provider's verification of such Warranty Claim, Provider will make a payment to Owner within thirty (30) days of Provider's verification equal to the product of (x) the absolute value of the balance in the Output Bank for the Output Guaranty (kw), multiplied by (y) the weighted-average of the Tolling Rates under the Customer Agreements ($/kWh) as of the Measurement Date giving rise to such Warranty Claim (such product, a "Output Guaranty Payment"); provided, Provider's cumulative aggregate liability for all Output Guaranty Payments shall not exceed an amount equal to six percent (6%) of the Aggregate Purchase Price of the Portfolio.

(b) For a Warranty Claim under the Cumulative Output Warranty, Provider will verify within fifteen (15) days of receipt of such Warranty Claim if the Output Bank for the Output Warranty has a negative balance. Upon Provider's verification of such Warranty Claim, within 90 days thereafter, Provider will repair or replace the applicable Underperforming Facilities such that the Portfolio will achieve instantaneous Output Percentage of at least **[...***...]** and notify Owner of the Warranty Correction Date; *provided*, that in order to have achieved the Warranty Correction Date, Provider will provide Owner with

evidence that the Portfolio operated at an instantaneous Output Percentage not less than **[…***…]** following completion of the repair or replacement of the applicable Underperforming Facilities. After the Warranty Correction Date, the Portfolio shall generate at least the Aggregate Minimum kWh for the Output Warranty, as measured two hundred seventy (270) days following the Warranty Correction Date.

(c) For a Warranty Claim under the Quarterly Output Warranty, Provider will verify within fifteen (15) days of receipt of such Warranty Claim if the Output Bank for the Output Warranty has a negative balance. Upon Provider's verification of such Warranty Claim, within 90 days thereafter, Provider will repair or replace the applicable Underperforming Facilities and notify Owner of the Warranty Correction Date; *provided*, that in order to have achieved the Warranty Correction Date, Provider will provide Owner with evidence that the Portfolio operated at an instantaneous Output Percentage not less than **[…***…]** following completion of the repair or replacement of the applicable Underperforming Facilities. After the Warranty Correction Date, the Portfolio shall generate at least the Aggregate Minimum kWh for the Output Warranty, as measured for the one hundred eighty (180) day period following such Warranty Correction Date.

(d) For a Warranty Claim under a Customer Warranty, Provider will verify such Warranty Claim. Upon Provider's verification of such Warranty Claim, Provider will cure such Warranty Claim as set forth in Section 6.04.

(e) Any Claim Notice must be delivered no later than ninety (90) days from the expiration of the O&M Term. Upon submission of a Claim Notice, Provider will verify the Warranty Claim set forth therein within fifteen (15) Business days.

Section 6.06 Disclaimers.

(a) EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED BY PROVIDER TO OWNER PURSUANT TO THIS O&M SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO OWNER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY FACILITY IN THE PORTFOLIO, THE SERVICES OR ANY OTHER WORK PROVIDED HEREUNDER OR DESCRIBED HEREIN.

(b) **IF ANY FACILITY IS OPENED OR MODIFIED BY OWNER OR ANY OWNER PERSON, (EXCLUDING CUSTOMERS AND EMERGENCY RESPONDERS) FOR ANY REASON OTHER THAN IN RESPONSE TO AN EMERGENCY POSING IMMINANT RISK TO PERSONS OR PROPERTY OR IN RESPONSE TO AN INJUCTION OR OTHER LEGALLY COMPELLED OR MANDATED ACTION (IN WHICH CASE BUYER SHALL PROVIDE IMMEDIATE NOTICE TO CONTRACTOR OF THE EXISTENCE OF SUCH ACTION), THEN, AS OF THE DATE SUCH FACILITY WAS OPENED OR MODIFIED, THE PORTFOLIO WARRANTIES SHALL BE NULL AND VOID.**

Section 6.07 Transfer. No warranty, guaranty, or other rights or entitlements under this O&M may be transferred to any third person by Owner unless in compliance with Article XIII of the EPC including.

Section 6.08 Liquidated Damages; Estoppel. The Parties acknowledge and agree that it would be impracticable or impossible to determine with precision the amount of damages that would or may be

incurred by Owner as a result of the Portfolio's failure to satisfy an Output Specification. It is therefore understood and agreed by the Parties that: (a) Owner may be damaged by the Portfolio's failure to satisfy an Output Specification; (b) it would be impractical or impossible to fix the actual damages to Owner resulting therefrom; and (c) payment of a Output Guaranty Payment or a Termination Value, as the case may be, for the Portfolio's failure to perform under the Output Guaranty and the Output Warranty, respectively, are in the nature of liquidated damages, are not a penalty, and are a fair and reasonable estimate of appropriate compensation for the losses that Owner may reasonably be anticipated to incur by such failure.

Article VII.
FACILITY TERMINATION EVENTS AND REMEDIES

Section 7.01 Facility Termination Events. Unless disputed in good faith, the following shall be "Facility Termination Events" with respect to a Facility:

(a) Provider fails to perform a Warranty Correction and (i) with respect to a Customer Warranty such failure continues until the expiration of all applicable cure periods in the applicable Customer Agreement or (ii) with respect to a failure to achieve an Output Specification, such failure continues until the expiration of all applicable cure periods in this Agreement; or

(b) Customer terminates its Customer Agreement due to Provider's failure to cure a Customer Warranty within the time periods provided for therein.

Section 7.02 Facility Termination Event Remedies.

(a) Upon the occurrence and continuance of a Facility Termination Event arising out of Provider's failure to perform a Warranty Correction for an Output Specification, Owner may, but shall not be required to, require Provider to purchase the Underperforming Facility or Underperforming Facilities, as the case may be, in accordance with Section 7.03 commencing with the most Underperforming Facility and continuing until the removal of the Underperforming Facility(ies) from the Portfolio is reasonably likely to comply with the Output Specifications calculated through the final days of the applicable Measurement Dates. Upon the occurrence and continuance of a Facility Termination Event arising out the termination of a Customer Agreement due to Provider's failure to cure a Customer Warranty, Owner may, written notice, require Provider to purchase the Facility associated with such Customer Agreement.

(b) EXCEPT FOR SECTIONS 6.04(A)(II) (*CUSTOMER WARRANTIES*) AND 6.05(A) (*WARRANTY CLAIMS*), PROVIDER'S PURCHASE OF THE FACILITY IN CONNECTION WITH A FACILITY TERMINATION EVENT SHALL PRECLUDE ANY FURTHER OWNER REMEDIES WITH RESPECT TO THE PROJECT AS A RESULT OF SUCH PURCHASE EVENT, AND PROVIDER'S PAYMENT OF THE TERMINATION VALUE IN ACCORDANCE WITH SECTION 7.03 SHALL CONSTITUTE PROVIDER'S SOLE AND EXCLUSIVE LIABILITY ARISING FROM SUCH FACILITY TERMINATION EVENT; PROVIDED THAT, PROVIDER SHALL REMAIN RESPONSIBLE FOR ANY LIABILITY TO OWNER ACCRUED PRIOR TO THE PURCHASE OF THE FACILITY THAT OWNER IS NOT OTHERWISE COMPENSATED FOR THROUGH THE PAYMENT OF THE TERMINATION VALUE.

Section 7.03 Termination Mechanics. If Provider is required to purchase a Project under Section 7.02, then:

(a) Provider shall pay to Owner a price in the amount of the Termination Value within twenty (20) Business Days after receipt of a notice from Owner under Section 7.02(a);

(b) title to the Facility shall automatically transfer back to Provider on an AS IS basis upon Owner's receipt of such payment and Owner shall deliver a Bill of Sale to Provider evidencing such transfer of title;

(c) Provider shall, within ninety (90) after the date of payment of the Termination Value (or such shorter period as may be required by the Customer Agreement), at its sole cost and expense, remove the Facility from the applicable Site in accordance with Section 2.03 (*Facility Removal*);

(d) such Facility shall no longer be deemed a part of the Portfolio and Schedule 1 will be updated to reflect the Project's removal from the Portfolio and the Facility will be excluded from the calculation of the Portfolio Warranties; and

(e) Provider and Owner's rights and obligations with respect to the Facility under this O&M shall terminate in full, except for those provisions that expressly survive by their terms.

Article VIII. TERMINATION AND INDEMNIFICATION

Section 8.01 Termination.

(a) With respect to a given Facility, Owner may terminate this O&M:

(i) upon Provider's failure to perform its obligations under the O&M for such Facility (excluding any obligations under Article VI) which failure Provider does not cure within a period of thirty (30) days after receipt of written notice of such failure to cure the same; provided, if Provider commences to cure such failure during such thirty-day period and is diligently and in good faith attempting to effect such cure, said cure period shall be extended for sixty (60) additional days;

(ii) upon Provider's failure to comply with its Customer Warranty obligations with respect to such Facility, which failure Provider does not cure within ten (10) Business Days after receipt of Owner's written notice thereof; or

(iii) for Owner's convenience by written notice at any time prior to June 30 of any calendar year, in which case the effective date of such termination shall be December 31 of the year in which the notice of termination is given. If a notice of termination is given under this Section 8.01(a)(iii) after June 30 of a calendar year, then the termination will be effective as of December 31 of the next calendar year.

(b) With respect to the entire Portfolio, Owner may terminate this O&M:

(i) Upon the occurrence of a Bankruptcy Event of Provider where Provider is prohibited from performing its obligations under this O&M for a period in excess of thirty (30) days as a result of such Bankruptcy Event;

(ii) upon Provider's failure to pay an Output Guaranty Payment or any Termination Value, as applicable, when due and payable under this O&M, which failure Provider does not cure after ten (10) Business Days upon receipt of Owner's written notice thereof; provided, however, that if the amount of any Provider non-payment or under-payment of an Output Guaranty Payment or any Termination Value, as applicable, is isolated to one or more specific Facilities, Owner may terminate this O&M, suspend payment only with respect to such specific Facility, or offset payments with respect to other Facilities in the Portfolio equal to the amount owed by Provider with respect to the Facility for which Provider is in default; or

(iii) for Owner's convenience by written notice at any time prior to June 30 of any calendar year, in which case the effective date of such termination shall be December 31 of the year in which the notice of termination is given.

(c) Provider may terminate this O&M in full:

(i) upon a Bankruptcy Event of Owner;

(ii) upon Owner's failure to pay the Service Fees due hereunder or any other amounts under Article V (*Payment*) when due and payable under this O&M which failure Owner does not cure after ten (10) Business Days upon receipt of Provider's written notice thereof; provided, however, that if the amount of any Owner non-payment or under-payment of a Provider Service Fee invoice is isolated to one or more specific Facilities, Provider may terminate this O&M, suspend Services only with respect to such specific Facility or Facilities, or offset payments with respect to other Facilities in the Portfolio equal to the amount owed by Owner with respect to the Facility for which Owner is in default.

(d) Provider may terminate this O&M or suspend Services, in each case solely with respect to a single Project, unless due to a Force Majeure Event, upon Owner's failure to perform any obligation under Article IV (*Owner's Rights and Responsibilities*) which failure Owner does not cure within a period of thirty (30) days after receipt of written notice of such failure to cure the same; provided, further, that if Owner commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days.

(e) Either Party may terminate this O&M with respect to a Project as follows:

(i) if the related Customer Agreement is terminated early or expires by its terms, provided that, in the case of a termination by Provider hereunder, if Owner elects to cause Provider to acquire the affected Project, the Provider's termination right shall occur after Provider purchases the Project and pays the Termination Value for the Project in accordance with Section 7.03);

(ii) the EPC is terminated with respect to such Project before the Facility achieves COO, provided the Provider termination right shall occur after any remediation of the affected Site required under the Customer Agreement is completed; or

(iii) Upon Provider's payment of the Termination Value for a Project in accordance with Section 7.03.

Section 8.02 Preservation of Rights. Upon a termination of this O&M under Section 8.01:

(a) all rights and obligations of the Parties hereto shall be terminated and discharged in full; *provided*, such termination shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination, including any rights or remedies available in equity or at law, or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

(b) With respect to a termination under Section 8.01(a), in addition to termination of this O&M with respect to the applicable Project and any rights or remedies available in equity or at law, Owner may suspend payment of Service Fees for such Project.

(c) such Project shall no longer be deemed part of the Portfolio.

Section 8.03 Mitigation. In exercising any of the foregoing remedies, each Party shall use commercially reasonable efforts to mitigate its damages.

Section 8.04 Rights Cumulative. Except as expressly otherwise provided herein, the rights of each of the parties under this O&M are cumulative, may be exercised as often as any party considers appropriate and are in addition to each such party's rights under this O&M, any of the agreements related thereto or under applicable law. Any failure to exercise or any delay in exercising any of such rights, or any partial or defective exercise of such rights, shall not operate as a waiver or variation of that or any other such right, unless expressly otherwise provided.

Section 8.05 Survival. Notwithstanding the foregoing, the following provisions of this O&M shall survive termination or expiration of this O&M: Section 3.04(e); Section 3.05 (*Data Access*); Section 4.04 (*Title to Replacement Parts*); Section 6.06 (*Disclaimers*); Section 6.07 (*Transfer*); Section 7.02(b); Section 9.01 (*Mutatis Mutandis*); Section 10.01 (*O&M Replacement*), and Article XI (*IP License and Infringement*), as well as any liability which has accrued hereunder and which has not been fully discharged prior to the date of termination or any duty or obligation which by its nature is intended to survive termination.

Section 8.06 Liquidated Damages; Estoppel. The Parties acknowledge and agree that it would be impracticable or impossible to determine with precision the amount of damages that would or may be incurred by Owner as a result of the Portfolio's failure to satisfy any Portfolio Warranty. It is therefore understood and agreed by the Parties that: (a) Owner may be damaged by Provider's failure to satisfy a Portfolio Warranty; (b) it would be impractical or impossible to fix the actual damages to Owner resulting therefrom; and (c) any cash payments in respect of a Warranty Claim under the Output Guaranty and any Termination Value payable to Owner for failure to meet such obligations are in the nature of liquidated damages, and not a penalty, and are fair and reasonable estimate of compensation for the losses that Owner may reasonably be anticipated to incur by such failure.

Article IX.
MUTATIS MUTANDIS

Section 9.01 Mutatis Mutandis. The following provisions of the EPC shall apply to this O&M, mutatis mutandis, as if they had been fully set forth herein: Sections 3.02 (*Labor and Personnel*); Section 3.03 (*Subcontractors*); Section 3.04 (*Permitting*); Section 3.06 (*IP*); Section 3.07 (*Project Documents*); Section 4.02 (*Buyer Cooperation*); Section 4.06 (*Project Document Modifications*); Section 5.07 (*Reimbursable Credit Support*); Section 6.05 (*Licenses*); Section 6.10 (*Infringement Warranty*); Section 6.11 (*Infringement Claims*); Article VIII (*Confidentiality*); Article X (*Indemnification*); Article XI (*Dispute Resolution*); Section 12.03 (*Survival*); Article XIII (*Assignment and Transfer*); Article XIV (*Miscellaneous*).

Article X.
O&M REPLACEMENT

Section 10.01 Replacement O&M.

(a) Any Transfer of any Facility and this O&M is subject to Article XIII of the EPC. If a Transfer in violation of Article XIII of the EPC occurs, then Provider may turn off its remote monitoring system with respect to the Facility and terminate access to BloomConnect.

(b) If a Facility is no longer covered by this O&M due to the expiration of its terms then Owner and Provider will enter into good faith negotiations to either renew the O&M Term of this O&M or enter into a new operations and maintenance agreement with substantially the same terms and pricing that Provider gives all of its similar customers with similar equipment at that time.

(c) Owner will not engage any other third party to provide operations and maintenance service in respect of any Facility without Provider's express written consent, such consent not to be unreasonably withheld, unless this O&M was terminated by Owner with respect to such Facility pursuant to its terms in connection with a failure by Provider to perform its obligations hereunder.

(d) If Owner proposes to engage a Competitor to provide operations and maintenance service in respect of any Facility under paragraph (c) above, then, unless this O&M was terminated by Owner with respect to such Facility pursuant to its terms in connection with a failure by Provider to perform its obligations hereunder, prior to Owner engaging the Competitor, Owner shall give notice thereof to Contractor, which notice shall specify the fees offered by such Competitor, the scope of services and any other material terms of such proposed agreement. Upon receipt of such notice, Contractor shall have ten (10) Business Days to notify Owner of its election, in its sole discretion, to extend the Term of the O&M or enter into a new agreement with Owner, in each case on the same terms as offered by the Competitor. If Contractor does not elect to match the Competitor offer within the time prescribed in this paragraph (d), Owner may proceed to engage the Competitor to provide operations and maintenance services in respect of the applicable Facility.

Article XI. IP LICENSE AND INFRINGEMENT

Section 11.01 System and Software Licenses. With respect to each Facility subject to this O&M, Provider hereby reaffirms and grants to Owner for purposes of this O&M the System License and Software License granted to Buyer under the EPC in accordance with the terms set forth in the EPC.

Section 11.02 Infringement Warranty. With respect to each Facility subject to this O&M, Provider hereby reaffirms and restates in favor of Owner the Infringement Warranty granted to Buyer under the EPC in accordance with the terms set forth in the EPC.

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In witness whereof, Owner and Provider have caused this O&M to be signed by their respective duly authorized officers as of the Effective Date.

OWNER:
RAD BLOOM PROJECT HOLDCO LLC,
a Delaware limited liability company

By: /s/ David Jonathan Matt
Name: David Jonathan Matt
Title: Managing Member

PROVIDER:
BLOOM ENERGY CORPORATION,
a Delaware corporation

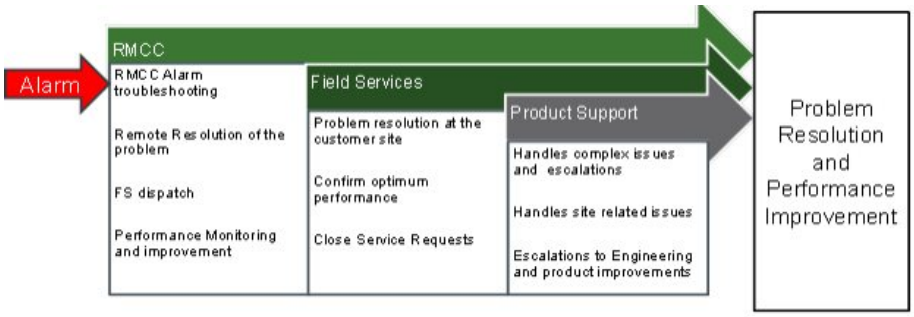
By: /s/ Greg Cameron
Name: Greg Cameron
Title: EVP and Chief Financial Officer

Schedule 1
Portfolio Projects

Schedule 2

Schedule 2
Services

- Periodic ongoing maintenance activities, as applicable:
    - Check surge protection device and replace as necessary
    - Replace main blower filter element
    - Replace air conditioning unit filter element if applicable
    - Replace auxiliary blower filter element
    - Remove any debris and vacuum inside of each cabinet
    - Remove any debris from the exterior of cabinets
    - Check all FCM hotbox enclosures for any leaking or cracks
    - Replace door filters
- Field Service Obligations, as applicable:
    - An e-mail announcement of a service appointment will be sent to address(es) specified by the Owner informing of a service visit in advance of a service visit
    - Field Service personnel will sign in at a security office as required by Owner
    - Field Service personnel will safely and securely maintain and repair the systems as needed in accordance with our established and released procedures
    - Bloom human resources and environmental health and safety ("EH&S") will work with Owner to fulfill requirements for certification of drug testing, training, and other EH&S procedures
- Site visit protocols, as applicable:
    - Works with Owner to resolve issues
    - Inspection of installed equipment to ensure peak performance
    - Inspection of all components to ensure proper operation within product and environmental specifications
    - Clearly and professionally interact with Owner regarding status of Site visits, performance of their systems and general fuel cell education
- Spare Parts
    - Provider maintains a list of all spare parts including field replaceable units (FRUs) and consumables for each of its commercial products
    - Spare parts are stocked in localized third party logistics depots in each service zone
    - The most common and most critical parts are stocked in each local depot and replenished on a weekly schedule
    - Parts not stocked in localized depots are dispatched from our warehouses via FedEx or other carriers and couriers
- Failure Response Protocol:



- Emergency Response Protocol:
    - Contact lists of Bloom Energy personnel to be contacted during normal business hours and during off hours (24-7-365 emergency escalation path) are provided for each region where Bloom Energy fuel cell projects that are installed and operational are located in order to remedy situations posing a risk to persons or property
    - Remote shutdown from Bloom remote monitoring control center ("RMCC") if required
    - Emergency power off button provided onsite
- Remote monitoring:
    - 24/7/365 performance monitoring and control of fleet
    - 1st level troubleshooting
    - Cross-functional interface with engineering, Software, controls, quality
    - Optimize performance
    - Support new Owner site start-ups
    - Owner performance analysis – daily
    - Monitor closely if NG conditioning canister replacement is required and if so, replace
- Subcontracted Services. The following may in some cases be performed by Subcontractors:
    - Water de-ionization system replenishment
    - Static transfer switch maintenance and repair
    - Some annual maintenance and upgrade work
    - Filter delivery, replacement, removal
    - High voltage transformer and switchgear maintenance
    - Circuit breaker and similar maintenance
    - Battery replacement
    - Some Facility performance upgrades
    - NG conditioning canister replacement
- Management Staff:
    - Customer Installations Group (CIG) – turnkey design, engineering, procurement, permitting, and installation
    - Field Services – commissioning, operations, and monitoring of servers
    - Customer Experience – interface with customer

    - Asset Management Group – deployment and reporting

- All Modules are instrumented to securely record over 1000 data points per server and stored in a data historian that resides in a Secure Co-located Data Center and Backed Up for data recovery
- CIG and Field Service employees are subject to drug tests, background checks, and other screening protocols based on customer site requirements
- Bloom Energy maintains a code of safe practices and ensures that copies are provided to all applicable field service technicians and includes:

    - Injury and illness prevention program
    - Required Personal Protection Equipment (PPE)
    - Corporate EH&S Standard
    - Proper use of powered industrial trucks
    - Contracted Crane Operations
    - Ladder safety program
    - Electrical Safety and Lock-Out Tag-Out (LOTO)
    - Fall protection
    - First aid/CPR program
    - Provider EH&S program
    - Bloom Energy Safety Commitment

Schedule 3
Insurance

Insurance. At all times during the O&M Term, without cost to Owner, Provider shall maintain in force and effect the following insurance, which insurance shall not be subject to cancellation, termination or other material adverse changes unless the insurer delivers to Owner written notice of the cancellation, termination or change at least thirty (30) days in advance of the effective date of the cancellation, termination or material adverse change or if notice from the insurer to Owner of material adverse change is not available on commercially reasonable terms then Provider shall provide Owner with such notice as soon as reasonably possible after becoming aware of such change. For the avoidance of doubt, a change to Contractor's Commercial General Liability or umbrella liability insurance policies that includes **[...***...]** shall constitute a "material adverse change" within the meaning if this paragraph.

(a) Worker's Compensation Insurance as required by the laws of the state in which Provider's employees are performing EPC Services or Facility Services;

(b) Employer's liability insurance with limits at policy inception not less than One Million Dollars ($1,000,000.00) per occurrence;

(c) Commercial General Liability Insurance (**[...***...]**), including bodily injury and property damage liability (arising from premises, operations, contractual liability endorsements, products liability, or completed operations) with limits not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate limit at policy inception;

(d) If there is exposure, automobile liability insurance in accordance with prudent industry practice with a limit of not less than One Million Dollars ($1,000,000.00), combined single limit per occurrence;

(e) Umbrella liability insurance (**[...***...]**) acting in excess of underlying employer's liability, commercial general liability and automobile liability policies with **[...***...]** per occurrence, except that any first-tier subcontractors shall be required to maintain such insurance with limits of not less than **[...***...]**;

(f) Professional errors and omission insurance with a limit of not less than One Million Dollars ($1,000,000.00) per occurrence;

(g) Environmental/pollution liability insurance with a limit of not less than One Million Dollars ($1,000,000.00) per claim;

(h) Provider shall cause Owner and Owner Financing Parties to be included as additional insured to all insurance policies required in accordance with the provisions of this Agreement except for worker's compensation and professional errors and omission insurance. The required insurance must be written as a primary policy not contributing to or in excess of any policies carried by Owner or Financing Parties, and each must contain a waiver of subrogation, in form and substance reasonably satisfactory to Owner and Owner Financing Parties, in favor of Owner and Owner Financing Parties.

The insurances contemplated in this clause are primary. The Parties acknowledge that, if a claim is made under any of the insurances contemplated in this Agreement, it is their intention that the insurer cannot require the Party first to exhaust indemnities referred to in this Agreement before the insurer's obligation to perform is mature, subject to the insurer's later pursuing subrogation, in which event any recovery will be credited by such insurer *pro tanto* in favor of the policyholder. Where applicable, each of these insurances will:

(a) be effected with an insurer reasonably acceptable to Owner and Owner Financing Parties;

(b) contain a waiver of subrogation in favor of Owner and Owner Financing Parties; and

(c) include a provision that such insurance is primary insurance with respect to the interests of Owner and Owner Financing Parties and Provider and that any other insurance maintained by Owner and Owner Financing Parties is excess and not contributory insurance with the insurances required under this Agreement; and

(d) include a provision that should there be a material change to the coverage that the Owner and the Financing Parties be notified within 30 days of material change. If the insurer cannot notify then the Provider shall provide such notification to include information as to why the insurance is no longer commercially available and what efforts were made to provide the coverage in a manner that is satisfactory to the Owner and the Financing Parties.

Provider shall provide Owner with evidence of compliance with these insurance requirements when requested by Owner from time to time on a reasonable basis. Upon Buyer's reasonable request, Contractor shall provide for its review specific policy language concerning additional insured endorsements and exclusions from coverage.

Schedule 4
Service Fees

Calendar Months since Facility COD	Rate ($/kW-month)	
	[...***...]	[...***...]
1 through 12	[...***...]	[...***...]
13 through 24	[...***...]	[...***...]
25 through 36	[...***...]	[...***...]
37 through 48	[...***...]	[...***...]
49 through 60	[...***...]	[...***...]
61 through 72	[...***...]	[...***...]
73 through 84	[...***...]	[...***...]
85 through 96	[...***...]	[...***...]
97 through 108	[...***...]	[...***...]
109 through 120	[...***...]	[...***...]
121 through 132	[...***...]	[...***...]
133 through 144	[...***...]	[...***...]
145 through 156	[...***...]	[...***...]
157 through 168	[...***...]	[...***...]
169 through 180	[...***...]	[...***...]
181 through 192	[...***...]	[...***...]
193 through 204	[...***...]	[...***...]
205 through 216	[...***...]	[...***...]
217 through 228	[...***...]	[...***...]
229 through 240	[...***...]	[...***...]

Ancillary Module Fees (Standard Adders)

Service Pricing		Monthly
[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]
[...***...]	[...***...]	[...***...]

Schedule 5

[...*...]**

1. **[...***...]**:

[...*...]**.

2. **[...***...]**.
3. **[...***...]**.
4. **[...***...]**.
5. **[...***...]**.

Exhibit A
Form of Claim Notice

To: **Bloom Energy Corporation**, a Delaware corporation (the "Provider")

This Claim Notice, dated _____, 20__, is given pursuant to Section 6.05 (*Warranty Claim*) of that certain Operations and Maintenance Agreement, by and between Provider and RAD Bloom Project Holdco LLC, a Delaware limited liability company (the "Owner"), dated as of June 25, 2021 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the "O&M").

Owner hereby notifies Provider of a breach of the following Warranty Claim (check one):

☐ Output Guaranty
☐ Output Warranty
☐ Customer Warranty

Please verify the same.

OWNER:
RAD BLOOM PROJECT HOLDCO LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Exhibit B
Form of Quarterly Report

Form of Quarterly Report uploaded to Data Room as Microsoft Excel filename "Quarterly Report."

Facility/Site	kWh	Nameplate	Equivalent Duration (kWh/Site NP) (hrs)	Start Time	Event Category	Event Description

BLOOM ENERGY CORPORATION

FORM OF EMPLOYMENT, CHANGE IN CONTROL AND SEVERANCE AGREEMENT

This Employment, Change in Control and Severance Agreement (the "***Agreement***"), entered into effective as of [_____], 2021 (the "***Effective Date***") between Bloom Energy Corporation, a Delaware corporation (the "***Company***") and [NAME] ("***Executive***" and, together with the Company, the "***Parties***"). This Agreement supersedes in its entirety that certain offer letter between Executive and the Company dated as of [_____] ("***Offer Letter***").

WHEREAS, the Company desires to assure itself of the continued services of Executive by continuing to engage Executive to perform services as an employee of the Company under the terms hereof;

WHEREAS, Executive desires to provide continued services to the Company on the terms herein provided; and

WHEREAS, the Parties desire to execute this Agreement to supersede the Offer Letter and reflect certain changes to Executive's employment with the Company effective as of the Effective Date.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, including the respective covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Employment.

(a) General. The Company shall employ Executive upon the terms and conditions provided herein effective as of the Effective Date.

(b) Position and Duties. Effective as of the Effective Date, Executive: (i) shall continue to serve as the Company's Chief Executive Officer, with responsibilities, duties, and authority usual and customary for such position, subject to direction by the [Board of Directors of the Company (the "***Board***") OR Chief Executive Officer of the Company (the "***CEO***")]; (ii) shall continue to report directly to the [Board or CEO]; and (iii) agrees promptly and faithfully to comply with all present and future policies, requirements, rules and regulations, and reasonable directions and requests, of the Company in connection with the Company's business. At the Company's request, Executive shall serve the Company and/or its subsidiaries and affiliates in such other capacities in addition to the foregoing as the Company shall designate, provided that such additional capacities are consistent with Executive's position as the Company's [TITLE]. In the event that Executive serves in any one or more of such additional capacities, Executive's compensation shall not automatically be increased on account of such additional service.

(c) Principal Office. Executive shall continue to perform services for the Company at the Company's offices located in San Jose, California, or, with the Company's consent, at any other place in connection with the fulfillment of Executive's role with the

Company; provided, however, that the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company's business.

(d) Exclusivity. Except with the prior written approval of the [Board or CEO] (which the [Board or CEO] may grant or withhold in the [Board or CEO]'s sole and absolute discretion), Executive shall devote Executive's best efforts and full working time, attention, and energies to the business of the Company, except during any paid vacation or other excused absence periods. Notwithstanding the foregoing, Executive may, without violating this Section 1(d), (i) as a passive investment, own publicly traded securities in such form or manner as will not require any services by Executive in the operation of the entities in which such securities are owned; (ii) engage in charitable and civic activities; or (iii) engage in other personal passive investment activities, in each case, so long as such interests or activities do not materially interfere to the extent such activities do not, individually or in the aggregate, interfere with or otherwise prevent the performance of Executive's duties and responsibilities hereunder. Executive may also serve as a member of the board of directors or board of advisors of another organization provided (i) such organization is not a competitor of the Company; (ii) Executive receives prior written approval from the [Board or CEO]; and (iii) such activities do not individually or in the aggregate interfere with the performance of Executive's duties under this Agreement, violate the Company's standards of conduct then in effect, or raise a conflict under the Company's conflict of interest policies. For the avoidance of doubt, the [Board or CEO] has approved Executive's continued service with those organizations set forth on Exhibit A, such approval to continue until the earlier to occur of (a) the [Board or CEO]'s revocation of such approval in the [Board or CEO]'s sole and absolute discretion, or (b) such time as such service interferes with the performance of Executive's duties under this Agreement, violates the Company's standards of conflict or raises a conflict under the Company's conflict of interest policies.

2. Term. The period of Executive's employment under this Agreement shall commence on the Effective Date and shall continue until Executive's employment with the Company is terminated pursuant to Section 5. The phrase "***Term***" as used in this Agreement shall refer to the entire period of employment of Executive by the Company.

3. Compensation and Related Matters.

(a) Annual Base Salary. During the Term, Executive shall receive a base salary at the rate of $[xxx,xxx.xx] per year (as may be increased from time to time, the "***Annual Base Salary***"). The Annual Base Salary shall be subject to withholdings and deductions and paid to Executive in accordance with the customary payroll practices and procedures of the Company. Such Annual Base Salary shall be reviewed by the [Board and/or] the Compensation Committee of the Board, not less than annually.

(b) Annual Bonus. Executive shall be eligible to receive an annual bonus based on Executive's achievement of performance objectives established by the Board and/or its Compensation Committee, such bonus to be targeted at [xxx]% of the Annual Base Salary (the "***Annual Bonus***"). Any Annual Bonus approved by the Board and/or the Compensation Committee of the Board shall be paid at the same time annual bonuses are paid to other

executives of the Company generally and, in any event, by March 15 of the year following the year to which such Annual Bonus relates.

(c) Benefits. Executive shall be entitled to participate in such employee and executive benefit plans and programs as the Company may from time to time offer to provide to its executives, subject to the terms and conditions of such plans. Notwithstanding the foregoing, nothing herein is intended, or shall be construed, to require the Company to institute or continue any particular plan or benefit.

(d) Business Expenses. The Company shall reimburse Executive for all reasonable, documented, out-of-pocket travel and other business expenses incurred by Executive in the performance of Executive's duties to the Company in accordance with the Company's applicable expense reimbursement policies and procedures as are in effect from time to time.

(e) Vacation. Executive will be entitled to paid vacation in accordance with the Company's vacation policy, as in effect from time to time.

4. Equity Awards.

(a) Eligibility. Executive shall be eligible for the discretionary grant of restricted stock units, performance-based stock units and other equity awards following the Effective Date as may be determined by the Board or its Compensation Committee.

(b) Failure to Assume or Substitute. In the event of a Change in Control (as defined below) for all awards in which the acquirer (or an affiliate thereof) does not assume or continue any then-outstanding equity awards, including, without limitation, options, restricted stock units and performance-based stock units, held by Executive or substitute for any such awards substantially equivalent awards, then the vesting, exercisability and settlement of each such award shall be accelerated in full effective immediately prior to but conditioned upon the consummation of the Change in Control so that each such equity award held by Executive shall be fully vested (and, if applicable, exercisable). Except as otherwise provided in an agreement evidencing a performance-based award, for each such equity award that is a performance-based award, the applicable performance goals shall be deemed achieved at the greater of target or actual achievement (with the performance goals equitably adjusted if necessary to reflect a truncated performance period). The provisions contained in this Section 4(b) shall apply notwithstanding any provision to the contrary contained in any agreement evidencing an equity award granted to Executive to the extent such agreement confers lesser rights to Executive.

5. Termination.

(a) At-Will Employment. The Company and Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law. This means that it is not for any specified period of time and, subject to any ramifications under Section 6 of this Agreement, can be terminated by Executive or by the Company at any time, with or without advance notice, and for any or no particular reason or cause. It also means that Executive's job duties, title, and responsibility and reporting level, work schedule, compensation,

and benefits, as well as the Company's personnel policies and procedures, may be changed with prospective effect, with or without notice, at any time in the sole discretion of the Company (subject to any ramification such changes may have under Section 6 of this Agreement). This "at-will" nature of Executive's employment shall remain unchanged during Executive's tenure as an employee and may not be changed, except in an express writing signed by Executive and a duly-authorized officer of the Company. If Executive's employment terminates for any lawful reason, Executive shall not be entitled to any payments, benefits, damages, award, or compensation other than as provided in this Agreement.

(b) Notice of Termination. During the Term, any termination of Executive's employment by the Company or by Executive (other than by reason of death) shall be communicated by written notice (a "***Notice of Termination***") from one Party hereto to the other Party hereto (i) indicating the specific termination provision in this Agreement relied upon, if any, (ii) setting forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of Executive's employment under the provision so indicated, and (iii) specifying the Date of Termination (as defined below). The failure by the Company to set forth in the Notice of Termination all of the facts and circumstances which contribute to a showing of Cause (as defined below) shall not waive any right of the Company hereunder or preclude the Company from asserting such fact or circumstance in enforcing its rights hereunder.

(c) Date of Termination. For purposes of this Agreement, "***Date of Termination***" shall mean the date of the termination of Executive's employment with the Company specified in a Notice of Termination.

(d) Deemed Resignation. Upon termination of Executive's employment for any reason, Executive shall be deemed to have resigned from all offices and board memberships, if any, then held with the Company or any of its affiliates, and, at the Company's request, Executive shall execute such documents as are necessary or desirable to effectuate such resignations.

6. Consequences of Termination.

(a) Payments of Accrued Obligations upon all Terminations of Employment. Upon a termination of Executive's employment for any reason, Executive (or Executive's estate or legal representative, as applicable) shall be entitled to receive, within thirty (30) days after Executive's Date of Termination (or such earlier date as may be required by applicable law): (i) any portion of Executive's Annual Base Salary earned through Executive's Date of Termination not theretofore paid, (ii) any expenses owed to Executive under Section 3, (iii) any accrued but unused paid time-off owed to Executive, (iv) any Annual Bonus earned but unpaid as of the Date of Termination, and (v) any amount arising from Executive's participation in, or benefits under, any employee benefit plans, programs, or arrangements under Section 3, which amounts shall be payable in accordance with the terms and conditions of such employee benefit plans, programs, or arrangements. Except as otherwise set forth in Sections 6(b) and (c), the payments and benefits described in this Section 6(a) shall be the only payments and benefits payable in the event of Executive's termination of employment for any reason.

(b) Severance Payments upon a Qualifying Termination. If, during the Term, Executive experiences a Qualifying Termination, then in addition to the payments and benefits described in Section 6(a), the Company shall, subject to Executive's delivery to the Company of a waiver and release of claims agreement substantially in the form of Exhibit B hereto (but updated to the extent deemed by the Company to be necessary to reflect any changes in applicable law) (the "***Release***") that becomes effective and irrevocable in accordance with Section 10(d), provide Executive with the following:

(i) The Company shall pay to Executive an amount equal to (A) [xx] multiplied by Executive's Annual Base Salary [plus (B) [xx] multiplied by Exeuctive's Annual Bonus]. Such amount will be subject to applicable withholdings and payable in a single lump sum cash payment on the first regular payroll date following the date the Release becomes effective and irrevocable in accordance with Section 10(d).

(ii) During the period commencing on the Date of Termination and ending on the [xx] month anniversary thereof or, if earlier, the date on which Executive becomes eligible for comparable replacement coverage under a subsequent employer's group health plan (in any case, the "***Non-CIC COBRA Period***"), subject to Executive's valid election to continue healthcare coverage under Section 4980B of the Internal Revenue Code of 1986, as amended (the "***Code***") and the regulations thereunder, the Company shall, in its sole discretion, either (A) continue to provide to Executive and Executive's dependents, at the Company's sole expense, or (B) reimburse Executive and Executive's dependents for coverage under its group health plan (if any) at the same levels in effect on the Date of Termination; *provided, however*, that if (1) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the continuation coverage period to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A1(a)(5), (2) the Company is otherwise unable to continue to cover Executive or Executive's dependents under its group health plans, or (3) the Company cannot provide the benefit without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then, in any such case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments over the Non-CIC COBRA Period (or remaining portion thereof).

(c) Severance Payments upon CIC Qualifying Termination. If, during the Term, Executive experiences a CIC Qualifying Termination, then, in addition to the payments and benefits described in Section 6(a), the Company shall, subject to Executive's delivery to the Company of the Release that becomes effective and irrevocable in accordance with Section 10(d), provide Executive with the following:

(i) The Company shall pay to Executive an amount equal to the sum of (A) [xx] multiplied by Executive's Annual Base Salary plus (B) [xx] multiplied by a prorated portion of the Executive's target Annual Bonus, determined based on the number of full months completed during the applicable performance period and assuming target achievement. Such amount will be subject to applicable withholdings and payable in a

single lump sum cash payment on the first regular payroll date following the date the Release becomes effective and irrevocable in accordance with Section 10(d).

(ii) During the period commencing on the Date of Termination and ending on the [xx] month anniversary thereof or, if earlier, the date on which Executive becomes eligible for comparable replacement coverage under a subsequent employer's group health plan (in any case, the "***CIC COBRA Period***"), subject to Executive's valid election to continue healthcare coverage under Section 4980B of the Code and the regulations thereunder, the Company shall, in its sole discretion, either (A) continue to provide to Executive and Executive's dependents, at the Company's sole expense, or (B) reimburse Executive and Executive's dependents for coverage under its group health plan (if any) at the same levels in effect on the Date of Termination; *provided, however*, that if (1) any plan pursuant to which such benefits are provided is not, or ceases prior to the expiration of the continuation coverage period to be, exempt from the application of Section 409A under Treasury Regulation Section 1.409A-1(a)(5), (2) the Company is otherwise unable to continue to cover Executive or Executive's dependents under its group health plans, or (3) the Company cannot provide the benefit without violating applicable law (including, without limitation, Section 2716 of the Public Health Service Act), then, in any such case, an amount equal to each remaining Company subsidy shall thereafter be paid to Executive in substantially equal monthly installments over the CIC COBRA Period (or remaining portion thereof).

(iii) Cause any unvested equity awards, including any stock options and restricted stock unit awards, held by Executive as of the Date of Termination, to become fully vested and, if applicable, exercisable, and cause all restrictions and rights of repurchase on such awards to lapse with respect to all of the shares of the Company's Common Stock subject thereto. Unless otherwise provided in the award agreement evidencing a performance-based award, for the purposes of determining vesting, the applicable performance goals shall be deemed achieved at target.

(d) No Other Severance. Except as otherwise approved by the Board, the provisions of this Section 6 shall supersede in their entirety any severance payment provisions in any severance plan, policy, program, or other arrangement maintained by the Company.

(e) No Requirement to Mitigate; Survival. Executive shall not be required to mitigate the amount of any payment provided for under this Agreement by seeking other employment or in any other manner. Notwithstanding anything to the contrary in this Agreement, the termination of Executive's employment shall not impair the rights or obligations of any Party.

(f) Definition of Cause. For purposes hereof, "***Cause***" shall mean Executive's (a) willful failure to substantially to perform Executive's duties and responsibilities to the Company or willful violation of a material written Company policy delivered to Executive by the Company prior to such violation; (b) conviction of, or plea of *nolo contendere* to, a non-vehicular felony or crime involving moral turpitude; (c) unauthorized use or disclosure of any proprietary information or trade secrets of the Company or any other party to whom Executive owes an obligation of nondisclosure as a result of Executive's relationship with the Company, in each

case, that is materially and demonstrably injurious to the Company; (d) misappropriation of a material business opportunity of the Company; (e) willful provision of material aid to a competitor of the Company; or (f) willful breach of any material obligations of any material provisions under any written agreement or covenant with the Company that, in the case of clause (a), (c), (d), (e) or (f), remains uncured, if curable, more than 30 days after written notice thereof is delivered to Executive by the Company. For the purposes of the foregoing, no action or omission shall be deemed willful unless such action or failure to act was taken or failed to be taken in bad faith without the reasonable belief that such action or failure to act was in the best interests of the Company.

(g) Definition of CIC Qualifying Termination. For purposes hereof, "***CIC Qualifying Termination***" shall mean a termination of Executive's employment effected by the Company in connection with the consummation of a Change in Control, including at the request of the prospective acquirer whose proposed acquisition would constitute a Change in Control upon its completion, or within three (3) months prior to or within twelve (12) months following the consummation of a Change in Control, resulting from (A) the Company or its successor terminating Executive's employment for any reason other than Cause or (B) Executive voluntarily resigning Executive's employment for Good Reason. A termination or resignation due to Executive's death or disability shall not constitute a CIC Qualifying Termination.

(h) Definition of Change in Control. For purposes hereof, "***Change in Control***" shall have the meaning ascribed to the term "Corporate Transaction" in the Company's 2018 Equity Incentive Plan, as amended, provided that the transaction (including any series of transactions) also qualifies as a change in control event under U.S. Treasury Regulation 1.409A-3(i)(5).

(i) Definition of Good Reason. For purposes hereof, "***Good Reason***" means, without Executive's consent, (i) a material diminution in Executive's authority, duties or responsibilities, including a material change in Executive's reporting responsibilities, such that [Executive no longer reports directly to the Board] OR [Executive is required to report to a person whose duties, responsibilities and authority are materially less than those of the person to whom Executive was reporting immediately prior to such change and/or a material reduction in the level of management to which Executive reports], (ii) a reduction in Executive's Annual Base Salary or Annual Bonus opportunity, (iii) a requirement that Executive relocate Executive's principal place of work to a location that increases Executive's one-way commute by more than fifty (50) miles from Executive's then-current work location, or (iv) a material breach of this Agreement by the Company. For Executive to receive the benefits under this Agreement as a result of a voluntary resignation for Good Reason, all of the following requirements must be satisfied: (1) Executive must provide written notice to the Company of Executive's intent to assert Good Reason within sixty (60) days of the initial existence of one or more of the conditions set forth in subclauses (i) through (iv); (2) the Company will have thirty (30) days (the "***Company Cure Period***") from the date of such notice to remedy the condition and, if it does so, Executive may withdraw Executive's resignation or may resign with no benefits under this Agreement; and (3) any termination of employment for Good Reason must occur within ten (10) days of the earlier of expiration of the Company Cure Period or written notice from the Company that it will not undertake to cure the condition set forth in subclauses (i) through (iv). Should the Company remedy the condition as set forth above and then one or more of the conditions arises again, Executive may assert Good Reason again subject to all of the conditions set forth herein.

(j) Definition of Qualifying Termination. For purposes hereof, "***Qualifying Termination***" shall mean, other than a CIC Qualifying Termination, the termination of Executive's employment with the Company effected by the Company without Cause or by Executive for Good Reason, and shall not include a termination due to Executive's death or disability.

7. Assignment and Successors. The Company shall assign its rights and obligations under this Agreement to any successor to all or substantially all of the business or the assets of the Company (by merger or otherwise). This Agreement shall be binding upon and inure to the benefit of the Company, Executive, and their respective successors, assigns, personnel, and legal representatives, executors, administrators, heirs, distributees, devisees, and legatees, as applicable. None of Executive's rights or obligations may be assigned or transferred by Executive, other than Executive's rights to payments hereunder, which may be transferred only by will, operation of law, or as otherwise provided herein**.**

8. Miscellaneous Provisions.

(a) Confidentiality Agreement. Executive hereby affirms Executive's obligations under that certain Confidential Information and Invention Assignment Agreement by and between Executive and the Company dated as of [MONTH/DAY/YEAR] (the "***Confidentiality Agreement***"). The Confidentiality Agreement shall survive the termination of this Agreement and Executive's employment with the Company for the applicable period(s) set forth therein; provided that any terms inconsistent with this Agreement, this Agreement shall control.

(b) Non-Solicitation of Employees. For a period of one year following Executive's Date of Termination, Executive shall not, either directly or indirectly (i) solicit for employment by any individual, corporation, firm, or other business, any employees, consultants, independent contractors, or other service providers of the Company or any of its affiliates, or (ii) solicit any employee or consultant of the Company or any of its affiliates to leave the employment or consulting of or cease providing services to the Company or any of its affiliates; *provided*, *however*, that the foregoing clauses (i) and (ii) shall not apply to a general advertisement or solicitation (or any hiring pursuant to such advertisement or solicitation) that is not specifically targeted to such employees or consultants.

(c) Governing Law. This Agreement shall be governed, construed, interpreted, and enforced in accordance with its express terms, and otherwise in accordance with the substantive laws of the State of California, without giving effect to any principles of conflicts of law, whether of the State of California or any other jurisdiction, and where applicable, the laws of the United States, that would result in the application of the laws of any other jurisdiction.

(d) Validity. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

(e) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement. Signatures delivered by facsimile shall be deemed effective for all purposes.

(f) Entire Agreement. The terms of this Agreement, collectively with the Confidentiality Agreement and the agreements evidencing Executive's equity awards, are intended by the Parties to be the final expression of their agreement with respect to the employment of Executive by the Company and supersede all prior understandings and agreements, whether written or oral, regarding Executive's service to the Company[, including without limitation, the Offer Letter]. The Parties further intend that this Agreement, collectively with the Confidentiality Agreement and the agreements evidencing Executive's equity awards, shall constitute the complete and exclusive statement of their terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative, or other legal proceeding to vary the terms of this Agreement, the Confidentiality Agreement or the agreements evidencing Executive's equity awards.

(g) Amendments; Waivers. This Agreement may not be modified, amended, or terminated except by an instrument in writing signed by Executive and a duly authorized representative of the Company. By an instrument in writing similarly executed, Executive or a duly authorized officer of the Company, as applicable, may waive compliance by the other Party with any specifically identified provision of this Agreement that such other Party was or is obligated to comply with or perform; *provided*, *however*, that such waiver shall not operate as a waiver of, or estoppel with respect to, any other or subsequent failure. No failure to exercise and no delay in exercising any right, remedy, or power hereunder shall preclude any other or further exercise of any other right, remedy, or power provided herein or by law or in equity.

(h) Dispute Resolution. To ensure the timely and economical resolution of disputes that arise in connection with this Agreement, Executive and the Company agree that, except as excluded herein, any and all controversies, claims and disputes arising out of or relating to this Agreement, including without limitation any alleged violation of its terms or otherwise arising out of the Parties' relationship, shall be resolved solely and exclusively by final and binding arbitration held in Santa Clara County, California through JAMS in conformity with California law and the then-existing JAMS employment arbitration rules, which can be found at https://www.jamsadr.com/rules-employment-arbitration/. The Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. shall govern the interpretation and enforcement of this arbitration clause. All remedies available from a court of competent jurisdiction shall be available in the arbitration; provided, however, in the event of a breach of Sections 8(a) or 8(b), the Company may request relief from a court of competent jurisdiction if such relief is not available or not available in a timely fashion through arbitration as determined by the Company. The arbitrator shall: (a) provide adequate discovery for the resolution of the dispute; and (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall award the prevailing Party attorneys' fees and expert fees, if any. Notwithstanding the foregoing, it is acknowledged that it will be impossible to measure in money the damages that would be suffered if the Parties fail to comply with any of the obligations

imposed on them under Sections 8(a) and 8(b), and that in the event of any such failure, an aggrieved person will be irreparably damaged and will not have an adequate remedy at law. Any such person shall, therefore, be entitled to seek injunctive relief, including specific performance, to enforce such obligations, and if any action shall be brought in equity to enforce any of the provisions of Sections 8(a) and 8(b), none of the Parties shall raise the defense, without a good faith basis for raising such defense, that there is an adequate remedy at law. Executive and the Company understand that by agreement to arbitrate any claim pursuant to this Section 8(h), they will not have the right to have any claim decided by a jury or a court, but shall instead have any claim decided through arbitration. Executive and the Company waive any constitutional or other right to bring claims covered by this Agreement other than in their individual capacities. Except as may be prohibited by applicable law, the foregoing waiver includes the ability to assert claims as a plaintiff or class member in any purported class or collective action or representative proceeding. Nothing herein shall limit Executive's ability to pursue claims for workers compensation or unemployment benefits or pursue other claims which by law cannot be subject to mandatory arbitration.

(i) Enforcement. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a portion of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

(j) Withholding. The Company shall be entitled to withhold from any amounts payable under this Agreement any federal, state, local, or foreign withholding or other taxes or charges which the Company is required to withhold. The Company shall be entitled to rely on an opinion of counsel if any questions as to the amount or requirement of withholding shall arise.

(k) Whistleblower Protections and Trade Secrets. Notwithstanding anything to the contrary contained herein, nothing in this Agreement prohibits Executive from reporting possible violations of federal law or regulation to any United States governmental agency or entity in accordance with the provisions of and rules promulgated under Section 21F of the Securities Exchange Act of 1934 or Section 806 of the Sarbanes-Oxley Act of 2002, or any other whistleblower protection provisions of state or federal law or regulation (including the right to receive an award for information provided to any such government agencies). Furthermore, in accordance with 18 U.S.C. § 1833, notwithstanding anything to the contrary in this Agreement: (i) Executive shall not be in breach of this Agreement, and shall not be held criminally or civilly liable under any federal or state trade secret law (x) for the disclosure of a trade secret that is made in confidence to a federal, state, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, or (y) for the disclosure of a trade secret that is made in a complaint or other document filed in a lawsuit or other proceeding,

if such filing is made under seal; and (ii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the trade secret to Executive's attorney, and may use the trade secret information in the court proceeding, if Executive files any document containing the trade secret under seal, and does not disclose the trade secret, except pursuant to court order.

9. Golden Parachute Excise Tax.

(a) Best Pay. Any provision of this Agreement to the contrary notwithstanding, if any payment or benefit Executive would receive from the Company pursuant to this Agreement or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then such Payment will be equal to the Reduced Amount (as defined below). The "***Reduced Amount***" will be either (A) the largest portion of the Payment that would result in no portion of the Payment (after reduction) being subject to the Excise Tax or (B) the entire Payment, whichever amount after taking into account all applicable federal, state, and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes), results in Executive' s receipt, on an after-tax basis, of the greater economic benefit notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in a Payment is required pursuant to the preceding sentence and the Reduced Amount is determined pursuant to clause (A) of the preceding sentence, the reduction shall occur in the manner (the "***Reduction Method***") that results in the greatest economic benefit for Executive. If more than one method of reduction will result in the same economic benefit, the items so reduced will be reduced pro rata (the "***Pro Rata Reduction Method***"). Notwithstanding the foregoing, if the Reduction Method or the Pro Rata Reduction Method would result in any portion of the Payment being subject to taxes pursuant to Section 409A (as defined below) that would not otherwise be subject to taxes pursuant to Section 409A, then the Reduction Method and/or the Pro Rata Reduction Method, as the case may be, shall be modified so as to avoid the imposition of taxes pursuant to Section 409A as follows: (1) as a first priority, the modification shall preserve to the greatest extent possible, the greatest economic benefit for Executive as determined on an after-tax basis; (2) as a second priority, Payments that are contingent on future events (*e.g*., being terminated without cause), shall be reduced (or eliminated) before Payments that are not contingent on future events; and (3) as a third priority, Payments that are "deferred compensation" within the meaning of Section 409A shall be reduced (or eliminated) before Payments that are not deferred compensation within the meaning of Section 409A.

(b) Accounting Firm. The accounting firm engaged by the Company for general tax purposes as of the day prior to the Change of Control will perform the calculations set forth in Section 9(a). If the firm so engaged by the Company is serving as the accountant or auditor for the acquiring company, the Company will appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company will bear all expenses with respect to the determinations by such firm required to be made hereunder. The accounting firm engaged to make the determinations hereunder will provide its calculations, together with

detailed supporting documentation, to the Company within thirty (30) days before the consummation of a Change of Control (if requested at that time by the Company) or such other time as requested by the Company. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it will furnish the Company with documentation reasonably acceptable to the Company that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder will be final, binding and conclusive upon the Company and Executive.

10. Section 409A.

(a) General. The intent of the Parties is that the payments and benefits under this Agreement comply with or be exempt from Section 409A of the Code and the Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date, ("***Section 409A***") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. Notwithstanding any provision of this Agreement to the contrary, if the Company determines that any compensation or benefits payable under this Agreement may be subject to Section 409A, the Company shall work in good faith with Executive to adopt such amendments to this Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Company determines are necessary or appropriate to avoid the imposition of taxes under Section 409A, including, without limitation, actions intended to (i) exempt the compensation and benefits payable under this Agreement from Section 409A, and/or (ii) comply with the requirements of Section 409A; however, this Section 10(a) shall not create an obligation on the part of the Company to adopt any such amendment, policy or procedure or take any such other action, nor shall the Company (A) have any liability for failing to do so, or (B) incur or indemnify Executive for any taxes, interest or other liabilities arising under or by operation of Section 409A.

(b) Separation from Service, Installments and Reimbursements. Notwithstanding any provision to the contrary in this Agreement: (i) no amount that constitutes "deferred compensation" under Section 409A shall be payable pursuant to Section 6 unless the termination of Executive's employment constitutes a "separation from service" within the meaning of Section 1.409A-1(h) of the Department of Treasury Regulations ("***Separation from Service***"); (ii) for purposes of Section 409A, Executive's right to receive installment payments shall be treated as a right to receive a series of separate and distinct payments; and (iii) to the extent that any reimbursement of expenses or in-kind benefits constitutes "deferred compensation" under Section 409A, such reimbursement or benefit shall be provided no later than December 31st of the year following the year in which the expense was incurred. The amount of expenses reimbursed in one year shall not affect the amount eligible for reimbursement in any subsequent year. The amount of any in-kind benefits provided in one year shall not affect the amount of in-kind benefits provided in any other year.

(c) Specified Employee. Notwithstanding anything in this Agreement to the contrary, if Executive is deemed by the Company at the time of Executive's Separation from Service to be a "specified employee" for purposes of Section 409A, to the extent delayed commencement of any portion of the benefits to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A, such portion of Executive's benefits shall not be provided to Executive prior to the earlier of (i) the expiration of the six-month period measured from the date of Executive's Separation from Service with the Company or (ii) the date of Executive's death. Upon the first business day following the expiration of the applicable Section 409A period, all payments deferred pursuant to the preceding sentence shall be paid in a lump sum to Executive (or Executive's estate or beneficiaries), and any remaining payments due to Executive under this Agreement shall be paid as otherwise provided herein.

(d) Release. Notwithstanding anything to the contrary in this Agreement, to the extent that any payments due under this Agreement as a result of Executive's termination of employment are subject to Executive's execution and delivery of the Release, (i) if Executive fails to execute the Release on or prior to the Release Expiration Date (as defined below) or timely revokes Executive's acceptance of the Release thereafter, Executive shall not be entitled to any payments or benefits otherwise conditioned on the Release, and (ii) in any case where Executive's Date of Termination and the Release Expiration Date fall in two separate taxable years, any payments required to be made to Executive that are conditioned on the Release and are treated as nonqualified deferred compensation for purposes of Section 409A shall be made in the later taxable year. For purposes of this Section 10(d), "***Release Expiration Date***" shall mean the date that is twenty-one (21) days following the date upon which the Company timely delivers the Release to Executive, or, in the event that Executive's termination of employment is "in connection with an exit incentive or other employment termination program" (as such phrase is defined in the Age Discrimination in Employment Act of 1967), the date that is forty-five (45) days following such delivery date. To the extent that any payments of nonqualified deferred compensation (within the meaning of Section 409A) due under this Agreement as a result of Executive's termination of employment are delayed pursuant to this Section 10(d), such amounts shall be paid in a lump sum on the first payroll date following the date that Executive executes and does not revoke the Release (and the applicable revocation period has expired) or, in the case of any payments subject to Section 10(d)(ii), on the first payroll period to occur in the subsequent taxable year, if later.

11. Employee Acknowledgement. Executive acknowledges that Executive has read and understands this Agreement, is fully aware of its legal effect, has not acted in reliance upon any representations or promises made by the Company other than those contained in writing herein, and has entered into this Agreement freely based on Executive's own judgment.

[*Signature Page Follows*]

The Parties have executed this Agreement as of the date first set forth above.

BLOOM ENERGY CORPORATION

By:__

Name: [_____]

Title: [_____]

EXECUTIVE

By:__

Name: [_____]

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EXHIBIT A

PERMITTED OUTSIDE ACTIVITIES

1.

EXHIBIT B

RELEASE OF CLAIMS

This Release of Claims ("***Release***") is entered into as of _____, 20__, between [NAME] ("***Executive***") and Bloom Energy Corporation, a Delaware corporation (the "***Company***" and, together with Executive, the "***Parties***"), effective eight (8) days after Executive's signature hereto (the "***Effective Date***"), unless Executive revokes Executive's acceptance of this Release as provided in Paragraph 1(c), below.

1. Executive's Release of the Company. Executive understands that by agreeing to this Release, Executive is agreeing not to sue, or otherwise file any claim against, the Company or any of its employees or other agents for any reason whatsoever based on anything that has occurred as of the date Executive signs this Release.

(a) On behalf of Executive and Executive's heirs and assigns, Executive hereby releases and forever discharges the "***Releasees***" hereunder, consisting of the Company, and each of its owners, affiliates, divisions, predecessors, successors, assigns, agents, directors, officers, partners, employees, and insurers, and all persons acting by, through, under or in concert with them, or any of them, of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, known or unknown, fixed or contingent (hereinafter called "***Claims***"), which Executive now has or may hereafter have against the Releasees, or any of them, by reason of any matter, cause, or thing whatsoever from the beginning of time to the date hereof, including, without limiting the generality of the foregoing, any Claims arising out of, based upon, or relating to Executive's hire, employment, remuneration or resignation by the Releasees, or any of them, including Claims arising under federal, state, or local laws relating to employment, Claims of any kind that may be brought in any court or administrative agency, any Claims arising under the Age Discrimination in Employment Act ("***ADEA***"), 29 U.S.C. § 621, et seq.; Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000 et seq.; the Equal Pay Act, 29 U.S.C. § 206(d); the Civil Rights Act of 1866, 42 U.S.C. § 1981; the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.; the False Claims Act , 31 U.S.C. § 3729 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.; the Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 et seq. the Fair Labor Standards Act, 29 U.S.C. § 215 et seq., the Sarbanes-Oxley Act of 2002; the California Labor Code; the employment and civil rights laws of California; Claims for breach of contract; Claims arising in tort, including, without limitation, Claims of wrongful dismissal or discharge, discrimination, harassment, retaliation, fraud, misrepresentation, defamation, libel, infliction of emotional distress, violation of public policy, and/or breach of the implied covenant of good faith and fair dealing; and Claims for damages or other remedies of any sort,

including, without limitation, compensatory damages, punitive damages, injunctive relief and attorney's fees.

(b) Notwithstanding the generality of the foregoing, Executive does not release the following claims:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iii) Claims to continued participation in certain of the Company's group benefit plans pursuant to the terms and conditions of COBRA;

(iv) Claims to any benefit entitlements vested as the date of Executive's employment termination, pursuant to written terms of any Company employee benefit plan;

(v) Claims for indemnification under any indemnification agreement with the Company, the Company's Bylaws, California Labor Code Section 2802 or any other applicable law; and

(vi) Executive's right to bring to the attention of the Equal Employment Opportunity Commission claims of discrimination; provided, however, that Executive does release Executive's right to secure any damages for alleged discriminatory treatment.

(c) In accordance with the Older Workers Benefit Protection Act of 1990, Executive has been advised of the following:

(i) Executive has the right to consult with an attorney before signing this Release;

(ii) Executive has been given at least [twenty-one (21) OR forty-five (45)] days to consider this Release;

(iii) Executive has seven (7) days after signing this Release to revoke it, and Executive will not receive the severance benefits provided by that certain Employment Agreement between the Parties (the "***Employment Agreement***") unless and until such seven (7) day period has expired. If Executive wishes to revoke this Release, Executive must deliver notice of Executive's revocation in writing, no later than 5:00 p.m. on the seventh (7th) day following Executive's execution of this Release to [_____].

(d) EXECUTIVE ACKNOWLEDGES THAT EXECUTIVE HAS BEEN ADVISED OF AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"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."

BEING AWARE OF SAID CODE SECTION, EXECUTIVE HEREBY EXPRESSLY WAIVES ANY RIGHTS EXECUTIVE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

2. Executive Representations. Executive represents and warrants that:

(a) Executive has returned to the Company all Company property in Executive's possession;

(b) Executive is not owed wages, commissions, bonuses or other compensation, other than wages through the date of the termination of Executive's employment and any accrued, unused vacation earned through such date, and any payments that become due under the Employment Agreement;

(c) During the course of Executive's employment Executive did not sustain any injuries for which Executive might be entitled to compensation pursuant to worker's compensation law or Executive has disclosed any injuries of which Executive is currently, reasonably aware for which Executive might be entitled to compensation pursuant to worker's compensation law; and

(d) Executive has not initiated any adversarial proceedings of any kind against the Company or against any other person or entity released herein, nor will Executive do so in the future, except as specifically allowed by this Release.

3. Severability. The provisions of this Release are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

4. Choice of Law. This Release shall in all respects be governed and construed in accordance with the laws of the State of California, including all matters of construction, validity and performance, without regard to conflicts of law principles.

5. Integration Clause. This Release and the Employment Agreement contain the Parties' entire agreement with regard to the separation of Executive's employment, and

supersede and replace any prior agreements as to those matters, whether oral or written. This Release may not be changed or modified, in whole or in part, except by an instrument in writing signed by Executive and a duly authorized officer or director of the Company.

6. Execution in Counterparts. This Release may be executed in counterparts with the same force and effectiveness as though executed in a single document. Facsimile signatures shall have the same force and effectiveness as original signatures.

7. Intent to be Bound. The Parties have carefully read this Release in its entirety; fully understand and agree to its terms and provisions; and intend and agree that it is final and binding on all Parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing on the dates shown below.

EXECUTIVE **BLOOM ENERGY CORPORATION**

_____ _____

[_____] By:

Title:

Date: _____ Date: _____

EXHIBIT 31.1

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER

PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a)

OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,

AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, KR Sridhar, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2021 of Bloom Energy Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2021

By: /s/ KR Sridhar
KR Sridhar
President and Chief Executive Officer
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATIONS OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13a-14(a) AND RULE 15d-14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory Cameron, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2021 of Bloom Energy Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 6, 2021

By: /s/ Gregory Cameron
Gregory Cameron
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

EXHIBIT 32.1

CERTIFICATIONS OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF
THE SARBANES-OXLEY ACT OF 2002

The following certifications are hereby made in connection with the Quarterly Report on Form 10-Q for the quarter ended June 30, 2021 of Bloom Energy Corporation (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"):

I, KR Sridhar, President and Chief Executive Officer, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 2004, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

August 6, 2021

By: /s/ KR Sridhar
KR Sridhar
President and Chief Executive Officer
(Principal Executive Officer)

I, Gregory Cameron, Executive Vice President and Chief Financial Officer, hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 2004, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 6, 2021

By: /s/ Gregory Cameron
Gregory Cameron
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)