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 March 31, 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**
(Sate 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 April 29, 2021 was as follows:

Class A Common Stock, $0.0001 par value 144,617,101 shares

Class B Common Stock, $0.0001 par value 27,772,758 shares

Bloom Energy Corporation

Quarterly Report on Form 10-Q for the Three Months Ended March 31, 2021

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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 AND SUPPLEMENTARY DATA

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

	March 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents[1]	$ 180,719	$ 246,947
Restricted cash[1]	54,865	52,470
Accounts receivable[1]	108,328	99,513
Inventories	153,172	142,059
Deferred cost of revenue	55,064	41,469
Customer financing receivable[1]	5,515	5,428
Prepaid expenses and other current assets[1]	26,809	30,718
Total current assets	584,472	618,604
Property, plant and equipment, net[1]	599,437	600,628
Operating lease right-of-use assets	55,165	35,621
Customer financing receivable, non-current[1]	43,880	45,268
Restricted cash, non-current[1]	130,080	117,293
Deferred cost of revenue, non-current	3,029	2,462
Other long-term assets[1]	35,199	34,511
Total assets	$ 1,451,262	$ 1,454,387
Liabilities, Redeemable Noncontrolling Interest, Stockholders' Equity and Noncontrolling Interest		
Current liabilities:		
Accounts payable	$ 72,960	$ 58,334
Accrued warranty	5,958	10,263
Accrued expenses and other current liabilities[1]	82,133	112,004
Deferred revenue and customer deposits[1]	69,240	114,286
Operating lease liabilities	7,219	7,899
Financing obligations	13,330	12,745
Non-recourse debt[1]	118,468	120,846
Total current liabilities	369,308	436,377
Deferred revenue and customer deposits, non-current[1]	84,472	87,463
Operating lease liabilities, non-current	61,714	41,849
Financing obligations, non-current	461,468	459,981
Recourse debt, non-current	290,090	168,008
Non-recourse debt, non-current[1]	99,941	102,045
Other long-term liabilities	19,867	17,268
Total liabilities	1,386,860	1,312,991
Commitments and contingencies (Note 13)		
Redeemable noncontrolling interest	356	377
Stockholders' equity:		
Common stock: $0.0001 par value; Class A shares - 600,000,000 shares authorized and 144,325,637 shares and 140,094,633 shares issued and outstanding and Class B shares - 600,000,000 shares authorized and 27,773,816 shares and 27,908,093 shares issued and outstanding at March 31, 2021 and December 31, 2020, respectively.	17	17
Additional paid-in capital	3,129,687	3,182,753
Accumulated other comprehensive loss	(126)	(9)
Accumulated deficit	(3,123,518)	(3,103,937)
Total stockholders' equity	6,060	78,824
Noncontrolling interest	57,986	62,195
Total liabilities, redeemable noncontrolling interest, stockholders' equity and noncontrolling interest	$ 1,451,262	$ 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 share and per share data)
(unaudited)

	Three Months Ended March 31,	
	2021	**2020**
Revenue:		
Product	$ 137,930	$ 99,559
Installation	2,659	16,618
Service	36,417	25,147
Electricity	17,001	15,375
Total revenue	194,007	156,699
Cost of revenue:		
Product	87,294	72,489
Installation	4,625	20,779
Service	36,118	30,970
Electricity	11,319	12,530
Total cost of revenue	139,356	136,768
Gross profit	54,651	19,931
Operating expenses:		
Research and development	23,295	23,279
Sales and marketing	19,952	13,949
General and administrative	25,801	29,098
Total operating expenses	69,048	66,326
Loss from operations	(14,397)	(46,395)
Interest income	74	819
Interest expense	(14,731)	(20,754)
Interest expense - related parties	—	(1,366)
Other expense, net	(85)	(8)
Loss on extinguishment of debt	—	(14,098)
(Loss) gain on revaluation of embedded derivatives	(518)	284
Loss before income taxes	(29,657)	(81,518)
Income tax provision	124	124
Net loss	(29,781)	(81,642)
Less: Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(4,892)	(5,693)
Net loss attributable to Class A and Class B common stockholders	$ (24,889)	$ (75,949)
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.15)	$ (0.61)
Weighted average shares used to compute net loss per share available to Class A and Class B common stockholders, basic and diluted	170,745	123,763

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 March 31,	
	2021	**2020**
Net loss	$ (29,781)	$ (81,642)
Other comprehensive loss, net of taxes:		
Change in derivative instruments designated and qualifying as cash flow hedges	(4,653)	(8,214)
Foreign currency translation adjustment	(228)	—
Other comprehensive loss, net of taxes	(4,881)	(8,214)
Comprehensive loss	(34,662)	(89,856)
Less: Comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	(350)	(13,902)
Comprehensive loss attributable to Class A and Class B stockholders	$ (34,312)	$ (75,954)

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

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

	Three Months Ended March 31, 2021							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity	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	—	1,140,502	—	—	—	—	—	—
ESPP purchase	—	977,508	—	4,726	—	—	4,726	—
Exercise of stock options	—	1,978,717	—	53,227	—	—	53,227	—
Stock-based compensation	—	—	—	15,780	—	—	15,780	—
Change in effective portion of interest rate swap agreement	—	—	—	—	—	—	—	4,653
Distributions to noncontrolling interests	(17)	—	—	—	—	—	—	(3,863)
Foreign currency translation adjustment	—	—	—	—	(117)	—	(117)	(111)
Net loss	(4)	—	—	—	—	(24,889)	(24,889)	(4,888)
Balances at March 31, 2021	$ 356	172,099,453	$ 17	$ 3,129,687	$ (126)	$ (3,123,518)	$ 6,060	$ 57,986

	Three Months Ended March 31, 2020							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Gain	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
Adjustment of embedded derivative for debt modification	—	—	—	(24,071)	—	—	(24,071)	—
Issuance of restricted stock awards	—	3,010,606	—	—	—	—	—	—
ESPP purchase	—	992,846	—	4,177	—	—	4,177	—
Exercise of stock options	—	110,949	—	667	—	—	667	—
Stock-based compensation	—	—	—	21,676	—	—	21,676	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(5)	—	(5)	(8,209)
Distributions to noncontrolling interests	(1)	—	—	—	—	—	—	(3,897)
Net loss	(375)	—	—	—	—	(75,949)	(75,949)	(5,318)
Balances at March 31, 2020	$ 67	125,150,690	$ 12	$ 2,689,208	$ 14	$ (3,022,333)	$ (333,099)	$ 73,867

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)

	Three Months Ended March 31,	
	2021	**2020**
Cash flows from operating activities:		
Net loss	$ (29,781)	$ (81,642)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	13,442	13,035
Non-cash lease expense	2,115	1,549
Revaluation of derivative contracts	290	241
Stock-based compensation	17,210	23,019
Gain on long-term REC purchase contract	—	(4)
Loss on extinguishment of debt	—	14,098
Amortization of debt issuance costs and premium, net	971	4,755
Changes in operating assets and liabilities:		
Accounts receivable	(8,815)	2,136
Inventories	(10,820)	2,083
Deferred cost of revenue	(13,952)	(19,494)
Customer financing receivable	1,302	1,240
Prepaid expenses and other current assets	3,908	3,060
Other long-term assets	(687)	(2,924)
Accounts payable	14,145	4,822
Accrued warranty	(4,305)	681
Accrued expenses and other current liabilities	(24,941)	489
Operating lease liabilities	(2,474)	(1,717)
Deferred revenue and customer deposits	(48,036)	5,253
Other long-term liabilities	1,393	1,372
Net cash used in operating activities	(89,035)	(27,948)
Cash flows from investing activities:		
Purchase of property, plant and equipment	(12,932)	(12,360)
Net cash used in investing activities	(12,932)	(12,360)
Cash flows from financing activities:		
Proceeds from issuance of debt to related parties	—	30,000
Repayment of debt	(4,862)	(9,128)
Repayment of debt - related parties	—	(2,105)
Proceeds from financing obligations	5,016	—
Repayment of financing obligations	(3,077)	(2,503)
Distributions to noncontrolling interests and redeemable noncontrolling interests	(3,880)	(4,270)
Proceeds from issuance of common stock	57,953	4,845
Net cash provided by financing activities	51,150	16,839
Effect of exchange rate changes on cash, cash equivalent and restricted cash	(229)	—
Net decrease in cash, cash equivalents, and restricted cash	(51,046)	(23,469)
Cash, cash equivalents, and restricted cash:		
Beginning of period	416,710	377,388
End of period	$ 365,664	$ 353,919
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	$ 14,963	$ 17,790
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	2,830	2,236
Operating cash flows from financing leases	39	1
Financing cash flows from financing leases	63	4
Cash paid during the period for income taxes	72	29
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	1,172	466
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	22,649	421
Recognition of financing lease right-of-use asset during the year-to-date period	1,457	251
Accrued distributions to equity investors	—	1
Accrued interest for notes	—	467

Accrued debt issuance costs	—	2,970
Adjustment of embedded derivative related to debt extinguishment	—	24,071

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

Bloom Energy Corporation
Notes to Unaudited 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. During the three months ended March 31, 2021, we continued to experience supply chain disruptions due to COVID-19 as well as the Suez Canal blockage that affected logistics and container shortages. We put actions in place to mitigate the disruptions by booking alternate sea routes, creating virtual hubs and consolidating shipments coming from the same region. These mitigation efforts have increased the costs of our parts and materials.

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 $290.1 million of total outstanding recourse debt as of March 31, 2021, all 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 ASC 842 - *Leases*. As a result, we adjusted our previously reported 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 costs. The full extent to which the COVID-19 pandemic will directly or indirectly impact our business, results of operations and financial condition, including sales, expenses, our allowance for doubtful accounts, stock-based compensation, the carrying value of our long-lived assets, inventory, financial assets, and valuation allowances for tax assets, will depend on future developments that are highly uncertain, including as a result of new information that may emerge concerning the COVID-19 pandemic and the actions taken to contain it or treat it, as well as the economic impact on local, regional, national and international customers, suppliers and markets. We have made estimates of the impact of COVID-19 within our condensed consolidated financial statements and there may be changes to those estimates in future periods as new information becomes available. 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 months ended March 31, 2021 and 2020, total revenue in the Asia Pacific region was 43% and 37%, respectively, of our total revenue.

Credit Risk - At March 31, 2021 and December 31, 2020, one customer, SK Engineering and Construction Co., Ltd. ("SK E&C"), accounted for approximately 76% and 56% of accounts receivable. To date, we have not experienced any credit losses.

Customer Risk - During the three months ended March 31, 2021, revenue from two customers, SK E&C and EdgeWise Energy LLC, accounted for approximately 43% and 30%, respectively of our total revenue. During the three months ended March 31, 2020, revenue from two customers, SK E&C and Duke Energy, accounted for approximately 36% and 31%, respectively, of our total revenue.

2. Summary of Significant Accounting Policies

There have been no changes in our accounting policies from those reported in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. We have expanded our accounting policy relating to foreign currency transactions as follows:

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. Revenues 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, the Company 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

Deferred Revenue and Customer Deposits

Deferred revenue and customer deposits as of March 31, 2021 and December 31, 2020 consists of the following (in thousands):

	March 31, 2021	December 31, 2020
Deferred revenue	$ 120,643	$ 135,578
Customer deposits	33,069	66,171
Deferred revenue and customer deposits	$ 153,712	$ 201,749

Deferred revenue activity, including deferred incentive revenue activity, during the three months ended March 31, 2021 and 2020 consists of the following (in thousands):

	Three Months Ended March 31,	
	2021	2020
Beginning balance	$ 135,578	$ 175,455
Additions	156,586	138,387
Revenue recognized	(171,521)	(136,576)
Ending balance	$ 120,643	$ 177,266

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 March 31,	
	2021	2020
Revenue from contracts with customers:		
Product revenue	$ 137,930	$ 99,559
Installation revenue	2,659	16,618
Services revenue	36,417	25,147
Electricity revenue	595	72
Total revenue from contract with customers	177,601	141,396
Revenue from contracts accounted for as leases:		
Electricity revenue	16,406	15,303
Total revenue	$ 194,007	$ 156,699

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):

	March 31, 2021	December 31, 2020
As Held:		
Cash	$ 215,297	$ 180,808
Money market funds	150,367	235,902
	$ 365,664	$ 416,710
As Reported:		
Cash and cash equivalents	$ 180,719	$ 246,947
Restricted cash	184,945	169,763
	$ 365,664	$ 416,710

Restricted cash consisted of the following (in thousands):

	March 31, 2021	December 31, 2020
Current:		
Restricted cash	$ 53,179	$ 26,706
Restricted cash related to PPA Entities[1]	1,686	25,764
Restricted cash, current	54,865	52,470
Non-current:		
Restricted cash	114,713	286
Restricted cash related to PPA Entities[1]	15,367	117,007
Restricted cash, non-current	130,080	117,293
	$ 184,945	$ 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 March 31, 2021, includes $28.2 million and $1.0 million of current restricted cash, and $80.5 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, and $88.4 million and $13.3 million of non-current restricted cash, respectively. These entities are not considered VIEs.

5. Fair Value

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			
March 31, 2021	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 150,367	$ —	$ —	$ 150,367
	$ 150,367	$ —	$ —	$ 150,367
Liabilities				
Derivatives:				
Natural gas fixed price forward contracts	$ —	$ 1,650	$ —	$ 1,650
Embedded EPP derivatives	—	—	6,060	6,060
Interest rate swap agreements	—	11,301	—	11,301
	$ —	$ 12,951	$ 6,060	$ 19,011

	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.

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 March 31, 2021, we expect $2.2 million of the loss on the interest rate swaps accumulated in other comprehensive loss to be reclassified into earnings in the next 12 months.

Natural Gas Fixed Price Forward Contracts - As of December 31, 2020, 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 and therefore, as no observable inputs to support market activity were available, were classified as Level 3 liabilities. 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. At March 31, 2021, we transferred $1.7 million of 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.

We recognized an unrealized gain of $0.2 million and an unrealized loss of $0.6 million, as a result of a change in the fair value of our natural gas fixed price forward contracts during the three months ended March 31, 2021 and 2020, respectively. We realized gains of $0.7 million and $1.0 million for the three months ended March 31, 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 Escalation Protection Plan ("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 March 31, 2021 and 2020, we recorded the fair value of the embedded EPP derivatives and recognized an unrealized loss of $0.5 million and an unrealized gain of $0.3 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 three months ended March 31, 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	$ 13,144
Settlement of natural gas fixed price forward contracts	(4,503)	—	(4,503)
Changes in fair value	109	(635)	(526)
Liabilities at December 31, 2020	2,574	5,541	8,115
Settlement of natural gas fixed price forward contracts	(731)	—	(731)
Changes in fair value	(193)	519	326
Transfer from Level 3 to Level 2 in fair value hierarchy	(1,650)	—	(1,650)
Liabilities at March 31, 2021	$ —	$ 6,060	$ 6,060

To estimate the liabilities related to the EPP contracts an option pricing method was implemented through a Monte Carlo simulation. The unobservable inputs were simulated based on the available values for avoided cost and cost of electricity as calculated for March 31, 2021, using an expected growth rate of 7% over the contracts' life and volatility of 20%. The estimated growth rate and volatility were estimated based on the historical tariff changes for the period 2008 to 2020. Avoided cost is the transmission and distribution cost expressed in dollars per kilowatt hours avoided in the given year of the contract, calculated using the billing rates of the effective utility tariff applied during the quarter to the host account for which usage is offset by the generator. If the billing rates within the utility tariff change during the measurement period, the average of the amount of charge for each rate is weighted by the number of effective months for each amount.

The inputs listed above would have had a direct impact on the fair values of the above derivatives if they were adjusted. Generally, an increase in natural gas prices and a decrease in electric grid prices would each result in an increase in the estimated fair value of our derivative liabilities.

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):

	March 31, 2021		December 31, 2020	
	Net Carrying Value	Fair Value	Net Carrying Value	Fair Value
Customer receivables				
Customer financing receivables	$ 49,395	$ 41,039	$ 50,746	$ 42,679
Debt instruments				
Recourse:				
10.25% Senior Secured Notes due March 2027	68,703	70,873	68,614	71,831
2.5% Green Convertible Senior Notes due August 2025	221,387	400,009	99,394	426,229
Non-recourse:				
7.5% Term Loan due September 2028	30,869	37,044	31,746	37,658
6.07% Senior Secured Notes due March 2030	76,130	85,830	77,007	89,654
LIBOR + 2.5% Term Loan due December 2021	111,410	113,165	114,138	116,113

6. Balance Sheet Components

Inventories

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

	March 31, 2021	December 31, 2020
Raw materials	$ 78,113	$ 79,090
Work-in-progress	33,333	29,063
Finished goods	41,726	33,906
	$ 153,172	$ 142,059

The inventory reserves were $14.1 million and $14.0 million as of March 31, 2021 and December 31, 2020, respectively.

Prepaid Expenses and Other Current Assets

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

	March 31, 2021	December 31, 2020
Government incentives receivable	$ 479	$ 479
Prepaid hardware and software maintenance	5,304	5,227
Receivables from employees	5,251	5,160
Other prepaid expenses and other current assets	15,775	19,852
	$ 26,809	$ 30,718

Property, Plant and Equipment, Net

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

	March 31, 2021	December 31, 2020
Energy Servers	$ 672,667	$ 669,422
Computers, software and hardware	20,206	20,432
Machinery and equipment	109,177	106,644
Furniture and fixtures	8,495	8,455
Leasehold improvements	38,019	37,497
Building	46,730	46,730
Construction in progress	27,325	21,118
	922,619	910,298
Less: accumulated depreciation	(323,182)	(309,670)
	$ 599,437	$ 600,628

Depreciation expense related to property, plant and equipment, net, was $13.4 million and $13.0 million for the three months ended March 31, 2021 and 2020, respectively.

Property, plant and equipment under operating leases by the PPA Entities was $368.0 million and $368.0 million as of March 31, 2021 and December 31, 2020, respectively. The accumulated depreciation for these assets was $121.7 million and $115.9 million as of March 31, 2021 and December 31, 2020, respectively. Depreciation expense for these assets was $5.8 million and $6.2 million for the three months ended March 31, 2021 and 2020, respectively.

Depreciation expense is included in cost of product, installation, service and electricity revenue as well as research and development, sales and marketing and general and administration expenses in our condensed consolidated statements of operations.

Other Long-Term Assets

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

	March 31, 2021	December 31, 2020
Prepaid and other long-term assets	$ 24,834	$ 24,116
Deferred commissions	6,744	6,732
Equity-method investments	1,880	1,954
Long-term deposits	1,741	1,709
	$ 35,199	$ 34,511

Accrued Warranty

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

	March 31, 2021	December 31, 2020
Product warranty	$ 1,469	$ 1,549
Product performance	4,347	8,605
Maintenance services contracts	142	109
	$ 5,958	$ 10,263

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

Balances at December 31, 2019	$ 9,881
Accrued warranty, net	5,944
Warranty expenditures during the year	(5,671)
Balances at December 31, 2020	10,154
Accrued warranty, net	(3,224)
Warranty expenditures during the year-to-date period	(1,114)
Balances at March 31, 2021	$ 5,816

Accrued Expenses and Other Current Liabilities

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

	March 31, 2021	December 31, 2020
Compensation and benefits	$ 23,401	$ 28,343
Current portion of derivative liabilities	13,395	19,116
Sales-related liabilities	5,902	14,479
Accrued installation	8,717	16,468
Sales tax liabilities	2,302	2,732
Interest payable	719	2,224
Other	27,697	28,642
	$ 82,133	$ 112,004

Other Long-Term Liabilities

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

	March 31, 2021	December 31, 2020
Delaware grant	$ 9,212	$ 9,212
Other	10,655	8,056
	$ 19,867	$ 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 $9.2 million as of March 31, 2021 and December 31, 2020. 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 March 31, 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	—	68,703	68,703	—	10.25%	March 2027	Company	Yes
2.5% Green Convertible Senior Notes due August 2025	230,000	—	221,387	221,387	—	2.5%	August 2025	Company	Yes
Total recourse debt	300,000	—	290,090	290,090	—				
7.5% Term Loan due September 2028	33,393	2,985	27,884	30,869	—	7.5%	September 2028	PPA IIIa	No
6.07% Senior Secured Notes due March 2030	76,925	4,073	72,057	76,130	—	6.07%	March 2030	PPA IV	No
LIBOR + 2.5% Term Loan due December 2021	111,873	111,410	—	111,410	—	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	222,191	118,468	99,941	218,409	759				
Total debt	$ 522,191	$ 118,468	$ 390,031	$ 508,499	$ 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	Recourse
		Current	Long-Term	Total					
10.25% Senior Secured Notes due March 2027	$ 70,000	$ —	$ 68,614	$ 68,614	$ —	10.25%	March 2027	Company	Yes
2.5% Green Convertible Senior Notes due August 2025	230,000	—	99,394	99,394		2.5%	August 2025	Company	Yes
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	No
6.07% Senior Secured Notes due March 2030	77,837	3,882	73,125	77,007	—	6.07%	March 2030	PPA IV	No
LIBOR + 2.5% Term Loan due December 2021	114,761	114,138	—	114,138	—	LIBOR plus margin	December 2021	PPA V	No
Letters of Credit due December 2021	—	—	—	—	968	2.25%	December 2021	PPA V	No
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 March 31, 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. We used the proceeds of this issuance to repay $70.0 million of our 10% 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 outstanding unpaid principal of the 10.25% Senior Secured Notes of $70.0 million was classified as non-current as of March 31, 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 March 31, 2021 and accordingly, the noteholders may convert their Green Notes at any time during the quarter ending June 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.

As of March 31, 2021, the remaining lives of the Green Notes are approximately 4.4 years and accordingly, the Green Notes are classified as long-term debt. Interest expense for the three months ended March 31, 2021 was $1.2 million, including amortization of issuance costs of $0.5 million.

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 $3.8 million and $3.8 million as of March 31, 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 $8.7 million and $8.5 million as of March 31, 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 March 31, 2021 and December 31, 2020 was $111.4 million and $114.1 million, respectively. There was no non-current portion of this loan as of March 31, 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 ("LC") facility, the PPA V also pays commitment fees at 0.50% 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 March 31, 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.

Related Party Debt

Portions of the above described recourse and non-recourse debt were held by various related parties. See Note 12 - *Related Party Transactions* for a full description.

Repayment Schedule and Interest Expense

The following table presents details of our outstanding loan principal repayment schedule as of March 31, 2021 (in thousands):

Remainder of 2021	$	117,033
2022		16,393
2023		22,166
2024		24,886
2025		258,022
Thereafter		83,691
	$	522,191

Interest expense of $14.7 million and $22.1 million for the three months ended March 31, 2021 and 2020, respectively, was recorded in interest expense on the condensed consolidated statements of operations, which includes interest expense - related parties of zero and $1.4 million, for the three months ended March 31, 2021 and 2020, respectively.

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 March 31, 2021 and December 31, 2020 on our condensed consolidated balance sheets are as follows (in thousands):

	March 31, 2021	December 31, 2020
Liabilities		
Accrued expenses and other current liabilities	$ 11,301	$ 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 $180.7 million and $181.4 million as of March 31, 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 months ended March 31, 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 March 31,	
	2021	2020
Beginning balance	$ 15,989	$ 9,238
(Gain) loss recognized in other comprehensive loss	(4,164)	8,356
Amounts reclassified from other comprehensive loss to earnings	(489)	(142)
Net (gain) loss recognized in other comprehensive loss	(4,653)	8,214
Gain recognized in earnings	(35)	(37)
Ending balance	$ 11,301	$ 17,415

Embedded EPP Derivatives in Sales Contracts

We estimate the fair value of the embedded EPP derivatives in certain of the contracts with our customers using a Monte Carlo simulation model, which considers various potential electricity price forward curves over the sales contracts' terms. We use historical grid prices and available forecasts of future electricity prices to estimate future electricity prices. The grid pricing EPP guarantees that we provided in some of our sales arrangements represent an embedded derivative, with the initial value accounted for as a reduction in product revenue and any changes, reevaluated quarterly, in the fair market value of the derivative recorded in gain (loss) on revaluation of embedded derivatives. We recognized an unrealized loss of $0.5 million and a gain of $0.3 million attributable to the change in fair value for the three months ended March 31, 2021 and 2020, 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 $6.0 million and $5.9 million as of March 31, 2021 and 2020, respectively.

9. Leases

Facilities, Office Buildings, and Vehicles

We lease most of our facilities, office buildings and vehicles under operating leases that expire at various dates through February 2036. We lease various manufacturing facilities in Sunnyvale, Fremont, and Mountain View, California. Our lease for our Sunnyvale manufacturing facilities was entered into in April 2005 and expired in December 2020. In January 2021, we extended this lease to 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. 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.

Certain 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. During the quarters ended March 31, 2021 and 2020, rent expense for all occupied facilities was $3.1 million and $2.1 million, respectively.

Our leases have remaining 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 March 31, 2021 and December 31, 2020 were as follows (in thousands):

	March 31, 2021	December 31, 2020
Assets:		
Operating lease right-of-use assets, net [1, 2]	$ 55,165	$ 35,621
Financing lease right-of-use assets, net [3, 4]	1,685	334
Total	$ 56,850	$ 35,955
Liabilities:		
Current:		
Operating lease liabilities	$ 7,219	$ 7,899
Financing lease liabilities [5]	544	74
Total current lease liabilities	7,763	7,973
Non-current:		
Operating lease liabilities	61,714	41,849
Financing lease liabilities [6]	1,184	267
Total non-current lease liabilities	62,898	42,116
Total lease liabilities	$ 70,661	$ 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 months ended March 31, 2021 and 2020 were as follows (in thousands):

	Three Months Ended March 31,	
	2021	2020
Operating lease costs	$ 3,018	$ 2,069
Financing lease costs:		
Amortization of financing lease right-of-use assets	708	4
Interest expense for financing lease liabilities	199	2
Total financing lease costs	907	6
Short-term lease costs	168	139
Total lease costs	$ 4,093	$ 2,214

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

	March 31, 2021	December 31, 2020
Remaining lease term (years):		
Operating leases	8.5 years	6.7 years
Finance leases	3.3 years	4.2 years
Discount rate:		
Operating leases	9.2 %	8.7 %
Finance leases	8.2 %	7.0 %

Future lease payments under lease agreements for our facilities, office buildings, and vehicles as of March 31, 2021, were as follows (in thousands):

	Operating Leases	Finance Leases
Remainder of 2021	$ 10,324	$ 538
2022	11,397	481
2023	12,184	476
2024	10,762	363
2025	10,995	104
Thereafter	50,098	18
Total minimum lease payments	105,760	1,980
Less: amounts representing interest or imputed interest	(36,826)	(253)
Present value of lease liabilities	$ 68,934	$ 1,727

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 March 31, 2021 and 2020.

At March 31, 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	$ 30,901	$ (30,901)
2022	42,067	(42,067)
2023	43,004	(43,004)
2024	40,901	(40,901)
2025	39,859	(39,859)
Thereafter	88,742	(88,742)
Total lease payments	285,474	$ (285,474)
Less: imputed interest	(167,747)	
Total lease obligations	117,727	
Less: current obligations	(13,330)	
Long-term lease obligations	$ 104,397	

[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 $461.5 million and $460.0 million as of March 31, 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):

	March 31, 2021	December 31, 2020
Lease payment receivables, net[1]	$ 48,505	$ 49,806
Estimated residual value of leased assets (unguaranteed)	890	890
Net investment in sales-type leases	49,395	50,696
Less: current portion	(5,515)	(5,428)
Non-current portion of net investment in sales-type leases	$ 43,880	$ 45,268

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

As of March 31, 2021, the future scheduled customer payments from sales-type leases were as follows (in thousands):

	Future minimum lease payments
Remainder of 2021	$ 4,399
2022	6,110
2023	6,435
2024	6,797
2025	7,125
Thereafter	19,176
Total undiscounted cash flows	50,042
Less: imputed interest	(1,486)
Present value of lease payments[1]	$ 48,556

[1] Amount comprises a current and long-term portion of lease receivables of $5.5 million and $43.9 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 March 31, 2021, were as follows (in thousands):

	Operating Leases
Remainder of 2021	$ 32,655
2022	44,258
2023	45,345
2024	46,590
2025	47,612
Thereafter	264,207
Total lease payments	$ 480,667

10. Stock-Based Compensation and Employee Benefit Plans

Share-based grants are designed to reward employees for their long-term contributions to us and provide incentives for them to remain with us.

2002 Stock Plan

As of March 31, 2021, options to purchase 557,148 shares of Class B common stock were outstanding with a weighted average exercise price of $23.75 per share. The 2002 Stock Plan has been canceled; however, it continues to govern outstanding grants under the 2002 Stock Plan.

2012 Equity Incentive Plan

As of March 31, 2021, stock options to purchase 7,797,591 shares of Class B common stock were outstanding with a weighted average exercise price of $27.24 per share and no shares were available for future grant. As of March 31, 2021, we had outstanding RSUs that may be settled for 71,000 shares of Class B common stock under the plan. The 2012 Equity Incentive Plan has been canceled; however, it continues to govern outstanding grants under the 2012 Equity Incentive Plan.

2018 Equity Incentive Plan

As of March 31, 2021, stock options to purchase 4,691,844 shares of Class A common stock were outstanding with a weighted average exercise price of $9.43 per share and 7,794,217 shares of outstanding RSUs that may be settled for Class A common stock which were granted pursuant to the 2018 Equity Incentive Plan ("2018 Plan"). As of March 31, 2021, we had 25,855,075 shares reserved for issuance under the ***2***018 Plan.

2018 Employee Stock Purchase Plan

As of March 31, 2021, we had 3,512,465 shares reserved for future issuance under the 2018 Employee Stock Purchase Plan ("2018 ESPP"),

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 March 31,	
	2021	**2020**
Cost of revenue	$ 2,999	$ 5,507
Research and development	4,908	6,096
Sales and marketing	4,085	3,890
General and administrative	5,218	7,526
	$ 17,210	$ 23,019

During the three months ended March 31, 2021 and 2020, we capitalized $0.8 million and $1.2 million, of stock-based compensation cost, respectively, into inventory and property, plant and equipment.

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
Exercised	(1,978,717)			
Cancelled	(328,971)	10.64		
Balances at March 31, 2021	13,046,583	20.69	6.0	106,497
Vested and expected to vest at March 31, 2021	12,772,269	20.92	6.0	101,777
Exercisable at March 31, 2021	8,755,992	25.52	5.0	36,250

Stock Options - During the three months ended March 31, 2021 and 2020, we recognized $4.0 million and $5.6 million of stock-based compensation costs for stock options, respectively. We did not grant options in the three months ended March 31, 2021 and 2020.

As of March 31, 2021 and 2020, we had unrecognized compensation costs related to unvested stock options of $16.8 million and $36.3 million, respectively. This cost is expected to be recognized over the remaining weighted-average period of 1.6 years and 2.4 years, respectively. Cash received from stock options exercised totaled $53.2 million and $0.7 million for the three months ended March 31, 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	2,897,260	29.59
Vested	(1,140,502)	18.39
Forfeited	(310,328)	11.37
Unvested Balance at March 31, 2021	7,865,218	18.97

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 March 31, 2021 and 2020, we recognized $10.7 million and $13.2 million of stock-based compensation costs for stock awards, respectively.

As of March 31, 2021 and 2020, we had $126.2 million and $37.6 million of unrecognized stock-based compensation cost related to unvested stock awards, expected to be recognized over a weighted average period of 2.4 years and 1.3 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 costs associated with these PSUs is recognized over the service period as we evaluate the probability of the achievement of the performance conditions.

The following table presents the stock activity and the total number of shares available for grant under our stock plans as of March 31, 2021:

	Plan Shares Available for Grant
Balances at December 31, 2020	20,233,754
Added to plan	7,675,984
Granted	(2,628,268)
Exercised	—
Cancelled	639,299
Expired	(65,694)
Balances at March 31, 2021	25,855,075

2018 Employee Stock Purchase Plan

During the three months ended March 31, 2021 and 2020, we recognized $1.1 million and $2.9 million of stock-based compensation costs for the 2018 ESPP, respectively. We issued 977,508 shares in the three months ended March 31, 2021. During the three months ended March 31, 2021, we added an additional 1,902,572 shares and there were 3,512,465 shares available for issuance as of March 31, 2021.

As of March 31, 2021 and 2020, we had $1.2 million and $5.5 million of unrecognized stock-based compensation costs, expected to be recognized over a weighted average period of 0.5 years and 0.8 years, respectively.

We used the following weighted-average assumptions in applying the Black-Scholes valuation model for determination of the 2018 ESPP share valuation:

	Three Months Ended March 31,	
	2021	2020
Risk-free interest rate	0.06% - 0.13%	1.51%
Expected term (years)	0.5 - 2.0	0.5 - 2.0
Expected dividend yield	—	—
Expected volatility	95.0% - 109.0%	61.0%

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' Activities Summary

The table below shows the details of the three Investment Company VIEs that were active during the three months ended March 31, 2021 and their cumulative activities from inception to the periods indicated (dollars in thousands):

	PPA IIIa	PPA IV	PPA V
Overview:			
Maximum size of installation (in megawatts)	10	21	40
Installed size (in megawatts)	10	19	37
Term of power purchase agreements (in years)	15	15	15
First system installed	Feb-13	Sep-14	Jun-15
Last system installed	Jun-14	Mar-16	Dec-16
Income (loss) and tax benefits allocation to Equity Investor	99%	90%	99%
Cash allocation to Equity Investor	99%	90%	90%
Income (loss), tax and cash allocations to Equity Investor after the flip date	5%	No flip	No flip
Equity Investor [1]	US Bank	Exelon Corporation	Exelon Corporation
Put option date [2]	1st anniversary of flip point	N/A	N/A
Company cash contributions	$ 32,223	$ 11,669	$ 27,932
Company non-cash contributions [3]	$ 8,655	$ —	$ —
Equity Investor cash contributions	$ 36,967	$ 84,782	$ 227,344
Debt financing	$ 44,968	$ 99,000	$ 131,237
Activity as of March 31, 2021:			
Distributions to Equity Investor	$ 4,864	$ 10,922	$ 26,601
Debt repayment—principal	$ 11,575	$ 22,075	$ 19,363
Activity as of December 31, 2020:			
Distributions to Equity Investor	$ 4,847	$ 8,852	$ 24,809
Debt repayment—principal	$ 10,513	$ 21,163	$ 16,475

[1] Investor name represents ultimate parent of subsidiary financing the project.

[2] Investor right on the certain date, upon giving us advance written notice, to sell the membership interests to us or resign or withdraw from the investment partnership.

[3] Non-cash contributions consisted of warrants that were issued by us to respective lenders to each PPA Entity, as required by such entity's credit agreements. The corresponding values are amortized using the effective interest method over the debt term.

The noncontrolling interests in PPA IIIa are redeemable as a result of the put option held by the Equity Investors as of March 31, 2021 and 2020. At March 31, 2021 and 2020, the carrying value of redeemable noncontrolling interests of $0.4 million and $0.4 million, respectively, exceeded the maximum redemption value.

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):

	March 31, 2021	December 31, 2020
Assets		
Current assets:		
Cash and cash equivalents	$ 856	$ 1,421
Restricted cash	1,686	4,698
Accounts receivable	4,359	4,420
Customer financing receivable	5,515	5,428
Prepaid expenses and other current assets	1,822	3,048
Total current assets	14,238	19,015
Property and equipment, net	246,216	252,020
Customer financing receivable, non-current	43,880	45,268
Restricted cash, non-current	15,367	15,320
Other long-term assets	38	37
Total assets	$ 319,739	$ 331,660
Liabilities		
Current liabilities:		
Accrued expenses and other current liabilities	$ 14,587	$ 19,510
Deferred revenue and customer deposits	662	662
Non-recourse debt	118,468	120,846
Total current liabilities	133,717	141,018
Deferred revenue and customer deposits, non-current	5,909	6,072
Non-recourse debt, non-current	99,942	102,045
Total liabilities	$ 239,568	$ 249,135

As of January 1, 2020, the flip date, we are the majority owner shareholder in PPA IIIa receiving 95% of all cash distributions and profits and losses. In addition, 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.

We believe that by presenting assets and liabilities separate from the PPA Entities, we provide a better view of the true operations of our core business. The table below provides detail into the assets and liabilities of Bloom Energy separate from the PPA Entities. The table provides our stand-alone assets and liabilities, those of the PPA Entities combined, and our consolidated balances as of March 31, 2021 and December 31, 2020 (in thousands):

	March 31, 2021			December 31, 2020		
	Bloom Energy	PPA Entities	Consolidated	Bloom Energy	PPA Entities	Consolidated
Assets						
Current assets	$ 570,234	$ 14,238	$ 584,472	$ 599,589	$ 19,015	$ 618,604
Long-term assets	561,289	305,501	866,790	523,138	312,645	835,783
Total assets	$ 1,131,523	$ 319,739	$ 1,451,262	$ 1,122,727	$ 331,660	$ 1,454,387
Liabilities						
Current liabilities	$ 235,591	$ 15,249	$ 250,840	$ 295,359	$ 20,172	$ 315,531
Current portion of debt	—	118,468	118,468	—	120,846	120,846
Long-term liabilities	621,612	5,909	627,521	600,489	6,072	606,561
Long-term portion of debt	290,089	99,942	390,031	168,008	102,045	270,053
Total liabilities	$ 1,147,292	$ 239,568	$ 1,386,860	$ 1,063,856	$ 249,135	$ 1,312,991

12. Related Party Transactions

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

	Three Months Ended March 31,	
	2021	2020
Total revenue from related parties	$ 770	$ 1,049
Interest expense to related parties	—	1,366

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 March 31, 2021 and 2020, we recognized related party total revenue of $0.8 million and $1.0 million, respectively. Accounts receivable from this joint venture was $0.4 million as of March 31, 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 months ended March 31, 2021 and 2020, we did not recognize related party revenue and we had no outstanding accounts receivable from this joint venture.

Debt to Related Parties

We had no debt or convertible notes from investors considered to be related parties as of March 31, 2021 and December 31, 2020.

13. Commitments and Contingencies

Commitments

Purchase Commitments with Suppliers and Contract Manufacturers - In order to reduce manufacturing lead-times and to ensure an adequate supply of inventories, we have agreements with our component suppliers and contract manufacturers to allow long lead-time component inventory procurement based on a rolling production forecast. We are contractually obligated to purchase long lead-time component inventory procured by certain manufacturers in accordance with our forecasts. We can generally give notice of order cancellation at least 90 days prior to the delivery date. However, we issue purchase orders to our component suppliers and third-party manufacturers that may not be cancellable. As of March 31, 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 its customers over the contractual term. The PPA Entities monitor the need for any accruals arising from such guaranties, which are calculated as the difference between committed and actual power output or between natural gas consumption at warranted efficiency levels and actual consumption, multiplied by the contractual rates with the customer. Amounts payable under these guaranties are accrued in periods when the guaranties are not met and are recorded in cost of service revenue in the condensed consolidated statements of operations. We paid $0.1 million and $5.7 million for the three months ended March 31, 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 LC facility for this purpose. As of March 31, 2021, the balance of this cash-collateralized LC was $108.7 million, of which $28.2 million and $80.5 million is recognized as short-term and long-term restricted cash, respectively.

Pledged Funds - In 2019, pursuant to the PPA IIIb upgrade of Energy Servers, we have restricted cash of $13.3 million, which has been pledged for a seven-year period to secure our operations and maintenance obligations with respect to the totality of our obligations to the financier. 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.

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. The grant contains two types of milestones that we must complete to retain the entire amount of the grant proceeds. The first milestone was to provide employment for 900 full time workers in Delaware by the end of the first recapture period of September 30, 2017. The second milestone was to pay these full-time workers a cumulative total of $108.0 million in compensation by September 30, 2017. There are two additional recapture periods at which time we must continue to employ 900 full time workers and the cumulative total compensation paid by us is required to be at least $324.0 million by September 30, 2023. As of March 31, 2021, we had 462 full time workers in Delaware and paid $162.8 million in cumulative compensation. As of December 31, 2020, we had 424 full time workers in Delaware and paid $152.2 million in cumulative compensation. We have so far received $12.0 million of the grant, which is contingent upon meeting the milestones through September 30, 2023. In the event that we do not meet the milestones, we may have to repay the Delaware Economic Development Authority, up to $1.6 million on September 30, 2021 and up to an additional $2.5 million on September 30, 2023. We repaid $1.5 million of the grant in 2017, and no additional amounts have been repaid since then. As of March 31, 2021, we have recorded $1.3 million in current liabilities and $9.2 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.

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. Given that the case is still in its early stages, we are unable to estimate any range of reasonably possible losses.

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 March 31, 2021 and 2020, we recorded provisions for income taxes of $0.1 million and $0.1 million on pre-tax losses of $29.7 million and $81.5 million for effective tax rates of (0.4)% and (0.2)%, respectively.

The effective tax rate for the three months ended March 31, 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

Net loss per share (basic) available to common stockholders is calculated by dividing net loss available to common stockholders by the weighted-average shares of common stock outstanding for the period. Net loss per share is the same for each class of common stock as they are entitled to the same liquidation and dividend rights. As a result, net loss per share (basic) and net loss per share (diluted) available to common stockholders are the same for both Class A and Class B common stock and are combined for presentation.

Net loss per share (diluted) is computed by using the if-converted method when calculating the potentially dilutive effect, if any, of our convertible notes. Net loss per share (diluted) available to common stockholders is then calculated by dividing the resulting adjusted net loss available to common stockholders by the combined weighted-average number of fully diluted common shares outstanding. There were no adjustments to net loss available to common stockholders (diluted). Equally, there were no adjustments to the weighted average number of outstanding shares of common stock (basic) in arriving at the weighted average number of outstanding shares (diluted), as such adjustments would have been antidilutive.

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

	Three Months Ended March 31,	
	2021	2020
Numerator:		
Net loss available to Class A and Class B common stockholders	$ (24,889)	$ (75,949)
Denominator:		
Weighted average shares of common stock, basic and diluted	170,745	123,763
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.15)	$ (0.61)

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 March 31,	
	2021	2020
Convertible notes	$ 14,187	$ 40,723
Stock options and awards	8,625	4,993
	$ 22,812	$ 45,716

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, 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," "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 multi-national 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, notwithstanding government "shelter in place" orders. Following CDC and local guidelines, during the first quarter of 2021 and at present, many of our employees continue to work from home unless they are directly supporting essential manufacturing production operations, installation

work, service and maintenance activities and R&D. We have established protocols to minimize the risk of COVID-19 transmission within our facilities, including enhanced cleaning, and temperature screenings upon entry. In addition, all individuals entering our facilities are required to wear face coverings and our policy is to direct them not to enter if they have COVID-19-like symptoms. We 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 will continue 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 months ended March 31, 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. We also improved our liquidity in 2020 through the issuance of the $230.0 million aggregate principal amount of our 2.5% Green Convertible Senior Notes due 2025 (the "Green Notes") in August 2020, the conversion of our 10% Convertible Promissory Notes due December 2021 (the "10% Convertible Notes") and our 10% Constellation Promissory Note to December 2021 (the "10% Constellation Note"), and the redemption of our 10% Senior Secured Notes due July 2024 (the "10% Notes"). We did increase our working capital spend in the first quarter of 2021. We entered into new leases to ensure we had 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 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 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 seen any impact on our selling activity related to COVID-19 during the three months ended March 31, 2021.

Customer Financing

COVID-19 has resulted in a significant drop in the ability of many financiers (particularly financing institutions) to monetize tax credits. This is due to a drop in their taxable income stemming from losses due to the COVID-19 pandemic. We were able to obtain financing for our 2020 installations, but as of March 31, 2021, we were still in the process of securing financing for our 2021 installations. We are actively working with new sources of capital that could finance projects for our 2021 installations. We have experienced in the current environment an increase in the time needed to solidify new relationships. The travel restrictions and limited ability for financiers to conduct due diligence at our facilities has increased the timeline to reach closure with new financiers. In addition, our ability to obtain financing for our Energy Servers partly depends on the creditworthiness of our customers. Some of our customers' credit ratings have recently fallen, which is impacting financing for their use of an Energy Server.

Our recent experience has been that financing parties have capital to deploy and are interested in financing our Energy Servers. However, with the limited availability of tax credits, the difficulty for new potential financing parties to conduct due diligence in light of the pandemic and the drop in credit rating of some customers, it is taking longer to secure financing than in the past. If we are unable to secure financing for our 2021 installations, our revenue, cash flow and liquidity will be materially impacted.

Installations and Maintenance of Energy Servers

Our installation and maintenance operations have been impacted by the COVID-19 pandemic in 2020 and these impacts continued during the three months ended March 31, 2021. Our installation projects have experienced delays and may continue

to experience 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; 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. Our installations completed during the three months ended March 31, 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 months ended March 31, 2021, we experienced no delays in servicing our Energy Servers due to COVID-19.

Supply Chain

During 2020, 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. 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 COVID-19. During the three months ended March 31, 2021, we continued to experience supply chain disruptions due to COVID-19 with respect to logistics and container shortages. We put actions in place to mitigate the disruptions by booking alternate sea routes, creating virtual hubs and consolidating shipments coming from the same region.

If spikes in COVID-19 occur in regions in which our supply chain operates, which is currently happening in India, we could experience a delay in materials, which could in turn impact production and installations and our cash flow and results of operations, including revenue.

Manufacturing

As an essential business in both the states of California and Delaware, we have continued to manufacture Energy Servers, but have adopted strict measures to help keep our employees safe. These measures have decreased productivity to a limited extent, but our deployments, maintenance and installations have not yet been constrained by our current pace of manufacturing. As described above, we have established protocols to minimize the risk of COVID-19 transmission within our manufacturing facilities and follow CDC and local guidelines. We also instituted testing of individuals who come into our facilities. Even with these precautions, it is possible an asymptomatic individual could enter our facilities and transmit the virus to others. We have had positive tests and in such cases, we have followed CDC and local guidelines.

If we become aware of cases of COVID-19 among our employees, we notify those with whom the person is known to have been in contact, send the exposed employees home for at least 10 days and require all such employees to test negative before returning to work. Certain roles within our facilities involve greater mobility throughout our facilities and potential exposure to more employees. In the event an employee contracts COVID-19, or if we otherwise believe that a significant number of employees have been exposed and sent home, particularly in our manufacturing facilities, our production could be significantly impacted. Furthermore, since our manufacturing process requires tasks performed at both our California facility and Delaware facility, significant exposure at either facility would have a substantial impact on our overall production, and could adversely affect our cash flow and results of operations including revenue.

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. 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 Lease Options

Overview

Initially, we only offered our Energy Servers on a direct purchase basis, in which the customer purchases the product directly from us. We learned that while interested in our Energy Servers, some customers lacked the interest or financial capability to purchase our Energy Servers directly. Some of these customers were not in a position to optimize the use of federal tax benefits like the federal Investment Tax Credit ("ITC") or accelerated tax depreciation.

In order to expand our offerings to those unable or those who prefer to not directly purchase our Energy Servers and/or who prefer to contract for our services on a pay-as-you-go model, we subsequently developed three financing options that enabled customers' use of the Energy Servers without a direct purchase 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 service contracts with us for the purchase of electricity generated by the Energy Servers. The first type of services 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 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 tax 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. Each of these financings is limited by the creditworthiness of the customer. Additionally, the Traditional Lease and Managed Services Financing options, as with all leases, 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 purchase 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 our Energy Servers’ performance (efficiency and output) 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

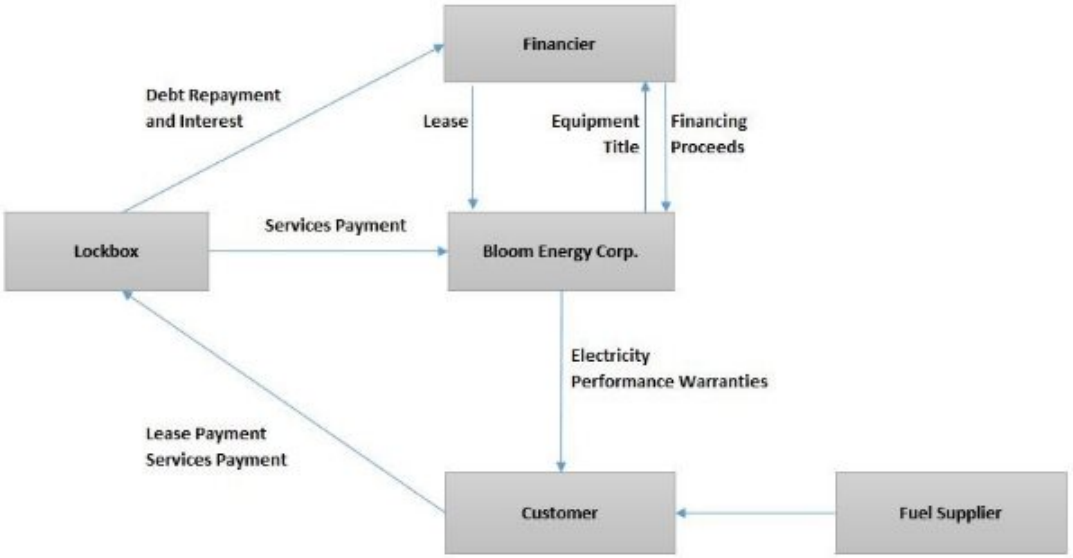
There are customers who purchase our Energy Servers directly pursuant to a fuel cell system supply and installation agreement. With a direct purchase, the first year of warranties and guaranties are typically included in the sale price of the Energy Server. In connection with the purchase of Energy Servers, 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 15 years.

These performance guarantees are negotiated on a case-by-case basis, but we typically provide an output guaranty of 95% measured annually and an efficiency guaranty of 52% 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 March 31, 2021, our obligation to make payments for underperformance on the direct purchase projects was capped at an aggregate total of approximately $93.7 million (including payments both for low output and for low efficiency). As of March 31, 2021, our aggregate remaining potential liability under this cap was approximately $73.1 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 and lease options 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. 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.

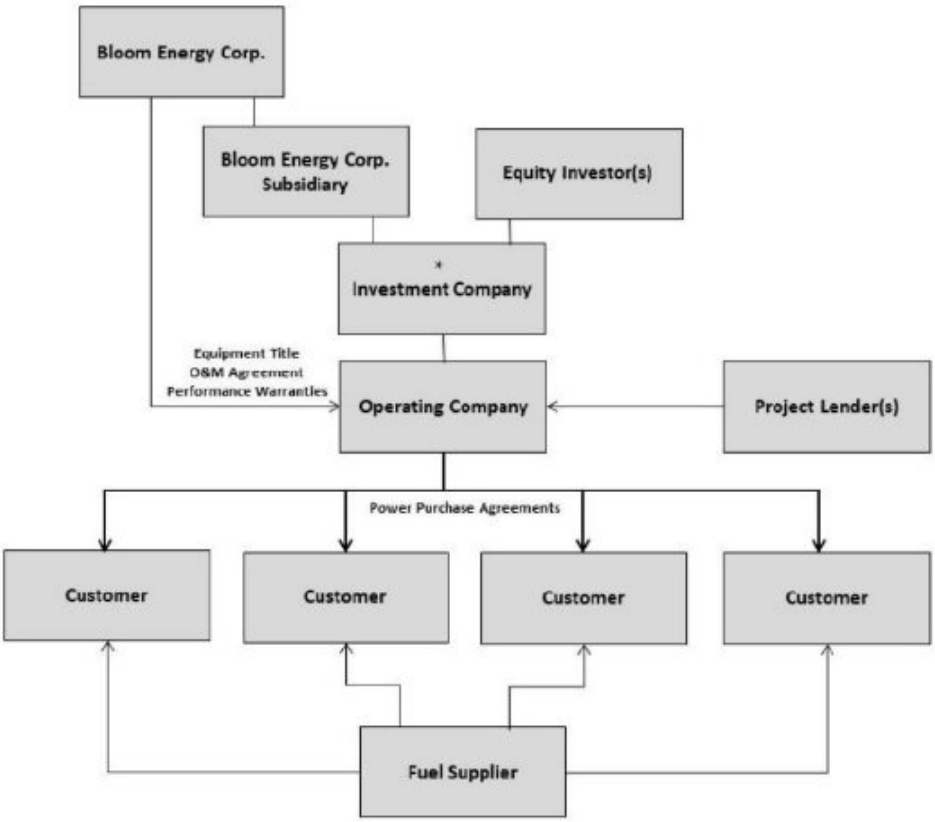
Under a Managed Services Financing, once we enter into a Managed Services Agreement with the customer, a financier is identified, we sell the Energy Server to such financier, as lessor, and the financier, as lessor, leases it back to us, as lessee, pursuant to a sale-leaseback transaction. The proceeds 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 fixed capacity payments made by the customer under the Managed Services Agreement are applied towards our obligation to pay periodic rent under the sale-leaseback transaction. We assign all our rights to such fixed payments made by the customer to the financier, as lessor.

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 in favor 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 March 31, 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



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

A PPA is an agreement pursuant to which the owner of an Energy Server sells electricity to an end customer on a dollar-per-kilowatt-hour basis pursuant to a power purchase agreement. 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 and efficiency or a combination of the two 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 March 31, 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 $105.5 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;
- satisfying the performance warranties and guaranties in each of the applicable PPAs on behalf of the Operating Company; 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.

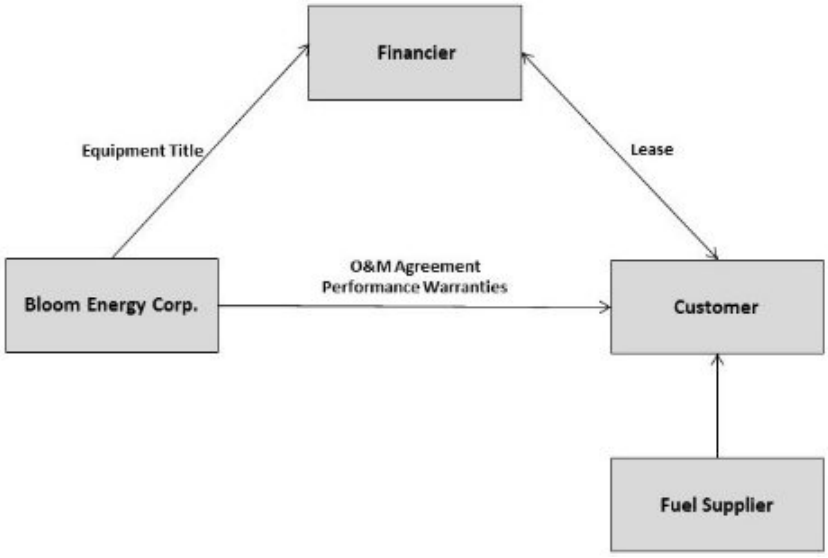
In each of our Portfolio Financings in which we hold an interest in the tax equity partnership, we perform certain administrative services as managing member on behalf of the applicable Operating Company, including invoicing the end customers for amounts owed under the PPAs, administering the cash receipts 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 March 31, 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 $2.9 million.

Remarketing at Termination of Lease

In the event the customer does not renew or purchase our Energy Servers to the end 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 are 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.

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 March 31, 2021, we have recognized revenue associated with 221 of such systems, which included 146 systems during the first quarter of 2021. 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 Months Ended March 31, 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 is either at the time when systems are shipped and delivered to our customers, or when the system is turned on and producing full power.

The product acceptances in the three months ended March 31, 2021 and 2020 were as follows:

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
Product accepted during the period (in 100 kilowatt systems)	359	256	103	40.2 %

Product accepted for the three months ended March 31, 2021 compared to the same period in 2020 increased by 103 systems, or 40.2%, as demand increased for our Energy Servers in 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 months ended March 31, 2021 and 2020 was as follows:

	Three Months Ended March 31,	
	2021	2020
Direct Purchase (including Third-Party PPAs and International Channels)	98 %	98 %
Managed Services	2 %	2 %
	100 %	100 %

The portion of total revenue attributable to each purchase option in the three months ended March 31, 2021 and 2020 was as follows:

	Three Months Ended March 31,	
	2021	2020
Direct Purchase (including Third-Party PPAs and International Channels)	87 %	85 %
Traditional Lease	1 %	1 %
Managed Services	6 %	7 %
Portfolio Financings	6 %	7 %
	100 %	100 %

Costs Related to Our Products

Total product related costs for the three months ended March 31, 2021 and 2020 was as follows:

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
Product costs of product accepted in the period	$2,324 /kW	$2,514 /kW	$(190) /kW	(7.6)%
Period costs of manufacturing related expenses not included in product costs (in thousands)	$ 3,586	$ 6,354	$ (2,768)	(43.6)%
Installation costs on product accepted in the period	$164 /kW	$784 /kW	$(620) /kW	(79.1)%

Product costs of product accepted for the three months ended March 31, 2021 compared to the same period in 2020 decreased by approximately $190 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 March 31, 2021 compared to the same period in 2020 decreased by approximately $2.8 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 March 31, 2021 compared to the same period in 2020 decreased by approximately $620 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 March 31, 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 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.

Results of Operations

A discussion regarding the comparison of our financial condition and results of operations for the three months ended March 31, 2021 and 2020 is presented below (in thousands, except percentage data).

Revenue

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Product	$ 137,930	$ 99,559	$ 38,371	38.5 %
Installation	2,659	16,618	(13,959)	(84.0)%
Service	36,417	25,147	11,270	44.8 %
Electricity	17,001	15,375	1,626	10.6 %
Total revenue	$ 194,007	$ 156,699	$ 37,308	23.8 %

Total Revenue

Total revenue increased by $37.3 million, or 23.8%, for the three months ended March 31, 2021 as compared to the prior year period. This increase was primarily driven by a $38.4 million increase in product revenue and $11.3 million increase in service revenue partially offset by a $14.0 million decrease in installation revenue.

Product Revenue

Product revenue increased by $38.4 million, or 38.5%, for the three months ended March 31, 2021 as compared to the prior year period. The product revenue increase was driven primarily by a 40.2% increase in product acceptances enabled by the expansion of our CDG program. Product revenue was minimally impacted by price reductions on a per unit basis.

Installation Revenue

Installation revenue decreased by $14.0 million, or 84.0%, for the three months ended March 31, 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 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.

Service Revenue

Service revenue increased by $11.3 million, or 44.8% for the three months ended March 31, 2021 as compared to the prior year period. This was primarily due to the 25.5% increase in our installed base and the maintenance contract renewals associated with it including growth internationally, and our efforts to proactively manage the growing fleet.

Electricity Revenue

Electricity revenue increased by $1.6 million, or 10.6%, for the three months ended March 31, 2021 as compared to the prior year period due to the increase in the managed services asset base.

Cost of Revenue

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Product	$ 87,294	$ 72,489	$ 14,805	20.4 %
Installation	4,625	20,779	(16,154)	(77.7)%
Service	36,118	30,970	5,148	16.6 %
Electricity	11,319	12,530	(1,211)	(9.7)%
Total cost of revenue	$ 139,356	$ 136,768	$ 2,588	1.9 %

Total Cost of Revenue

Total cost of revenue increased by $2.6 million, or 1.9%, for the three months ended March 31, 2021 as compared to the prior year period primarily driven by a $14.8 million increase in cost of product revenue and $5.1 million increase in cost of service revenue partially offset by a $16.2 million decrease in cost of installation revenue.

Cost of Product Revenue

Cost of product revenue increased by $14.8 million, or 20.4%, for the three months ended March 31, 2021 as compared to the prior year period. The cost of product revenue increase was driven primarily by a 40.2% increase in product acceptances, partially offset by ongoing cost reduction efforts, which reduced material, labor and overhead costs on a per unit basis by 12.3%.

Cost of Installation Revenue

Cost of installation revenue decreased by $16.2 million, or 77.7%, for the three months ended March 31, 2021 as compared to the prior year period. This decrease in cost of installation revenue, similar to the $14.0 million decrease in installation revenue, was driven by site mix as many of the acceptances did not have installation in the three months ended March 31, 2021.

Cost of Service Revenue

Cost of service revenue increased by $5.1 million, or 16.6%, for the three months ended March 31, 2021 as compared to the prior year period. This increase was primarily due to the 25.5% increase in our installed base and the maintenance contract renewals associated with it, 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 $1.2 million, or 9.7%, for the three months ended March 31, 2021 as compared to the prior year period, primarily due to the $0.8 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 March 31,		
	2021	2020	Change
	(dollars in thousands)		
Gross profit:			
Product	$ 50,636	$ 27,070	$ 23,566
Installation	(1,966)	(4,161)	2,195
Service	299	(5,823)	6,122
Electricity	5,682	2,845	2,837
Total gross profit	$ 54,651	$ 19,931	$ 34,720
Gross margin:			
Product	37 %	27 %	
Installation	(74) %	(25) %	
Service	1 %	(23) %	
Electricity	33 %	19 %	
Total gross margin	28 %	13 %	

Total Gross Profit

Gross profit improved by $34.7 million in the three months ended March 31, 2021 as compared to the prior year period primarily driven by the improvement in our product category as it reaches gross margin of 37%, and our service category as it reaches profitability.

Product Gross Profit

Product gross profit increased by $23.6 million in the three months ended March 31, 2021 as compared to the prior year period. The improvement is driven by a 40.2% increase in product acceptances, and a 10% improvement in product gross margin as our per-unit product cost reduction of 12.3% outpaced our minimal product price reductions.

Installation Gross Loss

Installation gross loss decreased by $2.2 million in the three months ended March 31, 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 $6.1 million in the three months ended March 31, 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, installed base and international growth, and our actions to proactively manage the fleet optimizations.

Electricity Gross Profit

Electricity gross profit improved by $2.8 million in the three months ended March 31, 2021 as compared to the prior year period mainly due to the increase in the managed service asset base and the $0.8 million change in the fair value of the natural gas fixed price forward contract.

Operating Expenses

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Research and development	$ 23,295	$ 23,279	$ 16	0.1 %
Sales and marketing	19,952	13,949	6,003	43.0 %
General and administrative	25,801	29,098	(3,297)	(11.3)%
Total operating expenses	$ 69,048	$ 66,326	$ 2,722	4.1 %

Total Operating Expenses

Total operating expenses increased by $2.7 million in the three months ended March 31, 2021 as compared to the prior year period. This increase was primarily attributable to our investment in front-end origination's 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.

Research and Development

Research and development expenses stayed relatively flat in the three months ended March 31, 2021 as compared to the prior year period; however, we are 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 enabling the hydrogen, electrolyzer, carbon capture, marine and biogas solutions.

Sales and Marketing

Sales and marketing expenses increased by $6.0 million in the three months ended March 31, 2021 as compared to the prior year period driven by the efforts to expand our United States and international sales force, as well as investment in brand and product management.

General and Administrative

General and administrative expenses decreased by $3.3 million in the three months ended March 31, 2021 as compared to the prior year period due to a $5.1 million reduction in legal expenses and $2.3 million reduction in stock-based compensation expenses, partially offset by a $3.1 million increase in outside services and consulting expenses, and $0.6 million increase in payroll spend.

Stock-Based Compensation

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Cost of revenue	$ 2,999	$ 5,507	$ (2,508)	(45.5)%
Research and development	4,908	6,096	(1,188)	(19.5)%
Sales and marketing	4,085	3,890	195	5.0 %
General and administrative	5,218	7,526	(2,308)	(30.7)%
Total stock-based compensation	$ 17,210	$ 23,019	$ (5,809)	(25.2)%

Total stock-based compensation for the three months ended March 31, 2021 compared to the prior year period decreased by $5.8 million primarily driven by the vesting of the one-time employee grants at the time of IPO, which completed in July 2020.

Other Income and Expense

	Three Months Ended March 31,		
	2021	2020	Change
		(in thousands)	
Interest income	$ 74	$ 819	$ (745)
Interest expense	(14,731)	(20,754)	6,023
Interest expense - related parties	—	(1,366)	1,366
Other expense, net	(85)	(8)	(77)
Loss on extinguishment of debt	—	(14,098)	14,098
Gain (loss) on revaluation of embedded derivatives	(518)	284	(802)
Total	$ (15,260)	$ (35,123)	$ 19,863

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 March 31, 2021 as compared to the prior year period decreased by $0.7 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 March 31, 2021 as compared to the prior year period decreased by $6.0 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 the 6% notes which have now been converted.

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 March 31, 2021 as compared to the prior year period decreased by $1.4 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 March 31, 2021 as compared to the prior year period decreased by $0.1 million due to changes in foreign currency translation expense and export incentive income.

Loss on Extinguishment of Debt

Loss on extinguishment of debt for the three months ended March 31, 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 March 31, 2021 as compared to the prior year period worsened by $0.8 million due to the change in fair value of our embedded EPP derivatives in our sales contracts.

Provision for Income Taxes

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Income tax provision	$ 124	$ 124	$ —	— %

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 change for the three months ended March 31, 2021 as compared to the prior year period is immaterial.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

	Three Months Ended March 31,		Change	
	2021	2020	Amount	%
	(dollars in thousands)			
Net loss attributable to noncontrolling interests and redeemable noncontrolling interests	$ (4,892)	$ (5,693)	$ 801	(14.1)%

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 March 31, 2021 as compared to the prior year period improved by $0.8 million due to increased losses in our PPA Entities, which are allocated to our noncontrolling interests.

Liquidity and Capital Resources

As of March 31, 2021, we had cash and cash equivalents of $180.7 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 March 31, 2021, we had $290.1 million of total outstanding recourse debt, $218.4 million of non-recourse debt and $19.9 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 are 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. 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 March 31, 2021, we were still working to secure 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 March 31, 2021, the current portion of our total debt is $118.5 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 is as follows (in thousands):

	Three Months Ended March 31,	
	2021	2020
Net cash provided by (used in):		
Operating activities	$ (89,035)	$ (27,948)
Investing activities	(12,932)	(12,360)
Financing activities	51,150	16,839

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):

	Three Months Ended March 31,	
	2021	2020
PPA Entities [1]		
Net cash provided by PPA operating activities	$ 5,976	$ 10,258
Net cash used in PPA financing activities	(9,506)	(8,957)

[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 increase in cash used in operating activities during the three months ended March 31, 2021 as compared to the prior year period was primarily the result of our net working capital increase of $93.3 million in the three months ended March 31, 2021 to support a shipment to a customer in the Republic of Korea with collections expected in the three months ending June 30, 2021, and to build systems to satisfy demand in future quarters. In addition, we experienced decreases in deferred revenue and customer deposits, and accrued expenses and other current liabilities during the three months ended March 31, 2021.

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 $12.9 million during the three months ended March 31, 2021 was primarily the result of expenditures on tenant improvements for a newly leased engineering building in Fremont, California. We will continue to make payments in the three months ending June 30, 2021 to complete this project. We also signed another building lease in January 2021 for a new manufacturing facility in Fremont, California. We expect to make capital expenditures over the next few quarters to ready this facility 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 three months ended March 31, 2021 was $51.2 million, an increase of $34.3 million compared to the prior year period primarily due to proceeds from stock option exercises and our 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 three months ended March 31, 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 three months ended March 31, 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 March 31, 2021. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of March 31, 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 March 31, 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

For a discussion of legal proceedings, see Note 13 - *Commitments and Contingencies* in Part I, Item 1, *Financial Statements*.

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. 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.
- 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.

Risks Related to Our Products and Manufacturing

- Our business has been and will continue 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 we are not able to continue to reduce our cost structure in the future, our ability to become profitable may be impaired.
- 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 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.

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 environmental 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 based, 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.
- The accounting treatment related to our revenue-generating transactions is complex, and if we are unable to attract and retain highly qualified accounting personnel to evaluate the accounting implications of our complex or non-routine transactions, our ability to accurately report our financial results may be harmed.
- 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.

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' (defined herein) 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, and sales personnel, our ability to compete and successfully grow our business could be harmed.

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 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, including our directors, executive officers and significant stockholders, which limits or precludes your ability to influence corporate matters including the election of directors and the approval of any change of control transaction, and may adversely affect the trading price of our Class A common stock.

- 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.

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 develops more slowly than we anticipate, our business will be harmed.

From our inception in 2001 through 2009, we were focused principally on research and development activities relating to our Energy Server technology. We did not deploy our first Energy Server and did not recognize any revenue until 2009. Since that initial deployment, our business has expanded significantly over a comparatively short time, and we have had a limited history operating our business at its current scale. Consequently, 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 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 Lease 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 the 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. The economic benefit of our Energy Servers to our customers includes, among other things, the benefit of reducing such customer's payments to the local utility company. The rates at which electricity is available from a customer's local electric utility company is subject to change and any changes in these rates may affect the relative benefits of our Energy Servers. Even in markets where we are competitive today, rates for electricity could decrease and render our Energy Servers uncompetitive. Several factors could lead to a reduction in the price or future price outlook for grid electricity, including the impact of energy conservation initiatives that reduce electricity consumption, construction of additional power generation plants (including nuclear, coal or natural gas) and technological developments by others in the electric power industry, which could result in electricity being available at costs lower than those that can be achieved from our Energy Servers. If the retail price of grid electricity does not increase over time at the rate that we or our customers expect, it could reduce demand for our Energy Servers and harm our business.

Further, the local electric utility or regulatory authorities may impose "departing load," "standby," power factor charges, greenhouse gas emissions charges, or other charges on our customers in connection with their acquisition or use of our Energy Servers, the amounts of which are outside of our control and which may have a material impact on the economic benefit of our Energy Servers to our customers. 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 acquiring our Energy Servers could adversely affect the demand for our Energy Servers.

In some states and countries, the current low cost of grid electricity, even together with available subsidies, does not render our product economically attractive. If we are unable to reduce our costs to a level at which our Energy Servers would be

competitive in such markets, or if we are unable to generate demand for our Energy Servers based on benefits other than electricity cost savings, such as reliability, resilience, or environmental benefits, our potential for growth may be limited.

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.

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. A unit of The Southern Company wholly owns a Third-Party PPA, and that entity purchases Energy Servers, which are then provided to various end customers under PPAs. 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.

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.

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, and it is possible an asymptomatic individual could enter our facilities and transmit the virus to others.

In addition, certain roles within our facilities involve greater mobility throughout our facilities and potential exposure to more employees. In the event one of such employees suffers from COVID-19, or if we otherwise believe that a significant number of employees have been 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 facility and Delaware facility, significant exposure 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. We may experience 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 experience liquidity problems or elect to suspend or cancel investments in our projects, an inability to secure financing for our customer purchases, an increase in the time to solidify new relationships, and negative impacts on the creditworthiness of our customers. 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 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, and will continue to be, adversely impacted by the COVID-19 pandemic. For example, our installation projects have experienced and may continue to experience 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 may in the future face increased competition for scarce resources, which may result in continuing delays or increases in the cost of obtaining such services, including increased labor costs and/or fees to expedite permitting. In addition, we have experienced interruptions and delays caused by confusion related to exemptions for "essential business" among our suppliers and their sub-contractors and the relevant permitting utilities related to our construction activities. Future changes in applicable government orders or regulations, or changes in the interpretation of existing orders or regulations, could result in reductions in the scope of permitted construction activities or prohibitions on such activities. 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 evolving 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 recently 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.

If we are unable to expand our manufacturing facilities or develop our existing facilities in a timely manner, we may be unable to further scale our business, which would negatively affect our results of operations and financial condition. In addition, if any of our supply chain partners suffer from capacity constraints, deployment delays, work stoppages or any other reduction in output, we may be unable to meet our delivery schedule, which could result in lost revenue and deployment delays that could harm our business and customer relationships. 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 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.

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.

As of March 31, 2021, we had a total of 23 megawatts in total deployed early generation servers, including our first and second generation servers, out of our total acceptances, net of 568 megawatts. None of these early generation servers are recognized as our property, plant and equipment. We expect that our deployed early generation Energy Servers, if not upgraded with our more current generation power modules, may continue to perform at a lower output and efficiency level and, as a result, the maintenance costs may exceed the contracted prices that we expect to generate if our customers continue to renew their maintenance service agreements with respect to those servers. Further, the Energy Servers held on our condensed consolidated financial statements, including those acquired through our Managed Services Financing option and our Portfolio Financings, could be impaired or have their useful life shortened in the future if adequate maintenance services are not performed or if a determination is made to upgrade the Energy Servers.

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. 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.

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 based, 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 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, several of our manufacturing facilities are located in Northern California, an area that is susceptible to earthquakes, floods and other natural disasters. In the event of a significant disruption to our manufacturing process or supply chain, we may not be able to easily shift production to other facilities or to make up for lost production, which could result in harm to our reputation, increased costs, and lower revenues.

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 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 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. Such delays

could prevent us from delivering our Energy Servers to our customers within required time frames and cause order cancellations. 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. Accordingly, the number of suppliers we have for some of our components and materials is limited and, in some cases, sole sourced. 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.

Moreover, we have in the past and may in the future experience unanticipated disruptions to operations or other difficulties with our supply chain or internalized supply processes due to exchange rate fluctuations, volatility in regional markets from where materials are obtained (particularly China, India and Taiwan), changes in the general macroeconomic outlook, global trade disputes, political instability, expropriation or nationalization of property, public health emergencies such as the COVID-19 pandemic, civil strife, strikes, insurrections, acts of terrorism, acts of war, or natural disasters. 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.

To the extent practicable, given the limitations in supply chain previously discussed, our business is subject to the risk of price fluctuations and periodic delays in the delivery of certain raw materials, which tariffs may exacerbate despite our current alternative sources for these materials. Disruptions in the supply of raw materials and components could temporarily impair our ability to manufacture our Energy Servers for our customers or require us to pay higher prices in order to obtain these raw materials or components from other sources, which could affect our business and our results of operations. 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 rely on 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 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 an input fuel for fuel cell projects. The Ministry of Trade, Industry, and Economy is running a stakeholder process in 2021 to determine the specifics of the HPS incentive mechanism. For the three months ended March 31, 2021 and for the year ended December 31, 2020, our revenue in the Republic of Korea accounted for 43% 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 phase out on December 31, 2023, as noted below:

- installations that commence construction before January 1, 2023 are eligible for a 26% credit;
- installations that commence construction in 2023 are eligible for a 22% credit; and
- installations have to be placed in service by January 1, 2026 or the installations become ineligible for the credit.

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 of the 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 standards regarding the emissions of greenhouse gases that are under development in order to remain eligible for the FC NEM tariffs. It is not certain that our efforts to obtain an acceptable substitute prior to that deadline will be successful. If our customers are unable to interconnect under the FC NEM tariffs the costs of interconnection may increase and such an increase may negatively impact demand for our products. Additionally, the uncertainty regarding the requirements for continued service under the FC NEM tariffs may negatively impact the perceived value or risks of our products, which may negatively impact demand for our products. Recognizing this, we are working with the appropriate regulatory channels to establish 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.

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. Nevertheless, one set of political activists aggressively seeks to eliminate these programs while another set seeks to deny access to these programs and incentives for any technology that relies on natural gas, regardless of the technology’s positive contribution to reducing air pollution, reducing carbon emissions or enabling electric service to be more reliable and resilient.

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 only the 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 environmental laws and regulations that could impose substantial costs upon us and cause delays in the delivery and installation of our Energy Servers.

We are subject to national, state, and local environmental laws and regulations as well as environmental laws in those foreign jurisdictions in which we operate. Environmental laws and regulations can be complex and may often change. 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 environmental laws and regulations can be significant, and violations may result in substantial fines and penalties or third-party damages. In addition, maintaining compliance with applicable environmental laws requires significant time and management resources and could cause delays in our ability to build out, equip and operate our facilities as well as service our fleet, which would adversely impact our business, our prospects, our financial condition, and our operating results. 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. 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 environmental 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.

Bloom is 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.

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). Currently, there is generally little guidance from these agencies on how certain environmental laws and regulations may or may not be applied to our technology.

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 once every 15 to 36 months by us from customers' sites. 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 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 operation of our Energy Server under the exemption prior to the issuance of the revised EPA guidance.

Small amounts of chromium in the hexavalent form ("CR+6"), were previously a concern. Our Energy Servers do not present a significant health hazard based on our modeling, testing methodology, and measurements. There are several supporting elements to this position including that the potential for CR+6 emissions from our Energy Servers are in very low concentrations, are emitted as nanoparticles that convert to the non-hazardous form CR+3 rapidly, are quickly dispersed into the air, and are not emitted in close proximity to locations where people would be expected to have a prolonged exposure. Nevertheless, we have engineered a technology solution that we are deploying.

Several states in which we currently operate, including California, require permits for emissions of air pollutants based on the quantity of emissions, most of which require permits only for quantities of emissions that are higher than those observed from our Energy Servers. Other states in which we operate, including New York, New Jersey, and North Carolina, have specific exemptions for fuel cells. Some states in which we operate have CR+6 limits that are an order of magnitude over our operating range. Within California, the Bay Area Air Quality Management District requires a permit for emissions that are more than 0.00051 lbs/year. Other California regulations require that levels of CR+6 be below 0.00005 $\mu g/m^3$, which is the level that triggers a Proposition 65 warning regarding the presence of CR+6 unless it can be shown to be at levels that do not pose a significant health risk. We have determined that the standards applicable in California in this regard are more stringent than those in any other state or foreign location in which we have installed Energy Servers to date, therefore, deployment of our solution has been focused on California's standards.

While we seek to comply with air quality and emission standards in every region in which we operate, it is possible that certain customers in other regions may request that we provide a new technology solution for their Energy Servers to comply with the stricter standards imposed by California. We currently plan to satisfy these requests from customers. Failure or delay in attaining regulatory approval 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. 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.

Furthermore, we have not yet determined whether our Energy Servers will satisfy regulatory requirements in the other states in the United States and in international locations in which we do not currently sell Energy Servers but may pursue in the future.

As a technology based, 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.

Although the current generation of our Energy Servers running on natural gas produce nearly 23% less carbon emissions compared to the average of U.S. combustion power generation, the operation of our Energy Servers does produce carbon dioxide ("CO2"), which has been shown to be a contributing factor 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 illegal 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, or we could be prohibited from completing new installations or continuing to operate existing projects. 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 March 31, 2021, we had an accumulated deficit of $3.1 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. We anticipate that we will 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;
- attracting and retaining key talent in a competitive marketplace; and
- the amount of stock-based compensation recognized in the period.

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;
- weaker than anticipated demand for our Energy Servers due to changes in government incentives and policies or due to other conditions;
- 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.

The accounting treatment related to our revenue-generating transactions is complex, and if we are unable to attract and retain highly qualified accounting personnel to evaluate the accounting implications of our complex or non-routine transactions, our ability to accurately report our financial results may be harmed.

Our revenue-generating transactions include the Traditional Lease, Managed Services Financings, sales to international channel partners, and Portfolio Financings, all of which are accounted for differently in our condensed consolidated financial statements. 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 thereto. Competition for senior finance and accounting personnel in the San Francisco Bay Area who have public company reporting experience is intense, 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.

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 March 31, 2021, we and our subsidiaries had approximately $508.5 million of total consolidated indebtedness, of which an aggregate of $290.1 million represented indebtedness that is recourse to us, all of which is classified as non-current. Of this $290.1 million in debt, $68.7 million represented debt under our 10.25% Senior Secured Notes (the "10.25% Senior Secured Notes"), and $221.4 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 $218.4 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 Lease 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 March 31, 2021, we and our subsidiaries have approximately $508.5 million of total consolidated indebtedness, including $118.5 million in short-term debt and $390.0 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 operations and maintenance 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 March 31, 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. 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, 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, 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. Furthermore, there is increasing competition for talented individuals in our field, 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. In addition, we do not have "key person" life insurance policies covering any of our officers or other key employees.

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.

Our headquarters and other facilities are located in an active earthquake zone, and an earthquake or other types of natural disasters or resource shortages, including public safety power shut-offs that have occurred and will continue to occur in California, could disrupt and harm our results of operations.

We conduct a majority of our operations in the San Francisco Bay area in an active earthquake zone, and certain of our facilities are located within known flood plains. The occurrence of a natural disaster such as an earthquake, drought, 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.

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;
- other events or factors including those resulting from war, incidents of terrorism or responses to these events; and
- sales or anticipated sales of shares of our Class A common stock by us or our stockholders.

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.

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, including our directors, executive officers and significant stockholders, which limits or precludes your ability to influence corporate matters including the election of directors and the approval of any change of control transaction, 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 March 31, 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.

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 may adversely affect the trading market for our Class A common stock.

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

None.

ITEM 6 - EXHIBITS

Index to Exhibits

The exhibits listed below are filed or incorporated by reference as part of this Quarterly Report on Form 10-Q.

			Incorporated by Reference			
Exhibit Number		**Description**	**Form**	**File No.**	**Exhibit**	**Filing Date**
10.1		Lease Agreement between Pacific Commons Owner, LP, and Bloom Energy Corporation entered into as of March 13, 2021				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.

** The certifications furnished in Exhibit 32.1 hereto are deemed to accompany this Annual Report on Form 10-K 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.

† Confidential treatment requested with respect to portions of this exhibit.

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

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: May 6, 2021

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

Date: May 6, 2021

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

EXHIBIT 10.1

LEASE AGREEMENT

BETWEEN

PACIFIC COMMONS OWNER, LP,
a Delaware limited partnership, AS

LANDLORD

AND

BLOOM ENERGY CORPORATION,
a Delaware corporation AS

TENANT

44408 Pacific Commons Blvd., Fremont, California

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made and entered into as of March 13, 2021 ("**Reference Date**"), by and between PACIFIC COMMONS OWNER, LP, a Delaware limited partnership ("**Landlord**") and BLOOM ENERGY CORPORATION, a Delaware corporation ("**Tenant**").

BASIC LEASE PROVISIONS

Premises: Approximately 164,293 rentable square feet as shown on Exhibit A attached hereto (the "**Premises**") consisting of the entire interior of the Building (as defined below). Notwithstanding the foregoing, except to the extent expressly provided herein, Tenant shall not have any rights to the roof, exterior walls, building systems or utility raceways of the Building.

Project: "Pacific Commons South" consisting of a ten (10) building industrial project (the "**Project**") as further set forth on Exhibit A-1 attached hereto. The Project consists such buildings, the legal parcel on which such buildings are situated, and the other improvements located thereon.

Building: The industrial building commonly known as "Building 9" located at 44408 Pacific Commons Boulevard in the City of Fremont, County of Alameda, State of California (the "**Building**").

Proportionate Share of Project: 9.56% (i.e., 164,293 RSF of the Premises / 1,718,490 RSF of the Project). Proportionate Share of

Building: 100%.

Lease Term: Beginning on the Commencement Date and ending on February 28, 2029. Commencement Date: August 1, 2021 (the

"**Commencement Date**"). See Paragraph 1(c).

Option to Extend: See Paragraph 46 herein.

Monthly Base Rent: The monthly Base Rent during the initial Lease Term shall be as follows:

Initial Estimated Monthly Operating Expense Payments:

Period of Lease Term:	Monthly Base Rent:
8/1/21 – 9/30/21	$0.00 per month
10/1/21 – 7/31/22	$94,468.48 per month
8/1/22 – 7/31/23	$194,605.11 per month
8/1/23 – 7/31/24	$200,443.26 per month
8/1/24 – 7/31/25	$206,456.56 per month
8/1/25 – 7/31/26	$212,650.26 per month
8/1/26 – 7/31/27	$219,029.77 per month
8/1/27 – 7/31/28	$225,600.66 per month
8/1/28 – 2/29/29	$232,368.68 per month

$54,216.69 per month. Such amount does not include utilities, which are to be paid separately in accordance with Paragraph 7 herein.

Prepaid Rent: $148,685.17 (which amount represents one (1) month of initial Base Rent and initial estimated Operating Expenses) (the "**Prepaid Rent**").

Letter of Credit: $1,133,622.

Permitted Use: General industrial and warehouse use for manufacturing, assembly, storage, distribution and sales (but limited to wholesale sales) of products and merchandise made and/or distributed by Tenant, and incidental office and administrative use related thereto, and subject to Legal Requirements, research and development, and all related legal uses (the "**Permitted Use**").

Tenant's Notice Address: Bloom Energy Corporation
4353 No. First Street San Jose, CA 95134 Attn:
General Counsel

Landlord's Notice Address: Pacific Commons Owner, LP
c/o Overton Moore Properties 19700 S. Vermont Ave., #101
Torrance, CA 90502
Attn: Timur Tecimer

Brokers: CBRE, Inc. (Landlord's broker) and
Jones Lang LaSalle Americas, Inc. (Tenant's broker) Improvement Allowance: See Exhibit C attached.

Addenda: Addendum 1 (Rules and Regulations);
Exhibit A (Site Plan of Premises including Outside Yard Area); Exhibit A-1 (Depiction of Project)
Exhibit B (Base Building Specifications); Exhibit C (Tenant Work Letter);
Exhibit D (Initial HazMat Certificate); Exhibit E (Signage Criteria);
Exhibit F-1 (Contractor Rules and Regulations);
Exhibit F-2 (Energy and Sustainability Construction Guidelines and Requirements)
Exhibit G (Form of Letter of Credit)
Exhibit H (Form of Subordination, Non-Disturbance and Attornment Agreement)

LEASE

1. **Granting Clause; Delivery/Early Access; Lease Term**.

(a) In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant leases from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

(b) Subject to all Legal Requirements (as defined below), Landlord shall deliver the Premises to Tenant one (1) business day after the mutual execution and delivery hereof (the "**Delivery Date**"). For the period from the Delivery Date until the day preceding the Commencement Date ("**Early Entry Period**"), Tenant shall have the right to enter the Premises solely for the purposes of performing inspections of the Premises, performing the Tenant Improvements (as defined in Exhibit C attached hereto and incorporated by reference herein (the "**Work Letter**") and installing Tenant's racking, furniture, fixtures and equipment at the Premises, provided Tenant has delivered to Landlord the Prepaid Rent, an original of the Letter of Credit, as well certificates of the insurance required to be carried by Tenant pursuant to the provisions of this Lease. Landlord hereby informs Tenant that the Base Building Improvements have been completed and that the Premises are ready for delivery to Tenant. Such early access to the Premises will not, in and of itself, advance the Commencement Date. During the Early Entry Period, all of the provisions of this Lease shall apply to Tenant, including, without limitation, the indemnities set forth in this Lease, but excluding only the obligation to pay Base Rent and Operating Expenses until the Commencement Date has occurred, whereupon Base Rent and Operating Expenses shall immediately commence. Notwithstanding anything to the contrary herein, Tenant shall be responsible for payment of all utility costs which are attributable to Tenant's activities at the Premises during the Early Entry Period, and Tenant shall pay such costs to Landlord within thirty (30) days after receipt of written demand. During the Early Entry Period, Landlord shall not be responsible for any loss, including theft, damage or destruction to any work or material installed or stored by Tenant at the Premises or for any injury to Tenant or its agents, employees, contractors, subcontractors, subtenants, assigns, licensees or invitees (each, a "**Tenant Party**" and collectively, the "**Tenant Parties**"). Landlord shall have the right to post appropriate notices of non-responsibility in connection with any early entry by Tenant. Notwithstanding anything to the contrary contained in this Lease, if for any reason other than due to the act or omission of Tenant and/or Force Majeure events, Landlord has not delivered the Premises to Tenant by the date that is twelve (12) months following the first business day after the mutual execution and delivery of this Lease ("**Outside Delivery Date**"), then Tenant shall have the right, but not the obligation, by written notice to Landlord given at any time after the Outside Delivery Date but prior to the date that Landlord delivers the Premises to Tenant in accordance with the applicable terms of this Lease, to terminate this Lease as of the date of Tenant's notice, in which case neither party shall have any further rights or obligations hereunder, this Lease shall be null and void and of no further force and effect and Landlord promptly shall return to Tenant the Letter of Credit and refund to Tenant all sums paid by Tenant to Landlord in connection with Tenant's execution of this Lease.

(c) The term of this Lease (the "**Lease Term**") shall commence on the Commencement Date specified in or established above, and except as otherwise provided herein, shall continue in full force and effect through the number of months provided in the Basic Lease Provisions; provided, however, that if the Commencement Date is a date other than the first day of a calendar month, the Lease Term shall consist of the remainder of the calendar month including and following the Commencement Date, plus said number of full calendar months. After the Commencement Date, Tenant shall, within ten (10) business days after receipt of written demand, execute and deliver a letter of acceptance of delivery of the Premises specifying the Commencement Date and the expiration of the Lease Term. From and after the Commencement Date, subject to compliance with Legal Requirements, Tenant shall have the right to access the Premises and utilize the Common Areas for their intended purposes twenty-four (24) hours per day, seven (7) days per week throughout the Lease Term.

2. **Acceptance of Premises**.

(a) Subject to Landlord's Construction Warranty (as defined below), Tenant acknowledges and agrees the Premises will be delivered in, and Tenant shall accept the Premises on the Delivery Date in, its "as- is" condition, subject to all applicable laws, ordinances, regulations, covenants and restrictions, and Landlord shall have no obligation to perform or pay for any repair or other work therein, except that Landlord shall disburse the

Tenant Improvement Allowance in accordance with the terms of the Tenant Work Letter, and shall cure any violation of Legal Requirements in any portion of the Base Building Improvements to the extent such violation prevents the issuance of any permits required to be obtained by Tenant in connection with the construction of the Tenant Improvements (provided in no event shall the absence of Building systems as part of the Base Building Improvements be considered a violation of Legal Requirements for purposes of this paragraph and further provided that in no event shall Landlord be required to make changes or modifications to the Base Building Improvements to comply with Legal Requirements to the extent such compliance or non-compliance is triggered by the type or layout of any Tenant Improvements, Tenant-Made Alterations, Bloom Boxes, Generators, utilities or other improvements performed by or on behalf of Tenant, or any particular use of the Premises by Tenant [as opposed to Legal Requirements applicable generally to office/industrial/warehouse buildings in the market area] or the installation of any furniture, fixtures or equipment by Tenant, Tenant hereby acknowledging that all Legal Requirements triggered by the same are Tenant's sole responsibility). Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. Tenant acknowledges and agrees that by taking possession of the Premises it shall be conclusive evidence that, subject to Landlord's Construction Warranty: (i) Tenant has inspected and accepted the Premises in an "As-Is, Where-Is" condition, (ii) the Base Building Improvements are suitable for the purpose for which the Premises are leased and Landlord has made no warranty, representation, covenant, or agreement with respect to the merchantability or fitness for any particular purpose of the Premises, (iii) the Premises are in good and satisfactory condition at the time Tenant takes possession thereof, (iv) no representations as to the repair of the Premises, nor promises to alter, remodel or improve the Premises have been made by Landlord except as otherwise expressly set forth in this Lease, and (v) there are no representations or warranties except as expressly set forth in this Lease, or implied or statutory warranties that extend beyond the description of the Premises. Except as provided in Paragraph 10 of this Lease and Paragraph 2(c) below, in no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. Subject to Landlord’s Construction Warranty, the taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in the required condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 10.

(b) The Building was constructed in substantial accordance with the specifications attached hereto as Exhibit B (the "**Base Building Specifications**"). Landlord shall deliver the Premises to Tenant on the Delivery Date, and Tenant shall accept delivery of the Premises, in such condition. The work performed by Landlord as described in such Base Building Specifications shall be referred to herein as the "**Base Building Improvements**". For the avoidance of doubt, the Building has been constructed in "cold shell" condition without HVAC or other Building systems except for (i) the ESFR system to the extent described in Exhibit B, and (ii) the restrooms serving the Building. In addition, included in the Base Building Improvements are any existing office improvements in the office area consisting of approximately square feet located at the NE corner of the Premises.

(c) Subject to the terms and conditions of this Paragraph 2(c), Landlord warrants ("**Landlord's Construction Warranty**"), for a period of twelve (12) months following the Commencement Date, that (I) the ESFR system of the Building shall be in good working order and repair; (II) the Building is equipped with an electrical pull section to accommodate up to 4,000 amps of electrical capacity, and the connection is 800 amps of electrical service to the Building; (III) the Building shall be water protected pursuant to industry standard (including, without limitation, the roof and roof membrane, subject to Tenant's building penetrations and installations and other work); (IV) the structural elements of the Building and the restrooms and the office portion of the Building were constructed in compliance with applicable Legal Requirements (including without limitation, the Americans With Disabilities Act) in effect as of the date of this Lease (but without regard to any Legal Requirements triggered by the remainder of Building systems [other than the ESFR system] to be installed by Tenant, the Tenant Improvements [including the layout of Tenant Improvements], Tenant-Made Alterations, Bloom Boxes, Generators, utilities or other improvements performed by or on behalf of Tenant, or any particular use of the Premises by Tenant [as opposed to Legal Requirements applicable generally to office/industrial/warehouse/manufacturing buildings in the market area] or the installation of any furniture, fixtures or equipment by Tenant, Tenant hereby acknowledging that all Legal Requirements triggered by any of the same being Tenant's sole responsibility);and (V) the Base Building Improvements (including without limitation the floor slab) will be free from material defects in workmanship and materials and otherwise in a good and working condition. If there is a breach of Landlord's Construction Warranty, Landlord shall, following timely written notice

from Tenant identifying such breach with reasonable specificity, as Tenant's sole and exclusive remedy, perform the work (at Landlord's sole cost and expense and without right of reimbursement from Tenant) reasonably necessary to cure such breach in Landlord's Construction Warranty. In connection with the performance of any such warranty work, (a) subject to the terms and conditions of the Lease, Landlord shall have the right to enter upon the Premises and/or into the Building with reasonable prior notice at any time during business hours (except that Landlord may enter at any time, without notice, in case of an emergency) to perform such work, and in no event shall the performance of such work by Landlord entitle Tenant to any abatement of rent or other compensation so long as Landlord uses commercially reasonable good faith efforts to minimize any material interference with Tenant's access to or use of the Premises for Tenant's normal business operations as a result of the performance of any such work; and (b) Tenant shall cooperate with Landlord in identifying the defect in question. Notwithstanding the foregoing, Landlord's Construction Warranty shall not apply with respect to defects or damage arising due to work performed by Tenant (including, without limitation, the Tenant Improvements and/or any Tenant-Made Alterations) and/or the negligence or willful misconduct of Tenant and/or any Tenant Party. If Tenant does not deliver written notice to Landlord of any breach of Landlord's Construction Warranty on or before the aforementioned 12-month period, then Tenant shall be deemed to have inspected and accepted the Premises in their present condition and Landlord shall have no further obligation to correct such condition under this Paragraph 2(c), but rather such condition shall be subject to the repair, maintenance and replacement obligations of Landlord and Tenant as expressly set forth in the Lease.

3. **Use**.

a. Subject to Tenant's compliance with all zoning ordinances and Legal Requirements, the Premises shall be used only for the Permitted Use and for no other use. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sales on the Premises. Tenant will use the Premises in a careful, safe and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, fumes, smoke, dust, gas, noise, or vibrations to emanate from the Premises in violation of applicable Legal Requirements, or take any other action that would constitute a nuisance or would unreasonably disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Project. Outside storage (except in the Outside Yard Area, defined below), including without limitation, storage of trucks, vehicles or any of Tenant's personal property, products or merchandise, is strictly prohibited without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall not bring upon the Premises or any portion of the Building or Project or use the Premises or permit the Premises or any portion thereof to be used for the growing, manufacturing, administration, distribution (including without limitation, any retail sales), possession, use or consumption of any cannabis, marijuana or cannabinoid product or compound, or any other illicit drug under either State of California or United States law, regardless of the legality or illegality of the same.

b. Subject to Landlord's Construction Warranty, Tenant, at its sole expense, shall comply with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants, conditions and restrictions and all other matters of record now or hereafter applicable to the Premises (collectively, "**Legal Requirements**"). Further, Tenant shall, at its sole cost and expense, timely and fully comply with all obligations imposed upon "operators" under the Warehouse Indirect Source Rule ("**Warehouse ISR**") implemented by the Bay Area Air Quality Management District ("**BAAQMD**"), including, without limitation, warehouse points compliance obligations, reporting, notification and recordkeeping requirements, and payment of mitigations fees, as applicable. The Premises shall not be used as a place of public accommodation under the Americans With Disabilities Act or similar state statutes or local ordinances or any regulations promulgated thereunder, all as may be amended from time to time. Tenant shall, at its expense, make any alterations or modifications to the Premises or the Building, that are required by Legal Requirements related to Tenant's particular and unique use or occupation of the Premises (as opposed to general office/industrial/warehouse/manufacturing). Tenant will not use or permit the Premises to be used for any purpose or in any manner that would void Tenant's or Landlord's insurance, increase the insurance risk, or cause the disallowance of any sprinkler credits. If any increase in the cost of any insurance on the Premises or the Project is caused by Tenant's use or occupation of the Premises, or because Tenant vacates the Premises, then Tenant shall pay the amount of such increase to Landlord. Subject to the provisions of Paragraph 1(b) above, any entrance into or occupation of the Premises by Tenant prior to the Commencement Date shall be subject to all obligations of Tenant under this Lease.

(c) Landlord hereby discloses to Tenant, in accordance with California Civil Code Section 1938, and Tenant hereby acknowledges that the Premises have not undergone an inspection by a Certified Access Specialist (CASp) to determine whether the Premises meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction- related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (i) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp reasonably approved in advance by Landlord; and (ii) Landlord shall have no obligation to perform any work or repairs identified in any such CASp inspection.

(d) Tenant and its employees and invitees shall have the non-exclusive right to use, in common with others, all areas, if any, designated by Landlord from time to time as common areas for the use and enjoyment of all tenants and occupants of the Project (collectively, the "**Common Areas**"), subject to such reasonable rules and regulations as Landlord may promulgate from time to time.

(e) Subject to Tenant's compliance with all applicable zoning ordinances, Legal Requirements, including receipt of any required permit therefor from the City of Fremont, and all reasonable rules and regulations prescribed by Landlord from time to time, and subject to the right of Landlord (and its agents, employees, and contractors) right to access or use such area as reasonably required in connection with exercising Landlord's rights, or performing Landlord's obligations, under this Lease, Tenant, at no additional rent or other cost to Tenant, shall have the exclusive right to store equipment required for Tenant's operations at the Premises, within the outside area depicted on Exhibit A attached hereto (the "**Outside Yard Area**"), including, without limitation, Tenant's mechanical and electrical equipment and gas tanks and, subject to applicable Legal Requirements, Tenant shall have the right to secure the Premises and the Outside Yard Area by installation of, without limitation, perimeter fencing, lighting, lift gates, guard shacks and cameras. Tenant shall, at Tenant's sole cost and expense, maintain the Outside Yard Area in a neat and orderly condition at all times, and free of trash and other debris, and Tenant shall use the Outside Yard Area for no purposes other than for storage of equipment and other items as expressly permitted above in this Paragraph 3(e). For purposes of all of Tenant's responsibilities, obligations and liabilities (but not rights) under this Lease, Tenant shall be responsible for the repair and replacement of the Outside Yard Area to the extent required by virtue of Tenant's use thereof (and not attributable to ordinary wear and tear or damage caused by Landlord or its employees, agents, or contractors). Tenant may not store any Hazardous Materials in the Outside Yard Area. At the expiration or earlier termination of the Lease Term or the earlier termination of Tenant's right to use the Outside Yard Area, Tenant shall promptly restore the Outside Yard Area, at Tenant's sole cost and expense, to its original condition, normal wear and tear excepted. Tenant shall not unreasonably disturb other tenants of the Project or interfere with Landlord's activities at the Project in connection with such storage or in connection with Tenant's activities relating to the Outside Yard Area and/or the items stored therein. Tenant shall ensure that any containers in the Outside Yard Area are sealed at all times and do not emit any odors. If reasonably requested by Landlord, Tenant shall install screening around the Outside Storage Area or portions thereof. In no event shall Tenant have the right to assign, sublease, license or otherwise transfer its rights under this Paragraph 3(e) separate and apart from an assignment of this Lease or sublease of the Premises that complies with the terms and conditions of Paragraph 17 below.

(f) Notwithstanding the foregoing or any other contrary provision set forth in this Lease, Tenant shall not be required to construct or pay, except as set forth in Paragraph 6(b) below, the cost of complying with any CC&R's, Legal Requirements or insurance underwriter's requirements requiring construction of improvements to the Premises, the Common Areas or the Project unless such compliance is necessitated solely because of Tenant's particular and unique use of the Premises (as opposed to general office/industrial/warehouse/manufacturing uses), the Tenant Improvements, Tenant-Made Alterations Bloom Boxes,

Generators, utilities or other improvements performed by or on behalf of Tenant or the installation of any furniture, fixtures or equipment by Tenant.

4. **Base Rent**. Tenant shall pay monthly Base Rent in the amounts set forth on the first page of this Lease. The Prepaid Rent (as set forth in the Basic Lease Provisions above) shall be due and payable upon Tenant's execution and delivery of this Lease (and shall be applied against Base Rent and Operating Expenses first coming due under this Lease). Tenant promises to pay to Landlord in advance, without demand, deduction or set-off (except as otherwise expressly set forth in this Lease), monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder shall be payable at such address as Landlord may specify from time to time by written notice delivered in accordance herewith. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations and shall constitute rent. Tenant shall have no right at any time to abate, reduce, or set- off any rent due hereunder except where expressly provided in this Lease and shall not be excused from paying any rent due hereunder for any reason whatsoever, except as expressly set forth to the contrary in this Lease. Tenant acknowledges that late payment by Tenant to Landlord of any rent due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Tenant is delinquent in any monthly installment of Base Rent, estimated Operating Expenses or other sums due and payable hereunder for more than five (5) days, Tenant shall pay to Landlord within thirty (30) days after receipt of written demand a late charge equal to five percent (5%) of such delinquent sum; provided, however, that no late charge shall be imposed with respect to the first (1st) late payment of rent in any twelve (12)- month period unless such failure shall continue for more than five (5) business days after notice from Landlord. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of such late payment by Tenant. The late charge shall be deemed to be rent, and the right to require it shall be in addition to all of Landlord's other rights and remedies for a payment failure of Tenant, including the right to charge interest on the past due amount.

5. **Letter of Credit**.

(a) As additional security for the full and faithful payment of all sums due under this Lease and the full and faithful performance of every covenant and condition of this Lease to be performed by Tenant, within ten (10) business days after execution and delivery of this Lease by Landlord and Tenant, Tenant shall deliver to Landlord a letter of credit in the amount of $1,133,622 (the "**LC Amount**") in favor of Landlord and effective immediately upon issuance (the "**Letter of Credit**"). The Letter of Credit initially delivered pursuant to this paragraph and all substitutions, replacements and renewals of it, must be consistent with and shall satisfy all the following requirements: (i) the Letter of Credit shall be clean, irrevocable and unconditional; (ii) the Letter of Credit must be issued by a bank which is a member of the New York Clearing House and which has a banking office dedicated to the administration and payment of letters of credit in the State of California, which bank must be satisfactory to Landlord in its reasonable discretion; (iii) the Letter of Credit shall have an expiration date no earlier than the first anniversary of the date of its issuance and shall provide for its automatic renewal from year to year unless terminated by the issuing bank by notice to Landlord given not less than sixty (60) days prior to its expiration date by registered or certified mail (and the final expiration date of the Letter of Credit and all renewals of it shall be no earlier than sixty (60) days following the end of the Lease Term); (iv) the Letter of Credit may be drawn at the State of California banking office of the issuer and must allow for draws to be made at sight pursuant to a form of draw request which has been approved by Landlord; (v) the Letter of Credit must allow for one draw in the whole amount or multiple partial draws (and Landlord shall not, as a condition to any draw, be required to deliver any certificate, affidavit or other writing to the issuer expressing the basis for the draw; nor shall the issuer have the right to inquire as to the basis for the draw or require instruction or authorization from any party other than Landlord; nor shall issuer be permitted to withhold a draw, when requested by Landlord, as a result of any instruction from any other party); (vi) the Letter of Credit shall be freely transferable by Landlord, provided that Tenant shall only be responsible for the fees in connection with the first such transfer; (vii) the Letter of Credit shall be governed by (A) the International Standby Practices SP 98 published by the International Chamber of Commerce and (B) the United Nations Convention on Independent Guarantees and Standby Letters of Credit; and (viii) the Letter of Credit shall otherwise be in such form as Landlord may require. Without limiting the generality of the foregoing, the Letter of Credit must be issued by a bank or financial institution reasonably acceptable to Landlord (x) that is chartered under the laws of the United States, any state thereof or the District of Columbia, and which is insured by the Federal

Deposit Insurance Corporation, (y) whose long-term debt ratings on bank level senior debt obligations are rated in not lower than the third highest category by at least two of Fitch Ratings Ltd. ("**Fitch**"), Moody's Investors Service, Inc. ("**Moody's**") and Standard & Poor's Ratings Services ("**S&P**") or their respective successors (the "**Rating Agencies**") (which, as of the date hereof, shall mean A from Fitch, A from Moody's or As from S&P) and (z) which has a short-term deposit rating at the bank level in the highest category from at least two Rating Agencies (which shall mean F1 from Fitch, P-1 from Moody's and A-1 from S&P) (the "**Issuer**"). Landlord hereby approves Wells Fargo Bank as the Issuer. The Letter of Credit shall be in substantially the form attached hereto as Exhibit G and incorporated by reference herein.

(b) Landlord may draw on the Letter of Credit, without advance notice to Tenant except as expressly set forth in this Lease, at any time or from time to time on or after (i) the occurrence of any Event of Default, or (ii) if Tenant, or anyone in possession of the Premises (or any portion thereof) through Tenant, holds over after the expiration or earlier termination of this Lease, or (iii) Landlord is given notice by the issuer of the Letter of Credit that it is terminating the Letter of Credit, or (iv) the Letter of Credit expires on a specified date by its terms and is not renewed or replaced at least thirty (30) days in advance of its expiration date, or (v) to the extent permitted by law, in the event any bankruptcy, insolvency, reorganization or any other debtor creditor proceeding is instituted by or against Tenant. Tenant hereby waives the provisions of any law, now or hereafter in effect, which limits the manner in which Landlord may apply sums drawn from the Letter of Credit, it being agreed that Landlord may apply such amounts towards any sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant.

(c) In addition, if at any time the bank or financial institution that issues the Letter of Credit is declared insolvent, or is placed into receivership by the Federal Deposit Insurance Corporation or any other governmental or quasi-governmental institution, or if the bank or financial no longer satisfies the ratings requirements set forth in Paragraph 5(a)(y) or 5(a)(z) above, then following written notice from Landlord, Tenant shall have fifteen (15) days to replace the Letter of Credit with a new letter of credit from a bank or financial institution reasonably acceptable to Landlord. If Tenant does not replace the Letter of Credit with a new letter of credit from a bank or financial institution reasonably acceptable to Landlord within such fifteen (15) day period, then notwithstanding anything to the contrary herein, Tenant shall be in default under the Lease (without any additional notice or opportunity to cure), and Landlord shall have the right to draw upon the Letter of Credit for the full amount of the Letter of Credit, and such amount shall be held by Landlord as a cash security deposit for application, at Landlord's election, to future sums owing to Landlord under the Lease, in such order and priority as Landlord elects in its absolute discretion.

(d) Landlord may apply any sum drawn on the Letter of Credit to amounts owing to Landlord under this Lease in such order and priority as Landlord elects in its absolute discretion. If any of the proceeds drawn on the Letter of Credit are not applied immediately to sums owing to Landlord under this Lease, Landlord may retain any such excess proceeds as a cash security deposit for application, at Landlord's election, to future sums owing to Landlord under this Lease, in such order and priority as Landlord elects in its absolute discretion. Tenant shall, within ten (10) days after Landlord's demand, restore the amount of the Letter of Credit drawn so that the Letter of Credit is restored to the original amount of the Letter of Credit. If Tenant does not restore the Letter of Credit to its original amount within the required time period, such non-restoration shall be considered an Event of Default. Notwithstanding anything to the contrary contained in this Lease, if Landlord draws on the Letter of Credit, then Tenant shall have the right, upon ten (10) days' prior written notice to Landlord, to obtain a refund from Landlord of any unapplied proceeds of the Letter of Credit which Landlord has drawn upon, any such refund being conditioned upon Tenant simultaneously delivering to Landlord a new original replacement Letter of Credit in the amount then required, and otherwise meeting the requirements contained in this Paragraph.

(e) Additionally, Landlord's draw and application of all or any portion of the proceeds of the Letter of Credit shall not impair any other rights or remedies provided under this Lease or under applicable law and shall not be construed as a payment of liquidated damages. If Tenant shall have fully complied with all of the covenants and conditions of this Lease, the Letter of Credit shall be returned to Tenant or, if Landlord has drawn on the Letter of Credit, the remaining proceeds of the Letter of Credit which are in excess of sums due the Landlord shall be repaid to Tenant, without interest, within thirty (30) days after the expiration or termination of the Term,

delivery of possession of the Premises by Tenant to Landlord in accordance with this Lease, and the satisfaction by Tenant of all of its obligations under the Lease.

(f) On any request by Landlord made during the Term, Tenant shall, at no material cost to Tenant, cooperate in accomplishing any reasonable modification of the Letter of Credit requested by Landlord. If the Letter of Credit should be lost, mutilated, stolen or destroyed, Tenant shall, at no out-of-pocket cost to Tenant (other than *de minimis* expense), cooperate in obtaining the issuance of a replacement.

(g) Tenant shall not assign or grant any security interest in the Letter of Credit and any attempt to do so shall be void and of no effect.

(h) In the event of a voluntary sale or transfer of Landlord's estate or interest in the Premises, Landlord shall transfer the Letter of Credit to the vendee or the transferee (to the extent not required to satisfy obligations of Tenant to Landlord), Tenant shall pay any transfer fees, but only for the first transfer, charged by the issuing bank and Landlord shall thereafter be considered released by Tenant from all liability for the return of the Letter of Credit. Tenant shall cooperate in effecting such transfer (at no material cost to Tenant, but without limiting Tenant's responsibility for any transfer fees for the first transfer,).

(i) Landlord and Tenant acknowledge and agree that in no event or circumstance shall the Letter of Credit or any renewal thereof or substitute therefor be (1) deemed to be or treated as a "security deposit" within the meaning of California Civil Code Section 1950.7, (2) subject to the terms of such Section 1950.7, or (3) intended to serve as a "security deposit" within the meaning of such Section 1950.7. The parties hereto (xx) recite that the Letter of Credit is not intended to serve as a security deposit and such Section 1950.7 and any and all other laws, rules and regulations applicable to security deposits in the commercial context ("**Security Deposit Laws**") shall have no applicability or relevancy thereto, and (yy) waive any and all rights, duties and obligations either party may now or, in the future, will have relating to or arising from the Security Deposit Laws.

(j) Notwithstanding the foregoing, if the Reduction Preconditions (defined below) are then satisfied, the LC Amount shall be reduced to equal $600,000.00. Upon satisfaction of the Reduction Precondition, Tenant shall be permitted to deliver to Landlord, at Tenant's sole cost, a new Letter of Credit (a "**Replacement Letter of Credit**") which satisfies all of the terms and conditions described above in Paragraph 5(a). Upon Landlord's receipt of a Replacement Letter of Credit that satisfies the terms and conditions of Paragraph 5(a), Landlord shall no longer be permitted to draw upon any existing Letter of Credit previously delivered by Tenant pursuant to Paragraph 5(a), and Landlord shall return to Tenant any such existing Letter of Credit then in Landlord's possession within thirty (30) days following Landlord's receipt of the Replacement Letter of Credit. As used herein, the term "**Reduction Preconditions**" means that Tenant is not then, and has not previously been, in default under this Lease after applicable notice and cure period and Tenant delivers to Landlord supporting financial documentation reasonably acceptable to Landlord evidencing that all of the following are true (as certified by the CEO, CFO, General Counsel or Vice President of Tenant): Tenant then has, and for each of the then two (2) most recently completed calendar quarters, Tenant had positive EBITDA. For purposes of this Lease, "**EBITDA**," shall mean Tenant's Operating Income plus Depreciation and Amortization, stock based compensation, debt extinguishment charges, amortization on debt issuance and any one-time non-cash charges, all as determined in accordance with generally accepted accounting principles.

6. **Operating Expenses**.

(a) During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12th of the annual cost, as estimated by Landlord from time to time, of Tenant's Proportionate Share (as hereinafter defined) of Operating Expenses. Payments thereof for any fractional calendar month shall be prorated. The provisions of this Paragraph 6 shall survive the expiration or earlier termination of the Lease.

(b) The term "**Operating Expenses**" means all costs and expenses incurred by Landlord in connection with the ownership, maintenance, and/or operation of the Project including, but not limited to costs of: utilities serving any Common Areas of the Project; maintenance, repair and replacement of all portions of the Project, including without limitation, paving and parking areas, roads, roofs, roof membrane, alleys, and driveways;

mowing, snow removal, landscaping, and exterior painting; the cost of maintaining utility lines, fire sprinklers and fire protection systems, exterior lighting and mechanical and building systems serving the Building or Project; amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; charges or assessments of any owners association to which the Building or the Project is subject; costs incurred in connection with any easement, covenants, conditions or restrictions pertaining to or affecting the Project, including, without limitation, costs to maintain landscaping, monitoring wells, parking areas under easements, project signage, transportation demand management program, or any other recurring costs to satisfy any conditions of approval of the Project, conditions imposed upon the Project and/or and comply with water quality laws and/or stormwater treatment requirements and other applicable Environmental Laws (as defined below); fees payable to tax consultants and attorneys for consultation and contesting taxes; environmental insurance, environmental management fees and environmental audits; the cost of any insurance deductibles for insurance maintained by Landlord (which deductibles shall be commercially reasonable based on the deductibles of institutional owners of commercial properties similar to the Project in the market in which the Project is located and otherwise subject to the limitations thereon set forth in Paragraph 9(b) below); property management fees payable to a property manager, including any affiliate of Landlord, provided that the property management fees shall not exceed three percent (3%) of the Base Rent payable by Tenant pursuant to the provisions of this Lease; security services, if any; trash collection, sweeping and removal; and all modifications, additions or alterations made by Landlord to the Project or the Building in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant) or that are appropriate to the continued operation of the Building as a commercial warehouse or industrial facility and the Project in the market area, which costs shall be amortized as set forth in this Paragraph 6(b). In addition, Operating Expenses shall include (1) all Taxes (hereinafter defined) due and payable each calendar year during the Lease Term, and (2) the cost of insurance maintained by Landlord for the Project for each calendar year during the Lease Term. For avoidance of doubt, Landlord, at Landlord's sole cost without right of reimbursement from Tenant, except to the extent of any damages caused by Tenant or any Tenant Parties, shall be responsible for the necessary and customary capital repairs and capital replacements of the Building Structural Elements. The cost of any repairs, replacements, modifications, additions or alterations to the Project to be performed by Landlord that are required to be capitalized under generally accepted real estate accounting principles, consistently applied (excluding the capital repairs and replacements of the Building Structural Elements) shall be amortized with interest (at a rate reasonably determined by Landlord) on a straight line basis over a period equal to the useful life thereof for federal income tax purposes and included in Operating Expenses only to the extent of the amortized amount for the respective calendar year.

(c) Notwithstanding the foregoing, Operating Expenses do not include (1) finance and debt service, principal and/or interest under mortgages or any other indebtedness of Landlord, or ground rent under ground lease; (2) costs of restoration to the extent of net insurance proceeds received by Landlord with respect thereto; (3) advertising expenses, promotional expenses, attorneys' fees, disbursements, and other costs and expenses incurred in procuring prospective tenants, negotiating and executing leases, and constructing improvements required to prepare for a new tenant's occupancy; (4) any costs or legal fees incurred in connection with a dispute with any particular tenant of the Project, including with respect to rent or enforcement of leases; (5) the costs of repair, replacement or restoration work occasioned by any Condemnation pursuant to Paragraph 16 below; (6) any depreciation allowance or expense, amortization (except as set forth in Paragraph 6(b) above), expense reserve and other non-cash items; (7) except for management fees, Landlord's general overhead and any overhead or profit increment to any subsidiary or affiliate of Landlord for services on or to the Building, Common Areas and/or the Project, to the extent that the cost of such service exceeds competitive costs for such services rendered by persons or entities of similar skill, competence and experience other than a subsidiary or affiliate of Landlord; (8) any costs or expenses representing any amount paid for services and materials to a (personal or business) related person, firm, or entity to the extent such amount exceeds the amount that would have been paid for such service or materials at the then existing market rates in the absence of such relationship; (9) compensation paid to any employee of Landlord above the grade of Property Manager/Building Superintendent, including officers and executives of Landlord; (10) the cost of any work or service furnished to any tenant or occupant of the Project to a materially greater extent or in a materially more favorable manner than that furnished generally to tenants and other occupants of the Project or the costs of work or services furnished exclusively for the benefit of any tenant or occupant of the Project or at such tenant's cost; (11) the costs for items and services which any tenant of the Project reimburses Landlord or pays to a third persons, to the extent of such reimbursement or payment; (12) costs incurred in connection with the presence of any Hazardous Materials (defined below), except to the extent permitted in accordance with the terms of Paragraph 30(k) below; (13) the costs and expenses attributable to the construction of

the Building, including correcting defects in the construction of the Building or in the Building equipment; (14) the costs of repairs or maintenance which are or would have been covered by warranties or service contracts in existence on the Commencement Date and to the extent such maintenance and repairs are or would have been made at no cost to Landlord; (15) the costs of repairs, alterations, and general maintenance necessitated by the negligence or willful misconduct of Landlord or its agents, employees or contractors, or repairs, alterations and general maintenance necessitated by the negligence or willful misconduct of any other tenant or occupant of the Project, or any of their respective agents, employees, contractors, invitees or licensees; (16) interest or penalties due to the late payment of taxes, utility bills or other such costs (except to the extent caused by Tenant); (17) any amount payable by Landlord by way of indemnity or for damages or which constitute a fine or penalty; (18) any cost for overtime or other expenses to Landlord in curing defaults; (19) the costs, including fines, penalties, and legal fees, incurred due to violations by Landlord, its employees, agents, contractors or assigns, or any other tenant or occupant of the Building of building codes, any governmental rule or requirement or the terms and conditions of any lease pertaining to the Building or any other contract; (20) any of the following Taxes (defined below): (a) estate, inheritance, transfer, gift or franchise taxes of Landlord or any federal, state or local income, or transfer tax, (b) penalties and interest, other than those attributable to Tenant's failure to timely comply with its obligations pursuant to this Lease, or (c) any Taxes in excess of the amount which would be payable if such tax or assessment expense were paid in installments over the longest possible term; and (21) bad debt expenses and charitable contributions and donations.

(d) If Tenant's total payments of Operating Expenses for any year are less than Tenant's Proportionate Share of actual Operating Expenses for such year as shown on Landlord's Actual Statement (defined below), then Tenant shall pay the difference to Landlord within thirty (30) days after receipt of written demand, and if more, then Landlord shall retain such excess and credit it against Tenant's next payments (unless determined after the expiration or earlier termination of the Lease, in which case Landlord shall refund such excess to Tenant within thirty (30) days after such determination). For purposes of calculating Tenant's Proportionate Share of Operating Expenses, a year shall mean a calendar year except the first year, which shall begin on the Commencement Date, and the last year, which shall end on the expiration of this Lease. Notwithstanding anything to the contrary contained in this Lease, if Landlord has not delivered an Actual Statement for any calendar year during the Term by the date which is eighteen (18) months after the end of the calendar year at issue, Tenant shall not be obligated to pay Tenant's Proportionate Share of any amounts in excess of the estimated Operating Expenses paid by Tenant for such calendar year (except to the extent of any Operating Expenses relating to supplemental taxes or assessments attributable to such calendar year which were not reasonably known to Landlord during the calendar year in question, for which no such limitation shall apply).

(e) With respect to Operating Expenses which Landlord allocates to the entire Project, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Project as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Project; and, with respect to Operating Expenses which Landlord allocates only to the Building, Tenant's "Proportionate Share" shall be the percentage set forth on the first page of this Lease as Tenant's Proportionate Share of the Building as reasonably adjusted by Landlord in the future for changes in the physical size of the Premises or the Building. Landlord may equitably increase Tenant's Proportionate Share for any item of expense or cost reimbursable by Tenant that relates to a repair, replacement, or service that benefits only the Premises or only a portion of the Project or Building that includes the Premises or that varies with occupancy or use. The estimated Operating Expenses for the Premises set forth on the first page of this Lease are only estimates, and Landlord makes no guaranty or warranty that such estimates will be accurate. The Premises, the Building, and the Project are stipulated for all purposes to contain the number of rentable square feet, respectively, as set forth in the Basic Lease Provisions, and the same will be conclusive and binding on Landlord and Tenant, except that Tenant's Proportionate Share of Building, Tenant's Proportionate Share of Project, the rentable area of the Premises, and the rentable area of the Building and Project, may reasonably be adjusted by Landlord in the future for changes in the physical size or area of the Premises, the Building, the Project, or the Common Areas. Except as otherwise set forth above, any statement of square footage set forth in this Lease, or that may have been used in calculating rental, is an approximation which Landlord and Tenant agree is reasonable and the rental based thereon is not subject to revision.

(f) Provided Tenant is not then in default beyond any applicable cure period of its obligations to pay rent, or any other payments required to be made by it under this Lease, Tenant shall have the right, once each calendar year, to cause a Qualified Person (as defined below) to reasonably review supporting data

for any portion of an actual statement of annual Operating Expenses delivered by Landlord (the "**Actual Statement**") in accordance with the following procedure:

i. Tenant shall, within ninety (90) days after any Actual Statement is delivered, deliver a written notice to Landlord specifying the portions of the Actual Statement that are claimed to be incorrect, provided that Tenant timely pays to Landlord all amounts due from Tenant to Landlord as specified in the Actual Statement. In no event shall Tenant be entitled to withhold, deduct, or offset any monetary obligation of Tenant to Landlord under the Lease (including without limitation, Tenant's obligation to make all payments of rent and all payments of Tenant's Operating Expenses) pending the completion of and regardless of the results of any review of records under this Paragraph. The right of Tenant under this Paragraph may only be exercised once for any Actual Statement, and if Tenant fails to meet any of the above conditions as a prerequisite to the exercise of such right, the right of Tenant under this Paragraph for a particular Actual Statement shall be deemed waived.

ii. Tenant acknowledges that Landlord maintains its records for the Project at the office of Landlord's property manager ("**Property Manager**"), and Tenant agrees that any review of records under this Paragraph shall be at the sole expense of Tenant and shall be conducted by a Qualified Person. Tenant acknowledges and agrees that any records reviewed under this Paragraph constitute confidential information of Landlord, which shall not be disclosed to anyone other than the Qualified Person performing the review, the principals of Tenant who receive the results of the review, and Tenant's accounting employees. The disclosure of such information to any other person, whether or not caused by the conduct of Tenant, shall constitute a material breach of this Lease.

iii. Any errors disclosed by the review shall be promptly corrected by Landlord, provided, however, that if Landlord disagrees with any such claimed errors, Landlord shall have the right to cause another review to be made by a Qualified Person. In the event of a disagreement between the two (2) reviews, the two (2) Qualified Persons who conducted Landlord's and Tenant's reviews shall jointly designate a third (3rd) Qualified Person, at Tenant's sole cost and expense (except as otherwise indicated in this Lease), to conduct a review of Landlord's records. The review of such third (3rd) Qualified Person shall be deemed correct and binding upon the parties. In the event that the final results of such review of Landlord's records reveal that Tenant has overpaid obligations for the preceding period, the amount of such overpayment shall be credited against Tenant's subsequent installment obligations to pay the estimated Operating Expenses; provided, however, if Tenant has overpaid by five percent (5%) or more, Landlord shall pay the reasonable out-of-pocket cost of the review of Landlord's records by Tenant's Qualified Person and the reasonable out-of-pocket cost of the review of Landlord's records by the third (3rd) Qualified Person. If this Lease has expired, Landlord shall return the amount of such overpayment to Tenant within thirty (30) days after such reviews have been made. In the event that such results show that Tenant has underpaid its obligations for a preceding period, the amount of such underpayment shall be paid by Tenant to Landlord within thirty (30) days after the determination. A "**Qualified Person**" means an accountant or other person experienced in accounting for income and expenses of industrial projects engaged solely by Tenant on terms which do not entail any compensation based or measured in any way upon any savings in rent or reduction in Operating Expenses achieved through the inspection process.

7. **Utilities**.

(a) Tenant shall contract for, and timely pay for all water, gas, electricity, heat, light, power, telephone, sewer, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises. Landlord shall have no responsibilities whatsoever in connection with the foregoing. Landlord may cause at Tenant's expense any utilities to be separately metered or charged directly to Tenant by the provider. Tenant shall pay its share of all charges for jointly metered utilities based upon consumption, as reasonably determined by Landlord. Tenant agrees to limit use of water and sewer for normal restroom and office use. No interruption or failure of utilities shall result in the termination of this Lease or the abatement of rent, provided if (I) Tenant is prevented from using, and does not use, the Premises or a portion thereof, as a result of any interruption in utilities or other essential services that Landlord is obligated to provide pursuant to the express terms of this Lease, and (II) such interruption is caused by Landlord's negligence or breach of its express obligations under this Lease, and (III) the cure of such interruption is within Landlord's reasonable

control (such interruption that satisfies (I), (II) and (III) above shall be referred to herein as an "**Abatement Event**"), then Tenant shall give written notice of such Abatement Event to Landlord. If, and only if, the Abatement Event persists for more than three (3) consecutive business days after Landlord's receipt of Tenant's written notice of such Abatement Event, then Base Rent and Operating Expenses shall be abated (proportionally if the Abatement Event only prevents Tenant from using a portion of the Premises) commencing on the fourth (4th) consecutive business day following Landlord's receipt of notice of the Abatement Event for such period of time that Tenant continues (as a result of the Abatement Event) to be so prevented from using, and does not use, the Premises or a portion thereof, in proportion that the area of the portion of the Premises that Tenant is prevented from using, and does not use, bears to the total area of the Premises. Landlord shall use commercially reasonable efforts to rectify any Abatement Event as soon as reasonably possible. Moreover, if such Abatement Event continues for a period of three hundred sixty-five
(365) consecutive days after Landlord's receipt of Tenant's written notice, and Tenant continues to be prevented from using, and does not use the entire Building during such period, then Tenant shall have the right to terminate the Lease upon written notice to Landlord no later than thirty (30) days after the expiration of such three hundred sixty- five (365) consecutive day period.

(b) If Tenant's requirements for or consumption of electricity exceed the electrical capacity and/or allocation for the Building as set forth on Exhibit B (i.e., 4,000 amps of electrical capacity, and the connection is 800 amps of electrical service), then Tenant may request the Building be fitted for additional capacity as a Tenant-Made Alteration pursuant and subject to the terms of Paragraph 12 below, and Landlord shall, at Tenant's expense, reasonably cooperate with Tenant in connection with any required applications or submittals to the applicable electrical utility company in order for such utility company to supply such additional electricity, provided the obtainment or provision of any such additional electrical capacity is not a condition or contingency to this Lease, and the use of electricity in the Premises shall not exceed the capacity of existing feeders and risers and electrical panels to or wiring in the Premises; but further provided, however, that, Tenant may install, at Tenant's cost and in accordance with this Lease, any risers or wiring required to meet Tenant's excess electrical requirements if, in Landlord's reasonable judgment, the same shall not cause permanent damage to the Building or the Premises, cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs, or expenses. Tenant will be allowed to install equipment of varying voltage, including but not limited to, 480v mechanical and elevator systems, 277v lighting and other systems, 208v equipment as required, and 120v systems as required. In addition, as part of the Tenant Improvements or as a Tenant-Made Alteration, Tenant shall have the right to work with the local utility company to upgrade the natural gas line serving the Premises, at Tenant's sole cost and expense, and Tenant acknowledges and agrees that any such upgrade is not a condition to the effectiveness of this Lease.

(c) Tenant shall, at its sole cost and expense, contract directly with a janitorial service and shall pay for all janitorial services used on or for the Premises. Landlord shall have no obligations whatsoever in connection therewith. All janitorial services and employees utilized by Tenant shall be subject to Landlord's prior written consent.

(d) Tenant shall store all trash and garbage within the Premises or in a trash dumpster or similar container approved by Landlord as to type, location and screening; and Tenant shall arrange for the regular pick-up of such trash and garbage at Tenant's expense (unless Landlord finds it necessary to furnish such service, in which event Tenant shall be charged an equitable portion of the total of the charges to all tenants using the service). Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Project. Tenant covenants and agrees, at its sole cost and expense: (i) to comply with all present and future Legal Requirements, orders and regulations of the federal, state, county, municipal or other governing authorities, departments, commissions, agencies and boards regarding the collection, sorting, separation, and recycling of garbage, trash, rubbish and other refuse (collectively, "**trash**"); (ii) to comply with Landlord's recycling policy as part of Landlord's energy efficient and environmentally sustainable practices ("**Landlord's Sustainability Initiative**") where it may be more stringent than applicable Legal Requirements; (iii) to sort and separate its trash and recycling into such categories as are provided by Legal Requirements or Landlord's Sustainability Initiative; (iv) that each separately sorted category of trash and recycling shall be placed in separate receptacles as directed by Landlord; (v) that Landlord reserves the right to require Tenant to arrange for such collection utilizing a contractor satisfactory to Landlord; and (vi) that Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Section. Tenant

shall provide Landlord as reasonably requested and no less than annually with a copy of waste manifests for all waste that leaves the Building that is within Tenant's direct control, including consumable waste, recyclable waste, pallets, off-site paper shredding and electronic waste.

(e) On-site Power. Landlord shall have the right to install on-site power (i.e., solar or small wind) at the Building or the Project. Tenant agrees to cooperate with Landlord in connection with the installation and on-going operation of such on-site power. Tenant shall have no right to any renewable energy credits resulting from on-site renewable energy generation, even if Tenant uses such energy. Landlord may retain or assign such renewable energy credits in Landlord's sole discretion.

(i) **Consumption Data**. Tenant shall within ten (10) business days of receipt of written request by Landlord provide consumption data in form reasonably required by Landlord: (x) for any utility billed directly to Tenant and any subtenant or licensee; and (y) for any submetered or separately metered utility supplied to the Premises for which Landlord is not responsible for reading. If Tenant utilizes separate services from those of Landlord, Tenant hereby consents to Landlord obtaining the information directly from such service providers and, upon ten (10) business days' prior written request, Tenant shall execute and deliver to Landlord and the service providers such written releases as the service providers may request evidencing Tenant's consent to deliver the data to Landlord. Any information provided hereunder shall be held confidential except for its limited use to evidence compliance with any sustainability standards. If Tenant fails to deliver any release or to provide any information requested hereunder within the ten (10)- business day period, then Landlord may charge Tenant the sum of $100.00 per day for each day after the ten (10)- business day period until delivered (the "**Late Reporting Fee**"), in addition to any other rights or remedies afforded to Landlord for an Event of Default pursuant to Paragraph 23 of this Lease. A Tenant Party shall not use, nor allow any of its parent, subsidiary or affiliated entities or architects, engineers, or other consultants or advisors to use, any of such consumption data or other information to challenge any sustainability score, rating, certification or other approval granted by any third party.

(ii)**Benchmarking**. When energy and/or water benchmarking are required by local, state or federal codes, Tenant shall use commercially reasonable good faith efforts to cooperate with Landlord to comply with such Laws. If Tenant fails to cooperate within ten (10) days of receipt of written request, Landlord may charge Tenant the Late Reporting Fee for each day after such ten (10)-day period that Tenant fails to so cooperate, in addition to any other rights or remedies afforded to Landlord for an Event of Default pursuant to Paragraph 23 of this Lease. If the results of such benchmarking reveals reasonable opportunities to improve efficiencies through Tenant operations, Tenant shall make every commercially reasonable effort to take such corrective measures.

(iii) **Data Center**. Tenant may not operate a Data Center within the Premises without the express written consent of Landlord. The term "**Data Center**" shall have the meaning set forth in the
s. Environmental Protection Agency's ENERGY STAR® program and is a space specifically designed and equipped to meet the needs of high-density computing equipment, such as server racks, used for data storage and processing. The space will have dedicated, uninterruptible power supplies and cooling systems. Data Center functions may include traditional enterprise services, on-demand enterprise services, high-performance computing, internet facilities and/or hosting facilities. A Data Center does not include space within the Premises utilized as a "server closet" or for a computer training area. In conjunction with the completion and operation of the Data Center, Tenant shall furnish the following information to Landlord:

i. Within ten (10) days of completion, Tenant shall report to Landlord the total gross floor area (in square feet) of the Data Center measured between the principal exterior surfaces of the enclosing fixed walls and including all supporting functions dedicated for use in the Data Center, such as any raised- floor computing space, server rack aisles, storage silos, control console areas, battery rooms, mechanical rooms for cooling equipment, administrative office areas, elevator shafts, stairways, break rooms and restrooms. If Tenant alters or modifies the area of the Data Center, Tenant shall furnish an updated report to Landlord on the square footage within ten (10) days following completion of the alterations or modifications.

ii. Within ten (10) days following the close of each month of operation of the Data Center, monthly IT Energy Readings at the output of the Uninterruptible Power Supply (UPS), measured in total kWh utilized for the preceding month (as opposed to instantaneous power readings), failing which in addition to same being an Event of Default, Tenant shall be obligated to pay to Landlord the Late Reporting Fee.

8. **Taxes**. Landlord shall pay all taxes, assessments, special assessments, improvement districts, and governmental charges that accrue against the Project and are applicable to any period during the Lease Term (collectively referred to as "**Taxes**"). Taxes that are applicable to any period during the Lease Term shall be included as part of the Operating Expenses charged to Tenant pursuant to Paragraph 6 hereof during each year of the Lease Term, based upon Landlord's reasonable estimate of the amount of Taxes, and shall be subject to reconciliation and adjustment pursuant to Paragraph 6 once the actual amount of Taxes is known. Taxes shall include, without limitation, any increase in any of the foregoing based upon construction of improvements on the Project or changes in ownership (as defined in the California and Revenue Taxation Code) or reassessments or the like to reflect the fair market value of the Project by the County Assessor as prescribed under California law. Landlord may contest by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof and any costs incurred in such contest may be included as part of Taxes. All capital levies, transfer or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any gross receipts, franchise tax, any excise, transaction, business and occupation, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises and/or the Project or any portion thereof shall be paid by Tenant to Landlord monthly in estimated installments or within thirty (30) days after receipt of written demand, at the option of Landlord, as additional rent; provided, however, in no event shall Tenant be liable for any taxes excluded in Paragraph 6(c)(20) above. If any such tax or excise is levied or assessed directly against Tenant, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant, and if any such taxes are levied or assessed against Landlord or Landlord's property and (a) Landlord pays them. or (b) the assessed value of Landlord's property is increased thereby and Landlord pays the increased taxes, then Tenant shall pay to Landlord such taxes within thirty
(30) days after Landlord's written request therefor.

9. **Insurance; Waivers; Subrogation**.

(a) **Tenant's Insurance**. Effective as of the earlier of: (1) the date Tenant enters or occupies the Premises; or (2) the Commencement Date, and continuing throughout the Lease Term, Tenant shall maintain the following insurance policies: (A) commercial general liability insurance of not less than $3,000,000 per occurrence, with an annual aggregate limit of not less than $5,000,000, which shall apply on a per location basis, or, following the expiration of the initial Lease Term, such other amounts as Landlord may from time to time reasonably require (and, if the use and occupancy of the Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy [e.g., the sale, service or consumption of alcoholic beverages], Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter [including liquor liability, if applicable] in such amounts as Landlord may reasonably require), insuring Tenant, Landlord, the Property Manager, Overton Moore Properties ("**Asset Manager**"), Invesco Advisers, Inc. ("**Invesco**") against all liability for injury to or death of a person or persons or damage to property arising from the use and occupancy of the Premises and (without implying any consent by Landlord to the installation thereof) the installation, operation, maintenance, repair or removal of Tenant's equipment with an additional insured endorsement in form CG 2026 04/13 (or another equivalent form approved in writing by Landlord); (B) Automobile Liability covering any owned, non-owned, leased, rented or borrowed vehicles of Tenant with limits no less than $1,000,000 combined single limit for property damage and bodily injury, naming Landlord, the Property Manager, Asset Manager and Invesco as additional insureds; (C) Special Risk Property insurance, excluding loss or damage from earthquake and flood, covering the full value of all Tenant-Made Alterations and improvements and betterments in the Premises, naming Landlord and its lender as additional loss payees as their interests may appear; (D) Special Risk Property insurance, excluding loss or damage from earthquake and flood, covering the full value of all furniture, trade fixtures and personal property (including property of Tenant or others) in the Premises or otherwise placed in the Project by or on behalf of a Tenant Party it being understood that no lack or inadequacy of insurance by Tenant shall in any event make Landlord subject to any claim by virtue of any theft of or loss or damage to any uninsured or inadequately insured property; (E) contractual liability insurance sufficient to cover Tenant's indemnity obligations hereunder (but only if such contractual liability insurance is not already included in Tenant's commercial general liability insurance policy); (F) worker's compensation insurance in amounts not less than statutorily required, and Employers' Liability insurance with limits of not less than $1,000,000; (G) business interruption insurance in an amount that will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against under Paragraph 9(a)(C); (H) in the event Tenant performs any alterations or repairs in, on, or to the Premises, Builder's Risk Insurance on a Special Risk basis

(including collapse) on a completed value (non-reporting) form, or by endorsement including such coverage pursuant to Paragraph 9(a)(C) hereinabove, for full replacement value covering all work incorporated in the Building and all materials and equipment in or about the Premises; and (I) such other insurance or any changes or endorsements to the insurance required herein, including increased limits of coverage, as Landlord, or any mortgagee or lessor of Landlord, may reasonably require from time to time. Tenant's insurance shall provide primary coverage to Landlord and shall not require contribution by any insurance maintained by Landlord, when any policy issued to Landlord provides duplicate or similar coverage, and in such circumstance Landlord's policy will be excess over Tenant's policy. Tenant shall furnish to Landlord certificates of such insurance, with an additional insured endorsement in form CG 2026 04/13 (or another equivalent form approved in writing by Landlord), and such other evidence satisfactory to Landlord of the maintenance of all insurance coverages required hereunder at least ten (10) days prior to the earlier of the Commencement Date or the date Tenant enters or occupies the Premises, and at least fifteen (15) days prior to each renewal of said insurance, and Tenant shall notify Landlord at least thirty (30) days before cancellation or a material change of any such insurance policies. All such insurance policies shall be in form, and issued by companies licensed to do business in the State of California and with a Best's rating of A:VII or better, reasonably satisfactory to Landlord. If Tenant fails to comply with the foregoing insurance requirements or to deliver to Landlord the certificates or evidence of coverage required herein, Landlord, in addition to any other remedy available pursuant to this Lease or otherwise, may, but shall not be obligated to, obtain such insurance and Tenant shall pay to Landlord on demand the premium costs thereof, plus an administrative fee of ten percent (10%) of such cost. It is expressly understood and agreed that the foregoing minimum limits of insurance coverage shall not limit the liability of Tenant for its acts or omissions as provided in this Lease.

(b) **Landlord's Insurance**. Throughout the Lease Term, Landlord shall maintain, as a minimum, the following insurance policies: (1) property insurance for the Building's replacement value (excluding property required to be insured by Tenant), less a commercially-reasonable deductible if Landlord so chooses (based on the deductibles of institutional owners of commercial properties similar to the Project in the market in which the Project is located); and (2) commercial general liability insurance in an amount of not less than $3,000,000. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary. Tenant shall pay its Proportionate Share of the cost of all insurance carried by Landlord with respect to the Project. The foregoing insurance policies and any other insurance carried by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control, and Tenant shall have no right or claim to any proceeds thereof or any other rights thereunder. In no event shall Landlord's deductibles (other than earthquake) exceed
$100,000.00 per occurrence (and deductibles for earthquake insurance, if applicable, exceed one percent (1%) per occurrence of the cost to repair the damage).

(c) **No Subrogation**. Notwithstanding any other provision of this Lease to the contrary, neither Landlord nor Tenant nor their respective officers, directors, members, partners, agents or employees shall be liable to the other for any injury, damage to or theft, destruction, loss, or loss of use of any property (collectively, a "**Loss**") caused by any risk, to the extent the same is insured against under any property insurance policy that covers the Building, the Premises, Landlord's or Tenant's fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof (whether or not such insurance is in fact in effect), regardless of cause or origin, including if the negligence of the other party hereto, or the negligence of its officers, directors, members, partners, agents or employees, caused such Loss, and each of Landlord and Tenant hereby waives any rights of recovery against the other and its respective officers, directors, members, partners, agents or employees for any Loss on account of such insured risks. Landlord and Tenant each hereby waive any right of subrogation and right of recovery or cause of action for injury including death or disease to respective employees of either as covered by worker's compensation (or which would have been covered if Tenant or Landlord as the case may be, was carrying the insurance as required by this Lease). Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier's rights of recovery under subrogation or otherwise against the other party. Landlord and Tenant each acknowledges that the waivers and releases set forth in this Paragraph 9(c) are intended to produce the result that any Loss which is covered by insurance would be borne by the insurance carriers of Landlord or Tenant, as the case may be, or by the party having the insurable interest if such Loss is not covered by insurance but this Lease requires such party to maintain insurance to cover such Loss. Landlord and Tenant agree that such waivers and releases were freely bargained for and willingly and voluntarily agreed to by Landlord and Tenant and do not constitute a violation of public policy.

(d) **Indemnity**. Except to the extent caused by the gross negligence or willful misconduct of Landlord or any Landlord Indemnitee, Tenant shall indemnify, defend and hold harmless the Landlord Indemnitees from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, losses and expenses (including attorneys' fees) arising from: (1) any injury to or death of any person or any Loss arising from any occurrence in the Premises, the use of the Common Areas by any Tenant Party; or (2) Tenant's failure to perform its obligations under this Lease, in each case even though caused or alleged to be caused by the negligence or fault of Landlord or its agents. This indemnity is intended to indemnify Landlord and its agents against the consequences of their own negligence or fault as provided above when Landlord or its agents are jointly, comparatively, contributively, or concurrently negligent with Tenant. The indemnities set forth in this Paragraph 9(d) shall survive termination or expiration of this Lease and shall not terminate or be waived, diminished or affected in any manner by any abatement or apportionment of Rent under any provision of this Lease. If any proceeding is filed for which indemnity is required hereunder, Tenant agrees, upon request therefor, to defend Landlord in such proceeding at its sole cost utilizing counsel satisfactory to Landlord in its sole but reasonable discretion.

(e) **No Consequential Damages.** Notwithstanding anything to the contrary contained in this Lease, except with respect to Tenant's obligations pursuant to Paragraph 22, "Holding Over", and Paragraph 30, "Hazardous Materials", in no event shall either party be liable to the other for any indirect, consequential, special, exemplary, incidental or punitive damages arising from or relating to this Lease.

10. **Landlord's Repairs**.

(a) This Lease is intended to be a net lease. Subject to Paragraphs 15 and 16 of this Lease and any damages caused by Tenant or any Tenant Parties, Landlord shall, at Landlord's sole cost and without right of reimbursement from Tenant, except as otherwise set forth in this Lease, maintain, repair and replace only the structural elements of: (a) the roof of the Building (not including the roof membrane, which shall be maintained and repaired as part of Operating Expenses), (b) the exterior walls of the Building (not including painting and caulking, which shall be maintained as part of Operating Expenses), and (c) the foundations and slabs, footings, and load- bearing columns and beams of the Building (collectively, the "**Building Structural Elements**"), including repairs and replacements to the Building Structural Elements necessitated by subgrade movement not caused by Tenant or any of its agents, contractors or employees. In addition, Landlord shall maintain, repair and replace (as needed) (reasonable wear and tear excluded and damages caused by Tenant or any Tenant Party excluded), as part of Operating Expenses (subject to the terms of this Lease, including the amortization of capital improvements and the exclusions to Operating Expenses as described in Paragraph 6(c) above), (i) the fire sprinklers and fire protection systems serving the Building (provided that monitoring of such systems shall be Tenant's responsibility pursuant to Paragraph 11 below), (ii) storm drainage and backflow systems serving the Building and Project; and (iii) the exterior parking areas, driveways and landscaping surrounding the Building (provided that regular sweeping of the parking areas and driveways and maintenance and repair of electrical vehicle charging stations shall be Tenant's responsibility pursuant to Paragraph 11 below). Notwithstanding the foregoing, subject to Paragraph 9(c) above, maintenance, repairs and/or replacements necessitated in any material respect by any breach by Tenant or any negligent act or omission of Tenant or any Tenant Party shall be performed at Tenant's cost and expense. The term "walls" as used in this Paragraph 10 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, dock bumpers, dock plates or levelers, or office entries, all of which shall be maintained by Tenant. Tenant shall promptly give Landlord written notice of any repair required by Landlord pursuant to this Paragraph 10, after which Landlord shall have a reasonable opportunity to repair such item. Tenant hereby waives the benefit of California Civil Code Sections 1941 and 1942, and any other statute providing a right to make repairs and deduct the cost thereof from the rent, except as otherwise expressly set forth in Paragraph 10(b) below.

(b) Notwithstanding the foregoing, in the event that Landlord fails within thirty (30) days after written notice from Tenant (or 48 hours after written notice in the case of an emergency involving the likelihood of imminent harm to person or material damage to property) to perform any maintenance and/or make any repairs to the Premises which Landlord is required to perform and/or make pursuant to the terms of this Lease, then Tenant may give Landlord an additional five (5) business days written notice (24 hours in the case of emergency as described above) (such additional notice, a "**Self-Help Notice**") specifying that Tenant is going to take such required action (which notice must describe in reasonable detail the action required of Landlord pursuant to this Lease, and state in the subject line in boldface, ALL CAPS that "**LANDLORD'S ATTENTION IS REQUIRED. IF LANDLORD FAILS TO COMMENCE PERFORMANCE OF ITS OBLIGATIONS**

WITHIN FIVE (5) BUSINESS DAYS [24 HOURS IN THE EVENT OF AN EMERGENCY] FOLLOWING LANDLORD'S RECEIPT OF THIS NOTICE, TENANT MAY EXERCISE IT'S "SELF-HELP " REMEDY PURSUANT TO PARAGRAPH 10(B) OF THE LEASE"). If Landlord has not commenced to repair such problem (or reasonably objected to the required action described in Tenant's notice) within the applicable period after Landlord's receipt of the Self-Help Notice from Tenant (which Self-Help Notice must conform with the foregoing requirements), then Tenant shall have the right to perform the required action of Landlord and, provided that Landlord has not reasonably disputed or objected to the required action described in Tenant's notice, Landlord shall reimburse Tenant for the actual and reasonable costs thereof (except to the extent Tenant would otherwise ultimately have been responsible for such costs under this Lease, including through Operating Expenses) together with a five percent (5%) administrative fee, within thirty (30) days after presentation of a reasonably detailed invoice demonstrating the expenses incurred by Tenant. In the event Tenant takes such action, and such work may affect the structure, systems or exterior appearance of the Building, then (except in the case of an emergency involving the likelihood of imminent harm to person or material damage to property where use of the same is not reasonably practicable) Tenant shall use only those contractors used by Landlord in the Premises for such work, if those contractors are readily available to perform such work and if not then by similarly qualified licensed contractors approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed). All work performed by Tenant pursuant to this Paragraph 10(b) shall be subject to all of the terms and conditions of this Lease (including, without limitation, Paragraphs 11 and 12 below), except that Landlord's consent shall not be required (to the extent the other provisions of this paragraph have been complied with by Tenant). In the event Landlord fails to pay all or any portion of the Reimbursement Amount due Tenant under this Paragraph 10(b) within thirty (30) days after receipt of Tenant's bill therefor, together with the invoices therefor and reasonable supporting documentation, Tenant may with ten (10) business days' prior notice to Landlord stating in bold-faced, all capital letters that: "FAILURE TO REIMBURSE WITHIN TEN (10) BUSINESS DAYS SHALL RESULT IN TENANT'S EXERCISE OF OFFSET RIGHTS PURSUANT TO PARAGRAPH 10(B) OF THE LEASE", offset such delinquent amount against fifty percent (50%) of the Base Rent due from Tenant until Tenant has been reimbursed in full (together with interest on such delinquent amount at the rate of eight percent (8%) per annum until such delinquent amount has been paid in full or fully credited), provided that Tenant shall provide Landlord with unconditional lien waivers in connection with the work relating to such amounts within ten (10) days after the date on which the amount has been fully paid or so offset, or as soon thereafter as reasonably practicable. Notwithstanding the foregoing, if Landlord delivers to Tenant a good faith written objection notice within five (5) business days after receipt of Tenant's notice of intent to offset, setting forth with reasonable particularity Landlord's reasons for its claim that Landlord is not required to pay Tenant all or any specified portion of the amounts due to Tenant hereunder, then Tenant shall not be entitled to offset the disputed portion of such sums. In the event of a dispute between Landlord and Tenant regarding the amounts due to Tenant hereunder, the dispute shall be determined by binding arbitration before JAMS in San Jose, California. The arbitration shall be administered and conducted pursuant to the JAMS Streamlined Arbitration Rules & Procedures. Unless the parties otherwise agree, the arbitrator must be a retired judge of the Superior Court of the State of California. The preceding to the contrary notwithstanding, if Tenant exercises its self-help right pursuant to this Paragraph 10(b), then Landlord shall not be obligated to pay to or reimburse Tenant for any portion of the costs incurred by Tenant in exercising its self-help right that are the responsibility of Tenant under the Lease.

11. **Tenant's Repairs**.

(a) Subject to Landlord's obligations in Paragraph 10, Tenant, at its sole expense, shall repair, replace and maintain in good condition and in compliance with all Legal Requirements all portions of the Premises, the Building and the Project and all areas, improvements and systems serving the Premises including, without limitation, dock, dock equipment and loading areas, truck doors, plumbing, water, and sewer lines up to points of common connection, entries, doors, door frames, ceilings, windows, window frames, interior walls, and the interior side of demising walls, heating, ventilation and air conditioning systems and the electrical, mechanical, plumbing, sewer, fire and life safety systems (to the extent not made the obligation of Landlord in Paragraph 10 above) and, if applicable, security systems (collectively, the "**Building Systems**") serving the Premises, monitoring of the Building's fire sprinklers and fire protection systems, repairing and maintaining the electrical charging stations within the parking areas, and sweeping of the Project's parking areas and driveways. Such repair and replacements shall include capital expenditures and repairs whose benefit may extend beyond the Lease Term. Within ten (10) business days of the Commencement Date, Tenant, at Tenant's expense, shall enter into maintenance service contracts for the maintenance and repair of the heating, ventilation and air conditioning systems and other

mechanical and building systems serving the Premises; provided, however, at Landlord's written election (but at Tenant's expense), Landlord shall have the right (but not the obligation) to enter into such maintenance service contracts. The scope of services and contractors under such maintenance contracts maintained by Tenant shall be subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

(b) In the event that any repair or maintenance obligation required to be performed by Tenant hereunder may affect the Building Structural Elements or may adversely affect the Building Systems, prior to commencing any such repair, Tenant shall provide Landlord with written notice of the necessary repair or maintenance and a brief summary of the Building Structural Element and/or the Building Systems that may be affected by such repair or maintenance. Within ten (10) business days after Landlord's receipt of Tenant's written notice, Landlord shall have the right, but not the obligation, to elect to cause such repair or maintenance to be performed by Landlord, or a contractor reasonably selected and engaged by Landlord, but at Tenant's sole cost and expense; provided, however, that Tenant shall have the right, in its sole but reasonable judgement, to reasonably approve the proposed cost of such repair or maintenance if the estimated cost is $100,000.00 or more.

(c) Within the fifteen (15)- day period prior to the expiration or termination of this Lease, Tenant shall deliver to Landlord a certificate from an engineer reasonably acceptable to Landlord certifying that the hot water equipment, dock equipment, and the HVAC system are then in good repair and working order. If Tenant fails to perform any repair or replacement for which it is responsible (or if Tenant fails to obtain any of the certifications described in the immediately preceding sentence), Landlord may perform such work (and/or obtain such certifications) and be reimbursed by Tenant within 30 days after receipt of written demand for all actual and reasonable costs and expenses incurred by Landlord in connection therewith. Subject to Paragraphs 9 and 15, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Project that results from damage caused by Tenant, its agents, contractors, or invitees and any repair that benefits only the Premises.

12. **Tenant-Made Alterations and Trade Fixtures**.

(a) Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("**Tenant-Made Alterations**") shall be subject to Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Tenant shall cause, at its expense, all Tenant-Made Alterations to comply with insurance requirements and with Legal Requirements and shall construct at its expense any alteration or modification required by Legal Requirements as a result of any Tenant-Made Alterations. Notwithstanding anything herein to the contrary, Tenant may, without Landlord's consent, but subject to Legal Requirements (including without limitation the approval applicable design review committee[s] and/or owners association[s]), install security cameras on the exterior of the Premises, erect or install shelves, wall display systems, bins, machinery, trade fixtures and security devices, including security gates, fences and rolling shutters (interior or exterior) in the Premises and in the Outside Yard Area. Also notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right, without obtaining Landlord’s consent, but upon prior written notice to Landlord, to install non-structural alterations, additions or improvements to the interior (and not visible from the exterior) of the Premises not requiring a permit and not costing in excess of $100,000.00 annually.

(b) All Tenant-Made Alterations shall be constructed in a good and workmanlike manner by contractors reasonably acceptable to Landlord and only good grades of materials shall be used. All plans and specifications for any Tenant-Made Alterations shall be submitted to Landlord for its approval, which shall not be unreasonably withheld, conditioned or delayed. Landlord may monitor construction of the Tenant-Made Alterations. Tenant shall reimburse Landlord for Landlord's review of plans and specifications not to exceed $1,500, but in no event shall Tenant be obligated to pay a supervision or construction management fee with respect to any Tenant- Made Alterations except as set forth in the Work Letter. Landlord's right to review plans and specifications and to monitor construction shall be solely for its own benefit, and Landlord shall have no duty to see that such plans and specifications or construction comply with applicable laws, codes, rules and regulations.

(c) Tenant shall provide Landlord with the identities and mailing addresses of all persons performing work or supplying materials, prior to beginning such construction, and Landlord may post on and about the Premises notices of non-responsibility pursuant to applicable law. Tenant shall furnish security or make other arrangements reasonably satisfactory to Landlord to assure payment for the completion of all work free and clear of liens and shall provide certificates of insurance for worker's compensation and other coverage in amounts and from

an insurance company satisfactory to Landlord protecting Landlord against liability for personal injury or property damage during construction. Upon completion of any Tenant-Made Alterations, Tenant shall deliver to Landlord sworn statements setting forth the names of all contractors and subcontractors who did work on the Tenant-Made Alterations and final lien waivers from all such contractors and subcontractors.

(d) Upon surrender of the Premises, at Landlord's sole election, all Tenant-Made Alterations, Tenant Improvements and any other leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, provided that Landlord shall have the right to require Tenant to remove, at Tenant's sole cost and expense, any and all such Tenant-Made Alterations, Tenant Improvements or other leasehold improvements and repair any damage caused by such removal. Notwithstanding the foregoing, Tenant shall have the right, at the time it requests Landlord's consent and delivers all plans and specifications to any Tenant Improvement or Tenant-Made Alteration to make a written request that Landlord notify Tenant whether Tenant shall be required to remove the applicable Tenant Improvement and/or Tenant-Made Alteration at the expiration or termination of the Lease Term, in which event Tenant shall only be obligated to remove (i) those Tenant Improvements and/or Tenant- Made Alterations, that Landlord notified Tenant in writing at the time Landlord provides its consent that it must remove at the end of the Lease Term, and (ii) those Tenant Improvements and/or Tenant-Made Alterations that Tenant did not timely seek or did not obtain Landlord's written consent to leave in place at the end of the Lease Term, and that Landlord ultimately requires Tenant to remove. For avoidance of doubt, Landlord shall only be permitted to require removal of a Tenant-Made Alteration or Tenant Improvement if such Tenant-Made Alteration or Tenant Improvement is not a customary tenant improvement for general industrial and warehouse space used for manufacturing, assembly, storage, distribution and wholesale sales of products and merchandise and research and development. Failure of Landlord to notify Tenant in writing at the time that Landlord issues its consent that a Tenant Improvement and/or Tenant-Made Alteration must be removed shall mean that Tenant shall not be obligated to remove the Tenant Improvement and/or Tenant-Made Alteration (as applicable) at the expiration or earlier termination of this Lease. Any Tenant Improvement and/or Tenant-Made Alterations, which Landlord has elected to not require Tenant to remove shall remain on the Premises as Landlord's property and shall be deemed abandoned by Tenant at the expiration or earlier termination of the Lease; provided, however, that Tenant reserves the right to remove the same upon the installation of subsequent replacement of Tenant Improvements and/or Tenant-Made Alterations of good quality made in accordance with the terms of this Lease, provided that such removal or replacement does not adversely affect the marketability of the Premises for the uses permitted hereunder. To the extent that Landlord requires such removal and restoration of the Premises and the Building, then, not later than the expiration or termination of this Lease, Tenant, at its sole expense, shall perform such work and repair any and all damage caused by the removal of any improvements and restore the Premises and the Building to its shell condition as set forth in the Base Building Specifications, normal wear and tear excepted.

(e) Tenant, at its own cost and expense and without Landlord's prior approval, may erect such shelves, bins, machinery and trade fixtures (collectively "**Trade Fixtures**") in the ordinary course of its business provided that such items do not alter the basic character of the Premises, do not overload or damage the Premises, and may be removed without injury to the Premises, and the construction, erection, and installation thereof complies with all Legal Requirements and with Landlord's requirements set forth above. Not later than the expiration or termination of this Lease, Tenant, at its sole expense, shall remove its Trade Fixtures and shall repair any and all damage caused by such removal.

(f) Any and all Tenant-Made Alterations performed by Tenant will be performed in accordance with Landlord's "Contractor Rules and Regulations" attached hereto as Exhibit F-1 and the Energy and Sustainability Construction Guidelines and Requirements attached hereto as Exhibit F-2, and any modifications thereto by Landlord, notwithstanding any more permissive local building codes or ordinances.

13. **Signs**. Subject to compliance with all Legal Requirements and all matters of record, and at no additional rent but at Tenant's sole cost, Tenant shall have the right to install its name and/or company logo on the exterior of the Building and on any monument sign serving the Building (collectively, "**Tenant's Signage**"); provided, however, the exact design, size, appearance, substance and location of Tenant's Signage shall be subject to Landlord's prior written approval (which shall not be unreasonably withheld, conditioned or delayed), and shall comply with Landlord's signage requirements for the Project identified on Exhibit E hereto and any requirements of the City of Fremont. Any and all costs relating to the design, permitting, fabrication, installation, maintenance and removal of Tenant's Signage shall be borne solely by Tenant. Tenant agrees to maintain, repair and replace Tenant's

Signage in good condition at all times. Subject to the provisions of Paragraph 3(e) above, any other decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's prior written approval (which shall not be unreasonably withheld, conditioned or delayed) and shall conform in all respects to Landlord's reasonable requirements. Subject to the provisions of Paragraph 3(b) above, Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Landlord shall not be required to notify Tenant of whether it consents to any signage until it (a) has received detailed, to-scale drawings thereof specifying design, material composition, color scheme, and method of installation, and (b) has had a reasonable opportunity to review them. Tenant shall be responsible, at its sole cost and expense, for obtaining all applicable governmental permits and approvals for all signage and exterior treatments. Upon vacation of the Premises by Tenant or earlier termination of this Lease, Tenant shall be responsible, at its sole cost and expense, for the removal of all signage (including, without limitation, Tenant's Signage) and the repair, re- painting and/or replacement of the surface to which such signage was attached, including remedying any discoloration caused by such installation or removal (so as to cause the same to be in its condition as of the date of installation, reasonable wear and tear excepted). If Tenant fails to perform such work, Landlord, after five (5) days' prior written notice to Tenant, may cause the same to be performed, and the cost thereof shall be immediately due and payable upon demand therefor.

14. **Parking**. Tenant shall have the exclusive right, free of charge, to park its vehicles in all of the areas designated for parking on Exhibit A (collectively, the "**Parking Area**"), subject to Tenant's obligation to comply with all Legal Requirements, the terms of this Lease and all reasonable rules and regulations which are prescribed from time to time by Landlord. Fourteen (14) charging stations shall be available for Tenant's exclusive use within the Parking Area, and five (5) parking stalls in front of the Building may be specifically designated exclusively for Tenant's visitors' use. Landlord shall not be responsible for enforcing Tenant's parking rights against any third parties. All motor vehicles (including all contents thereof) shall be parked in the Project's parking areas at the sole risk of Tenant, it being expressly agreed and understood Landlord has no duty to insure any of said motor vehicles (including the contents thereof), and Landlord is not responsible for the protection and security of such vehicles. Such customers and invitees shall be entitled to park on the Project while visiting or attending meetings at the Premises, so long as no overnight parking by these customers or invitees is allowed. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY PROPERTY DAMAGE OR LOSS WHICH MIGHT OCCUR ON THE PARKING AREAS OR AS A RESULT OF OR IN CONNECTION WITH THE PARKING OF MOTOR VEHICLES IN ANY OF THE PARKING SPACES. Landlord acknowledges and agrees that Tenant my convert parking spaces to locations for Tenant's Bloom Boxes, subject to compliance with Legal Requirements.

15. **Restoration**.

(a) If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within sixty (60) days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed two hundred ten (210) days from the date Landlord receives all permits, approvals, and licenses required to begin reconstruction, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than thirty (30) days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take two hundred ten (210) days or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises, excluding the Tenant-Made Alterations, the Tenant Improvements and any other improvements installed by Tenant or by Landlord and paid for by Tenant. Tenant at Tenant's expense shall promptly perform all repairs or restoration not required to be done by Landlord, and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Rent shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Notwithstanding the foregoing, either party may terminate this Lease upon thirty (30) days written notice to the other if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than thirty (30) days to repair such damage. Tenant shall pay to Landlord, within thirty (30)) days following receipt of Landlord's written demand therefor, Tenant's Proportionate Share of the amount of the deductible under Landlord's insurance policy. Notwithstanding the foregoing, if Tenant was entitled

to but elected not to exercise its right to terminate the Lease and Landlord does not substantially complete the repair and restoration of the Premises within sixty (60) days after the expiration of the estimated period of time set forth in the Landlord's estimate (except to the extent that substantial completion is delayed as a result of events of Force Majeure [up to 60 days in the aggregate] or any acts or omission of Tenant or any agent, employee, contractor, licensee or invitee of Tenant), then Tenant may terminate this Lease by written notice to Landlord within ten (10) days after the expiration of such period (but prior to substantial completion of the restoration), as the same may be extended.

(b) If the Premises are destroyed or substantially damaged by any peril not covered by the insurance maintained by Landlord or any Landlord's mortgagee requires that insurance proceeds be applied to the indebtedness secured by its mortgage (defined hereinafter), Landlord may terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after such destruction or damage or such requirement is made known by any such Landlord's mortgagee, as applicable, whereupon all rights and obligations hereunder shall cease and terminate, except for any liabilities of Landlord and Tenant which accrued prior to Lease termination. Notwithstanding the foregoing to the contrary, Landlord shall not have the foregoing termination right if insurance proceeds are insufficient due to the failure of Landlord to carry the insurance required to be carried pursuant to this Lease. In addition, Landlord shall not have the right to terminate this Lease for lack of insurance proceeds if Tenant, within thirty (30) days after receipt of Landlord's notice, agrees, in its sole discretion, to pay the shortfall in insurance proceeds necessary to complete the restoration. If Landlord elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect, but rent shall be proportionately reduced as provided in Paragraph 15(a). If Landlord elects to terminate this Lease, such termination shall be effective as of the date of the occurrence of such damage or destruction.

(c) Notwithstanding the foregoing, if all or any portion of Premises and/or Project are wholly or partially damaged or destroyed as a result of the gross negligence or willful misconduct of Tenant or any Tenant Party, then Tenant shall (i) not be entitled to terminate this Lease (notwithstanding the provisions of subparagraph
(a) above), and (ii) pay to Landlord the full amount of the deductible under Landlord's insurance policy (subject to the limitations thereon pursuant to Paragraph 9(b) above), and this Lease shall continue in full force and effect without any abatement or reduction in Base Rent or Operating Expenses or other payments owed by Tenant.

(d) Tenant hereby acknowledges and agrees that a Casualty shall occur only where the physical or structural integrity of the Premises or Building has been damaged or destroyed, and that a Casualty shall in no event occur as a result of (i) a governmentally mandated closure of the Premises, Building and/or Project and/or of Tenant's business for the purpose of protecting public health and safety (including, without limitation, to protect against acts of war or the spread of communicable diseases or infestations), or (ii) Tenant's inability to use the Premises or any other space leased by Tenant from Landlord at the Project, to the extent such space remains undamaged by any Casualty.

(e) The provisions of this Paragraph 15 shall constitute Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises or Project, and Tenant waives and releases all statutory rights and remedies in favor of Tenant in the event of damage or destruction, including without limitation those available under California Civil Code Sections 1932 and 1933(4). No damages, compensation or claim shall be payable by Landlord for any inconvenience, any interruption or cessation of Tenant's business, or any annoyance, arising from any damage or destruction of all or any portion of the Premises or Project.

16. **Condemnation**. If twenty percent (20%) or more of the Premises or the Project should be taken for any public or quasi-public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "**Taking**" or "**Taken**"), and (a) in Tenant's reasonable judgment the Taking would prevent or materially interfere with Tenant's use of the Premises, (b) in Landlord's reasonable judgment the Taking would materially interfere with or impair its ownership or operation of the Project or (c) as a result of such Taking, Landlord's mortgagee accelerates the payment of any indebtedness securing all or a portion of the Project, then upon written notice by Landlord or Tenant, as applicable, this Lease shall terminate and rent shall be apportioned as of said date. If twenty percent (20%) or more of the Premises shall be Taken, and this Lease is not terminated as provided above, the rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances, and Landlord shall restore the Premises as near as reasonably attainable to its condition prior to the Taking; provided, however, Landlord's obligation to so restore the

Premises shall be limited to the award Landlord receives in respect of such Taking that is not required to be applied to the indebtedness secured by a mortgage. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award, including, without limitation any award for a Taking of Tenant's leasehold interest hereunder. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for Tenant-Made Alterations, Tenant Improvements (paid for by Tenant and not through the Tenant Improvement Allowance), moving expenses, relocation costs and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant. This paragraph shall be Tenant's sole and exclusive remedy in the event of any taking and Tenant hereby waives any rights and the benefits of Section 1265.130 of the California Code of Civil Procedure or any other statute granting Tenant specific rights in the event of a Taking which are inconsistent with the provisions of this Paragraph.

17. **Assignment and Subletting**.

(a) Without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Tenant shall not assign this Lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate its leasehold interest or grant any concession or license within the Premises (each being a "**Transfer**") and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this Paragraph 17, a transfer of the ownership interests controlling Tenant shall be deemed a Transfer of this Lease unless such ownership interests are publicly traded. Notwithstanding the above, Tenant, without Landlord's prior written consent but with at least ten (10) days' prior written notice to Landlord (unless notice is prohibited by applicable securities laws or a written non-disclosure agreement, in which case Tenant shall provide written notice of the Permitted Transfer as soon as reasonably possible thereafter) may assign or sublet the Premises, or any part thereof, to (i) any entity controlling Tenant, controlled by Tenant or under common control with Tenant, (ii) a successor corporation or entity related to Tenant by merger, consolidation, non-bankruptcy reorganization or government action; or (iii) a purchaser of substantially all of Tenant's assets or stock (all of the foregoing hereinafter sometimes collectively shall be referred to as "**Permitted Transfers**", and any person to whom any Permitted Transfer is made hereinafter sometimes shall be referred to as a "**Permitted Transferee**"). If the Permitted Transfer,
(i) is an assignment of this Lease, within fifteen (15) days after the effective date thereof, the Permitted Transferee shall execute and deliver to Landlord a commercially reasonable instrument containing an express assumption of all of Tenant's obligations under this Lease arising from and after the date of the assignment, or (ii) is a sublease, the Permitted Transferee shall execute and deliver a commercially reasonable instrument to Landlord containing an express acknowledgment that the sublease is subordinate to this Lease, and, in each case the Permitted Transferee shall continue to use the Premises in compliance with the Permitted Use provisions of this Lease. For purposes of this Lease, a transfer or issuance of Tenant's stock over the New York Stock Exchange, the American Stock Exchange, or NASDAQ or by virtue of a private placement with a venture capital firm or other equity investor wherein such venture capital firm or other equity investor receives stock in Tenant shall not be deemed an assignment, subletting or other transfer of this Lease or the Premises requiring Landlord's consent. Any right of Landlord to recapture the Premises or receive excess rentals shall not apply to a Permitted Transfer. Any Permitted Transferee must have a net worth (calculated in accordance with generally accepted accounting principles, consistently applied) sufficient, in Landlord's reasonable judgment, to perform Tenant's remaining obligations under this Lease in light of such Transferee's net income, balance sheet and statement of cash. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with any Transfer, other than to a Permitted Transferee, not to exceed $3,500.00 per request for consent. Upon Landlord's receipt of Tenant's written notice of a desire to assign the substantial majority of the Premises (i.e., ninety percent (90%) or more of the Premises) for the substantial majority of the then remaining Term (i.e., for up to all but the last three (3) months of the Term) of this Lease (other than to a Permitted Transferee), Landlord may, by giving written notice to Tenant within twenty (20) days after receipt of Tenant's notice, terminate this Lease as of the date specified in Tenant's notice for the commencement of the proposed assignment. Tenant shall have the right, within five (5) business days after receipt of Landlord's recapture notice, to rescind Tenant's request for consent, in which case Landlord's recapture of the Premises shall be null and void and of no further force or effect. Tenant acknowledges and agrees that Landlord may withhold its consent to any proposed assignment or subletting for any reasonable basis including, but not limited to: (i) Tenant is in default of this Lease beyond applicable notice and cure periods; (ii) the assignee is unwilling to assume in writing all of Tenant's obligations hereunder; (iii) the assignee or subtenant has a financial condition which is reasonably unsatisfactory to Landlord or Landlord's mortgagee; (iv) the Premises will be used for

different purposes than those set forth in Paragraph 3(a) or for a use requiring or generating Hazardous Materials, or (v) the proposed assignee or subtenant or an affiliate thereof is an existing tenant in the Project and has been in active negotiations with Landlord for space in the Project during the previous ninety (90) days (unless Landlord does not have space in the Project sufficient to meet the proposed transferee's facilities requirements)s. Tenant hereby waives and releases its rights under Section 1995.310 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

(b) Notwithstanding any Transfer, Tenant and any guarantor or surety of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such Transfer). In the event that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto, excluding proceeds from the sale of any personal property for its then fair market value), less all actual and reasonable costs or expenses incurred by Tenant in connection with the sublease or assignment, including, without limitation, reasonable tenant concessions and allowances, including, without limitation, tenant improvement costs and allowances and any free rent periods, brokerage fees (not to exceed market rates), and reasonable legal fees with respect to the sublease or assignment, exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder fifty percent (50%) of such excess rental and other excess consideration within ten (10) business days following receipt thereof by Tenant. If such Transfer is for less than all of the Premises, such excess rental and other excess consideration shall be calculated on a rentable square foot basis.

(c) If this Lease is assigned or if the Premises is subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder beyond applicable notice and cure periods, Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding subparagraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Landlord's consent to any Transfer shall not waive Landlord's rights as to any subsequent Transfers. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any proposed transferee claims that Landlord has unreasonably withheld, conditioned or delayed its consent under this Paragraph 17 or otherwise has breached or acted unreasonably under this Paragraph 17, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including, without limitation, any right at law or equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed transferee.

18. **Intentionally Omitted.**

19. **Inspection and Access**. Landlord and its agents, representatives, and contractors may enter the Premises, upon at least twenty (24) hours' prior written notice and at any reasonable time (except in the case of emergency) to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers or, during the last year of the Lease Term, to prospective tenants. Any entry into the Premises shall not impair Tenant's operations more than reasonably necessary and shall comply with Tenant's commercially reasonable security procedures, and Tenant shall have the right to have an employee accompany Landlord and/or its agents at all times that Landlord and/or its agents are present on the Premises (provided Tenant makes available an employee at all such times). Landlord may erect a suitable sign on the Premises stating the Premises are available to let or that the Project is available for sale. Landlord may grant easements, make public dedications, designate common areas and create restrictions on or about the Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such commercially reasonable instruments as may be necessary for such easements, dedications or restrictions.

20. **Quiet Enjoyment**. If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, any ground lease, mortgage or deed of trust now or hereafter encumbering the Premises and all matters of record, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord, but not otherwise.

21. **Surrender**. No act by Landlord shall be an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless it is in writing and signed by Landlord. Upon termination of the Lease Term or earlier termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear, Tenant-Made Alterations and Tenant Improvements with respect to which Landlord has not reserved the right to require removal and casualty loss and condemnation covered by Paragraphs 15 and 16 excepted. Landlord shall meet with Tenant for a joint inspection of the Premises at least sixty (60) days prior to the time of vacating. Tenant shall remove (a) all Tenant Improvements and Tenant-Made Alterations for which Landlord has advised Tenant that removal would be required pursuant to Paragraph 12(d) above, and (b) all of Tenant's personal property (within either the interior of the Building or any areas outside of the Building wherever located) and Trade Fixtures and security system(s) (including any related utility installations serving same) and (c) any Generators and Bloom Boxes. Landlord's inspection of the Premises shall not create any liability on the part of Landlord whatsoever. Any Trade Fixtures, Tenant Improvements, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. All obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and all obligations concerning the condition and repair of the Premises. If Tenant fails to perform any obligation on or prior to the expiration or earlier termination of this Lease, Landlord may, but shall not be obligated to, perform such obligation if Tenant fails to commence such obligation within five (5) business days after written notice from Landlord, and Tenant shall pay Landlord all costs associated therewith, plus an administrative fee of ten percent (10%) of such costs, within thirty (30) days after Landlord's delivery to Tenant of an invoice therefor, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of Paragraph 22 shall apply.

22. Holding Over. If Tenant fails to vacate the Premises after the termination of the Lease Term, Tenant shall be, at Landlord's sole election, a tenant at will or at sufferance, and Tenant shall pay, in addition to any other rent or other sums then due Landlord, Base Rent equal to 125% of the Base Rent payable by Tenant during the last month of the Term for the first month of any holding over, and 150% of such Base Rent for each month thereafter, computed on a per diem basis for each month or part thereof during such holdover, even if Landlord consents to such holdover (which consent shall be effective only if in writing). All other payments shall continue under the terms of this Lease. Tenant shall also be liable for all Operating Expenses incurred during such holdover period. In addition, Tenant shall be liable for all damages (including reasonable attorneys' fees and expenses) of whatever type (including consequential damages) incurred by Landlord as a result of such holding over if Tenant remains in possession of the Premises for more than sixty (60) days after the expiration or earlier termination of this Lease. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided, and this Paragraph 22 shall not be construed as consent for Tenant to retain possession of the Premises.

23. Events of Default. Each of the following events shall be an event of default ("**Event of Default**") by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of five (5) days from the date such payment was due; provided, however, that Tenant shall not be deemed to be in default pursuant to this subparagraph (a) with respect to the first (1st) late payment of rent in any twelve (12) month period unless such failure shall continue for more than five (5) business days after written notice from Landlord.

(b) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (i) make a general assignment for the benefit of creditors; (ii) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "**proceeding for relief**"); (iii) become the subject of any proceeding for relief which is not dismissed within sixty (60) days of its filing or entry; or (iv) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

(c) Any insurance required to be maintained by Tenant pursuant to this Lease shall be canceled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(d) Tenant shall abandon or vacate the Premises at any time that Tenant is in default under any other provision of this Lease.

(e) Tenant shall attempt or there shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

(f) Tenant shall fail to discharge or bond over any lien placed upon the Premises in violation of this Lease within thirty (30) days after any such lien or encumbrance is filed against the Premises.

(g) Tenant shall fail to execute any instrument of subordination or attornment or any estoppel certificate within the time periods set forth in Paragraphs 27 and 29 respectively within three (3) business days following Landlord's second written request for the same.

(h) Tenant shall breach any of the requirements of Paragraph 30 and such failure shall continue for a period of five (5) days or more after written notice from Landlord to Tenant.

(i) Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 23, and except as otherwise expressly provided herein, such default shall continue for more than thirty (30) days after Landlord shall have given Tenant written notice of such default (provided, however, that Tenant shall not be in default hereunder if the default is not capable of cure within thirty (30) days but Tenant promptly commences the cure within the thirty (30)- day period and thereafter diligently prosecutes the cure to completion).

(j) The failure of Tenant or Tenant's employees, agents or representatives to observe or comply with any of the rules and regulations of the Project as the same may be amended from time to time, and such failure shall continue for five (5) days or more after written notice from Landlord to Tenant; provided, however, that if Tenant or Tenant's employees, agents or representatives shall breach the same rule or regulation more than two (2) times in any twelve (12) month period, then the third (3rd) such violation shall be deemed an Event of Default (without any notice).

Any notices to be provided by Landlord under this Paragraph 23 shall be in lieu of, and not in addition to, any notice required under Section 1161 *et seq*. of the California Code of Civil Procedure.

24. **Landlord's Remedies**. Upon the occurrence of any Event of Default, Landlord shall have the following rights and remedies, in addition to those allowed by law or in equity, any one or more of which may be exercised or not exercised without precluding the Landlord from exercising any other remedy provided in this Lease or otherwise allowed by law or in equity:

(a) **Termination of Lease**. Landlord may terminate this Lease and Tenant's right to possession of the Premises. If Tenant has abandoned and vacated the Premises, the mere entry of the Premises by Landlord in order to perform acts of maintenance, cure defaults, preserve the Premises or to attempt to relet the Premises, or the appointment of a receiver in order to protect the Landlord's interest under this Lease, shall not be

deemed a termination of Tenant's right to possession or a termination of this Lease unless Landlord has notified Tenant in writing that this Lease is terminated. Notification of any default described in Paragraph 23 of this Lease shall be in lieu of, and not in addition to, any notice required under Section 1161 *et seq*. of the California Code of Civil Procedure. If Landlord terminates this Lease and Tenant's right to possession of the Premises, Landlord may recover from Tenant:

i. The worth at the time of the award of unpaid rent which had been earned at the time of termination; plus

ii. The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

iii. The worth at the time of the award of the amount by which the unpaid rent for the balance of the Lease Term after the time of the award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

iv. Any other amounts necessary to compensate the Landlord for all of the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including any legal expenses, brokers commissions or finders fees (in connection with reletting the Premises and the pro rata portion of any leasing commission paid by Landlord in connection with this Lease which is applicable to the portion of the Lease Term, including option periods, which is unexpired as of the date on which this Lease terminated), the costs of repairs, cleanup, refurbishing, removal and storage or disposal of Tenant's personal property, equipment, fixtures and anything else that Tenant is required under this Lease to remove but does not remove (including those alterations which Tenant is required to remove pursuant to an election by Landlord and Landlord actually removes whether notice to remove shall be delivered to Tenant), and any costs for alterations, additions and renovations incurred by Landlord in regaining possession of and reletting (or attempting to relet) the Premises. Tenant shall also reimburse Landlord for the pro rata portion of leasehold improvement costs paid by Landlord to install leasehold improvements on the Premises which is applicable to that portion of the Lease Term including any terminated option periods which is unexpired as of the date on which this Lease terminated, discounted to present value.

All computations of the "worth at the time of the award" of amounts recoverable by Landlord under (1) and (2)hereof shall be computed by allowing interest at the maximum lawful contract rate per annum. The "worth at the time of the award" recoverable by Landlord under (3) and the discount rate for purposes of determining any amounts recoverable under (4), if applicable, shall be computed by discounting the amount recoverable by Landlord at the discount rate of the Federal Reserve Bank, San Francisco, California, at the time of the award plus one percent (1%).

Upon termination of this Lease, whether by lapse of time or otherwise, Tenant shall immediately vacate the Premises and deliver possession to Landlord, and Landlord shall have the right to re-enter the Premises.

(b) **Lease to Remain in Effect**. Notwithstanding Landlord's right to terminate this Lease, Landlord may, at its option, even though Tenant has breached this Lease and abandoned the Premises, and, to the extent otherwise permitted by applicable Legal Requirements, notwithstanding any governmentally-imposed eviction moratorium then in effect, continue this Lease in full force and effect and not terminate Tenant's right to possession, and enforce all of Landlord's rights and remedies under this Lease. In such event, Landlord shall have the remedy described in California Civil Code Section 1951.4 (Landlord may continue the Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has a right to sublet or assign, subject only to reasonable limitations). Further, in such event Landlord shall be entitled to recover from Tenant all costs of maintenance and preservation of the Premises, and all costs, including attorneys' fees and receivers' fees, incurred in connection with appointment of and performance by a receiver to protect the Premises and Landlord's interest under this Lease. No re-entry or taking possession of the Premises by Landlord shall be construed as an election to terminate this Lease unless a notice (signed by a duly authorized representative of Landlord) of intention to terminate this Lease is given to Tenant.

(c) **All Sums Collectible as Rent**. All sums due and owing to Landlord by Tenant under this Lease shall be collectible by Landlord as rent.

(d) **No Surrender**. No act or omission by Landlord or its agents during the Lease Term shall be an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless made in writing and signed by a duly authorized representative of Landlord. Landlord shall be entitled to a restraining order or injunction to prevent Tenant from defaulting under any of its obligations other than the payment of rent or other sums due hereunder.

(e) **Effect of Termination**. Neither the termination of this Lease nor the exercise of any remedy under this Lease or otherwise available at law or in equity shall affect Landlord's right of indemnification set forth in this Lease or otherwise available at law or in equity for any act or omission of Tenant, and all rights to indemnification and other obligations of Tenant intended to be performed after termination of this Lease shall survive termination of this Lease.

(f) **Waiver of Redemption by Tenant**. In the event Landlord exercises any one or more of Landlord's rights and remedies under this Article 24, Tenant expressly waives (for Tenant and for all those claiming under Tenant) any and all rights of redemption or relief from forfeiture under California Code of Civil Procedure Section 1174 or 1179, or granted by or under any present or future laws, and further releases Landlord from any and all claims, demands and liabilities by reason of such exercise by Landlord.

25. **Tenant's Remedies/Limitation of Liability**. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of thirty (30) days, then after such period of time as is reasonably necessary). All obligations of Landlord hereunder shall be construed as covenants, not conditions; and Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Tenant hereby waives the benefit of any laws granting it the right to perform Landlord's obligations or the right to terminate this Lease or withhold rent on account of any Landlord default. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord (and its partners, shareholders or members) to Tenant (or any person or entity claiming by, through or under Tenant) for any default by Landlord under this Lease or arising out of the relationship between Landlord and Tenant shall be limited solely to Tenant's actual direct, but not consequential, damages therefor and shall be recoverable only from Landlord's equity interest in the Building, and the sales, rental, insurance and condemnation proceeds therefrom, and in no event shall any personal liability be asserted against Landlord, its partners, shareholders, members, directors, employees or agents in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

26. INTENTIONALLY OMITTED.

27. **Subordination**.

(a) This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any deed of trust or mortgage or any ground lease, now existing or hereafter created on or against the Project or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees to attorn to any such holder, provided, however, that with respect to any future encumbrance, Tenant’s obligation to subordinate this Lease shall be subject to Tenant’s obtaining a commercially reasonable subordination, non-disturbance and attornment agreement providing for the recognition of Tenant’s rights, interests and options under this Lease in the event of a foreclosure, deed given in lieu of foreclosure or sale, so long as Tenant is not in default beyond applicable notice and cure periods. Except as set forth in the preceding sentence, the provisions of this Paragraph 27 shall be self-operative and no further instrument shall be required to effect such subordination or attornment; however, Tenant agrees to execute, acknowledge and deliver

such commercially reasonable instruments, confirming such subordination and such instruments of attornment as shall be requested by any such holder within ten (10) business days of receipt of such written request. Tenant's obligation to furnish each such instrument requested hereunder in the time period provided is a material inducement for Landlord's execution of this Lease and any failure of Tenant to timely deliver each instrument shall be deemed an Event of Default, subject to the provisions of Paragraph 23(g) above. Notwithstanding the foregoing, this Lease and Tenant's obligations hereunder shall be conditioned upon receiving from the holder of the existing mortgage encumbering the Project, within seven (7) business days after Landlord's execution of this Lease, a subordination, non-disturbance and attornment agreement in substantially the form attached hereto as Exhibit H and incorporated by reference herein.

(b) Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "**mortgage**" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "**holder**" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

(c) Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail to any mortgage holder whose address has been given to Tenant, and affording such mortgage holder a reasonable opportunity to perform Landlord's obligations hereunder. Notwithstanding any such attornment or subordination of a mortgage to this Lease, the holder of any mortgage shall not be liable for any acts of any previous landlord (except for obligations of a continuing nature, such as maintenance and repair obligations), shall not be obligated to install any tenant improvements, and shall not be bound by any amendment to which it did not consent in writing nor any payment of rent made more than one month in advance.

28. **Mechanic's Liens**. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Landlord may record, at its election, notices of non-responsibility pursuant to California Civil Code Section 8444 in connection with any work performed by Tenant. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such thirty (30)- day period. Without limiting any other rights or remedies of Landlord, if Tenant fails for any reason to cause a lien or encumbrance to be discharged within thirty (30) days of the filing or recording thereof, then Landlord may take such action(s) as it deems necessary to cause the discharge of the same (including, without limitation, by paying any amount demanded by the party who has filed or recorded such lien or encumbrance, regardless of whether the same is in dispute), and Landlord shall be reimbursed by Tenant for all costs and expenses incurred by Landlord in connection therewith within five (5) business days following written demand therefor.

29. **Estoppel Certificates**. Tenant agrees, from time to time, within ten (10) business days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the termination date of this Lease and such other matters pertaining to this Lease as reasonably may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease and any failure of Tenant to timely deliver each estoppel certificate shall be deemed an Event of Default. Except as

set forth in Paragraph 23(g) above, no cure or grace period provided in this Lease shall apply to Tenant's obligation to timely deliver an estoppel certificate. Tenant hereby irrevocably appoints Landlord as its attorney in fact to execute on its behalf and in its name any such estoppel certificate if Tenant fails to execute and deliver the estoppel certificate within ten (10) days after Landlord's written request thereof.

30. **Hazardous Materials**.

(a) **Hazardous Materials Certificate**. Prior to executing this Lease, Tenant has delivered to Landlord Tenant's executed initial Hazardous Materials Disclosure Certificate (the "**Initial HazMat Certificate**"), a copy of which is attached hereto as Exhibit D. Tenant covenants, represents and warrants to Landlord that the information in the Initial HazMat Certificate is true and correct and accurately describes the use(s) of Hazardous Materials (as defined in Paragraph 30(j) hereof) which will be made and/or used on the Premises by Tenant. Landlord hereby consents to Tenant's use in the Premises of the Hazardous Materials in the amounts listed on the Initial HazMat Certificate. Tenant shall, commencing with the date which is one (1) year from the Commencement Date and continuing every year thereafter, deliver to Landlord, an executed Hazardous Materials Disclosure Certificate (the "**HazMat Certificate**") describing Tenant's then present use of Hazardous Materials on the Premises, and any other reasonably necessary documents as requested by Landlord. The HazMat Certificates required hereunder shall be substantially in the form attached hereto as Exhibit D.

(b) **Compliance with Laws**. During the Term of this Lease, Tenant shall comply with all Environmental Laws and Environmental Permits (each as defined in Paragraph 30(j) below) applicable to Tenant's operation or use of the Premises, will cause all other persons occupying or using the Premises to comply with all such Environmental Laws and Environmental Permits, will promptly pay or cause to be paid all costs and expenses incurred by reason of such compliance, and will obtain and renew all Environmental Permits required for Tenant's operation or use of the Premises.

(c) No Generation. Tenant shall not generate, use, treat, store, handle, release or dispose of, or permit the generation, use, treatment, storage, handling, release or disposal of Hazardous Materials on the Premises, or the Project, or transport or permit the transportation of Hazardous Materials to or from the Premises or the Project except for the Hazardous Materials in the quantities listed on any HazMat Certificate and limited quantities of household cleaning products and office supplies used or stored at the Premises and required in connection with the routine operation and maintenance of the Premises, and used and stored in compliance with all applicable Environmental Laws and Environmental Permits (collectively, the "**Permitted Hazardous Materials**").

(d) **Environmental Assessment**. At any time and from time to time during the Term of this Lease, Landlord may perform, at no cost to Tenant (unless such inspections and tests reveal that Tenant has breached or violated the provisions of this Paragraph 30, in which event Tenant shall reimburse Landlord for the actual out-of-pocket costs and expenses reasonably incurred by Landlord in connection with such inspections or tests; provided, the foregoing shall not limit the inclusion of the cost and expenses of Landlord's regularly scheduled environmental audits as an element of Operating Expenses to the extent permitted above) an environmental site assessment report concerning the Premises, prepared by an environmental consulting firm reasonably chosen by Landlord, indicating the presence or absence of Hazardous Materials caused or permitted by Tenant or any Tenant Party and the potential cost of any compliance, removal or remedial action in connection with any such Hazardous Materials on the Premises. Upon reasonable prior notice and during normal business hours (except in the case of emergency), Tenant shall grant to Landlord and its agents access to the Premises.

(e) **Environmental Claims**. Tenant will immediately advise Landlord in writing of any of the following: (1) any pending or threatened Environmental Claim (as defined in Paragraph 30(j) below) against Tenant relating to the Premises or the Project; (2) any condition or occurrence on the Premises or the Project that results in noncompliance by Tenant with any applicable Environmental Law, or (b) could reasonably be anticipated to form the basis of an Environmental Claim against Tenant or Landlord or the Premises; (3) any condition or occurrence on the Premises caused by Tenant or any Tenant Party that could reasonably be anticipated to cause the Premises to be subject to any restrictions on the ownership, occupancy, use or transferability of the Premises under any Environmental Law; and (4) the actual or anticipated taking of any removal or remedial action by Tenant in response to the actual or alleged presence of any Hazardous Material stored, used, released or disposed of by Tenant or any Tenant Party on the Premises or the Project. All such notices shall describe in reasonable detail

the nature of the claim, investigation, condition, occurrence or removal or remedial action and Tenant's response thereto. In addition, Tenant will provide Landlord with copies of all communications regarding the Premises with any governmental agency relating to Environmental Laws, all such communications with any person relating to Environmental Claims, and such detailed reports of any such Environmental Claim as may reasonably be requested by Landlord.

(f) **No Change in Use**. Tenant will not change or permit to be changed the present use of the Premises.

(g) **Indemnity**. Tenant agrees to indemnify, defend and hold harmless the Landlord Indemnitees from and against all obligations (including removal and remedial actions), losses, claims, suits, judgments, liabilities, penalties, damages (including consequential and punitive damages), costs and expenses (including reasonable attorneys' and consultants' fees and expenses) of any kind or nature whatsoever that may at any time be incurred by, imposed on or asserted against such Landlord Indemnitees directly or indirectly based on, or arising or resulting from (a) the storage, use, release, discharge, spill or disposal of Hazardous Materials on the Premises by Tenant or a Tenant Party in violation of any Environmental Laws or Environmental Permits ("**Tenant Hazardous Materials**"), and (b) any Environmental Claim relating in any way to Tenant's operation or use of the Premises (the "**Hazardous Materials Indemnified Matters**"). The provisions of this Paragraph 30 shall survive the expiration or sooner termination of this Lease.

(h) **Payment on Indemnified Matters**. To the extent that the undertaking in the preceding paragraph may be unenforceable because it is violative of any law or public policy, Tenant will contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Hazardous Materials Indemnified Matters incurred by the Landlord Indemnitees.

(i) **Interest**. All sums paid and costs incurred by Landlord with respect to any Hazardous Materials Indemnified Matter shall bear interest at the Default Rate from the date so paid or incurred until reimbursed by Tenant, and all such sums and costs shall be immediately due and payable on demand.

(j) **Definitions**. (a) "**Hazardous Materials**" means (i) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; (ii) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law; and (iii) any other substance exposure which is regulated by any governmental authority; (b) "**Environmental Law**" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, health, safety or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; or relating to environmental impacts and matters, resource conservation, renewable energy and other similar "Green" matters; (c) "**Environmental Claims**" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of non-compliance or violation, investigations, proceedings, consent orders or consent agreements relating in any way to the storage, use, release or disposal of any Hazardous Materials by Tenant or any Tenant Party in violation of any Environmental Law or any Environmental Permit, including without limitation (i) any and all Environmental Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law arising out of or relating in any way to the storage, use, release or disposal of any Hazardous Materials by Tenant or any Tenant Party in violation of any Environmental Law or Environmental Permit, and (ii) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials stored, used, released or disposed of by Tenant or any Tenant Party in violation of any Environmental Law or

Permit, or arising from alleged injury or threat of injury to health, safety or the environment caused by Tenant or any Tenant Party in violation of any Environmental Law or Environmental Permit; and (d) "**Environmental Permits**" means all permits, approvals, identification numbers, licenses and other authorizations required by Tenant's use or occupancy of the Premises under any applicable Environmental Law.

(k) **Landlord's Representations; Release**. Landlord represents and warrants to Tenant that as of the date hereof, (1) Landlord has not received written notice from a governmental authority with jurisdiction indicating that the Premises contain Hazardous Materials in violation of applicable Environmental Requirements and that remediation is required (which violation has not been cured), and (2) to Landlord's actual knowledge, the Premises do not contain Hazardous Materials in violation of applicable Environmental Requirements. Tenant shall have no obligation to remediate or indemnify Landlord for a release of any environmental condition existing on, in, under or about the Premises, the Building or the Project prior to the Delivery Date that is in violation of Environmental Requirements ("**Pre-Existing Hazardous Materials**") unless (and to the extent) such release was caused by the negligence or willful misconduct of Tenant or any Tenant Party. In addition, except as expressly set forth to the contrary in this Paragraph 30, under no circumstance shall Tenant be liable for any losses, costs, claims, liabilities or damages (including attorneys' and consultants' fees) of any type or nature, directly or indirectly arising out of or in connection with any Pre-Existing Hazardous Materials, including the soils, surface water or groundwater thereof, or the violation of any Environmental Laws, except to the extent that any of the foregoing actually results from the storage, use, release or disposal of Tenant Hazardous Materials, or the exacerbation of Pre-Existing Hazardous Materials by Tenant or any Tenant Party. Landlord shall at Landlord's own cost and expense (which costs shall not constitute Operating Expenses except as otherwise provided herein) investigate, remove, monitor, mitigate and/or remediate any Hazardous Materials existing in the Premises or the Project to the extent required by applicable governmental authorities, in each case except to the extent such Hazardous Materials constitute Tenant Hazardous Materials. Notwithstanding anything to the contrary contained herein, fifty percent (50%) of the cost and expense associated with the removal and/or remediation of any Hazardous Materials and compliance with Environmental Requirements that are not the direct or indirect result of (i) any Hazardous Materials brought on or released by Landlord, its agents, employees, contractors or invitees (excluding other tenants of the Project) in violation of Environmental Requirements, (ii) Tenant Hazardous Materials or (iii) Pre-Existing Hazardous Materials shall be included as part of Operating Expenses pursuant to Paragraph 6 of this Lease, subject to an annual cap of $25,000 per year and an aggregate cap of $250,000 for the Lease Term.

31. **Rules and Regulations**. Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises and the Project. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any liability or obligation for the breach of any rules or regulations by other tenants in the Project.

32. **Security Service**. Tenant acknowledges and agrees that, while Landlord may (but shall not be obligated to) monitor the Project, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

33. **Force Majeure**. Neither Landlord nor Tenant shall be held responsible for delays in the performance of its obligations hereunder when resulting from or arising out of any foreseen or unforeseen causes beyond the reasonable control of Landlord including, but not limited to, strikes, lockouts, labor disputes, acts of God, inability or to obtain or shortages in labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, governmental orders or directives, delay in issuance of permits, inspections or approvals, utility company delays, enemy or hostile governmental action, civil commotion, inclement weather, fire or other casualty, pandemics, epidemics and wide-spread public health emergencies, eviction moratoria, and other causes beyond the reasonable control of Landlord or Tenant, as applicable ("**Force Majeure**"). In no event shall an event of Force Majeure excuse or delay any rental or insurance obligation of Tenant hereunder, or any obligation of Landlord to pay any sum of money pursuant to this Lease, including, without limitation, the Tenant Improvement Allowance pursuant to the Work Letter.

34. **Entire Agreement**. This Lease constitutes the complete and entire agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

35. **Severability**. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

36. **Brokers**. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the brokers set forth in the Basic Lease Provisions above (the "**Brokers**"), and each party agrees to indemnify and hold the other party harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnifying party with regard to this leasing transaction. Landlord shall be responsible for the payment of a commission to Landlord's Broker in connection with this Lease pursuant to the terms and conditions of a separate written agreement between Landlord and Landlord's Broker. Any commission due Tenant's Broker shall be the responsibility of Landlord's Broker, not Landlord.

37. **Miscellaneous**.

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by registered or certified mail, return receipt requested, or electronic mail, or by a reputable national overnight courier service, with proof of delivery and postage prepaid, or by hand delivery and sent to the notice address for each party listed in the Basic Lease Provisions. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord shall not unreasonably withhold, condition or delay any consent or approval required by this Lease.

(e) At Landlord's request from time to time Tenant shall furnish Landlord with true and complete copies of its most recent annual and quarterly financial statements prepared by Tenant or Tenant's accountants and any other financial information or summaries that Tenant typically provides to its lenders or shareholders. Such annual statements shall be audited by an independent certified public accountant at Tenant's sole cost and expense. Landlord shall hold such financial statements and information in confidence, and shall not disclose the same except: (1) to Landlord's lenders or potential lenders, (2) to potential purchasers of all or a portion of the Project, (3) to attorneys, accountants, consultants or other advisors, (4) otherwise as reasonably necessary for the operation of the Project or administration of Landlord's business, or (5) if disclosure is required by any judicial or administrative order or ruling. The foregoing shall not apply as long as Tenant is a public company whose stock is trading over any nationally recognized stock exchange or NASDAQ.

(f) Neither this Lease nor a memorandum of lease shall be filed by or on behalf of Tenant in any public record. Landlord may prepare and file, and upon request by Landlord, Tenant will execute a memorandum of lease.

(g) Each party acknowledges that it has had the opportunity to consult counsel with respect to this Lease, and therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(h) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution and delivery of this Lease by both parties.

(i) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(j) Any amount not paid by Tenant within five (5) days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or eight percent (8%) per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease. If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(k) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Project is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of every obligation under this Lease.

(m) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda (other than the rules and regulations) and the terms of this Lease, such exhibits or addenda shall control. In the event of a conflict between the rules and regulations attached hereto and the terms of this Lease, the terms of this Lease shall control.

(n) In the event either party shall commence an action to enforce any provision of this Lease, the prevailing party in such action shall be entitled to receive from the other party, in addition to damages, equitable or other relief, any and all costs and expenses incurred, including reasonable attorneys' fees and court costs and the fees and costs of expert witnesses, and fees incurred to enforce any judgment obtained. This provision with respect to attorneys' fees incurred to enforce a judgment shall be severable from all other provisions of this Lease, shall survive any judgment, and shall not be deemed merged into the judgment.

(o) There shall be no merger of the leasehold estate hereby created with the fee estate in the Premises or any part thereof if the same person acquires or holds, directly or indirectly, this Lease or any interest in this Lease and the fee estate in the leasehold Premises or any interest in such fee estate.

(p) To the extent Tenant or its agents or employees discover any water leakage, water damage or mold in or about the Premises or Project, Tenant shall promptly notify Landlord thereof in writing.

(q) Whenever Tenant requests Landlord to take any action not required of it hereunder or give any consent required or permitted under this Lease, Tenant, subject to the provisions of Paragraph 17(a) above, will reimburse Landlord for Landlord's reasonable, out-of-pocket costs payable to third parties and incurred by Landlord in reviewing the proposed action or consent, including reasonable attorneys', engineers' or architects' fees,

within 30 days after Landlord's delivery to Tenant of a statement of such costs. Tenant will be obligated to make such reimbursement without regard to whether Landlord consents to any such proposed action.

(r) Subject to Landlord's approval of the plans and specifications related thereto, which shall not be unreasonably withheld, conditioned, or delayed and subject to any Legal Requirements, Landlord shall permit Tenant to install and maintain at Tenant's sole expense a satellite dish and related equipment ("**Antenna**") on the roof of the Buildings in a location mutually acceptable to Landlord and Tenant, and subject to strict compliance with all applicable Legal Requirements. Tenant shall at all times own the Antenna. Landlord makes no warranties or representations to Tenant as to the permissibility of an Antenna on the roof of the Buildings under applicable Legal Requirements. Tenant shall be permitted to erect and maintain the Antenna for a term which will expire on the expiration or earlier termination of this Lease. Tenant shall be required to obtain all governmental permits, consents or authorizations necessary for the erection and operation of the Antenna. If installation of the Antenna requires any roof penetrations, Tenant shall use a contractor reasonably approved by Landlord and shall cause such work to be done in a manner that will preserve any roof warranty held by Landlord. Upon the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, shall remove the Antenna and restore the point of attachment to a clean, sealed condition. In addition, Tenant and its telecommunications companies, including local exchange telecommunications companies and alternative access vendor services companies, shall have no right of access to and within the Building, for the installation and operation of telecommunications systems, including voice, video, data, Internet, and any other services provided over wire, fiber optic, microwave, wireless, and any other transmission systems ("**Telecommunications Services**"), for part or all of Tenant's telecommunications within the Building and from the Building to any other location without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. All providers of Telecommunications Services shall be required to comply with the rules and regulations of the Building, applicable Legal Requirements and Landlord's reasonable policies and practices for the Building. Tenant acknowledges that Landlord shall not be required to provide or arrange for any Telecommunications Services and that Landlord shall have no liability to a Tenant-related party in connection with the installation, operation or maintenance of Telecommunications Services or any equipment or facilities relating thereto. Tenant, at its cost and for its own account, shall be solely responsible for obtaining all Telecommunications Services.

(s) Tenant (if a corporation, partnership or other business entity) hereby represents and warrants to Landlord that Tenant is and will remain during the Term a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Tenant has full right and authority to execute and deliver this Lease, that each person signing on behalf of Tenant is authorized to do so. Landlord hereby represents and warrants to Tenant that Landlord is a duly formed and existing entity qualified to do business in the state in which the Premises are located, that Landlord has full right and authority to execute and deliver this Lease, and that each person signing on behalf of Landlord is authorized to do so.

(t) Landlord and Tenant agree that all administrative fees and late charges prescribed in this Lease are reasonable estimates of the costs that Landlord will incur by reason of Tenant's failure to comply with the provisions of this Lease, and the imposition of such fees and charges shall be in addition to all of Landlord's other rights and remedies hereunder or at law, and shall not be construed as a penalty.

(u) Landlord may during the Lease Term construct, renovate, improve, alter, or modify (collectively, "**Renovations**") the Project, and in connection with any Renovations, Landlord may, among other things, erect scaffolding or other necessary structures outside the Building, temporarily limit access to portions of the Project, including portions of the common areas, or perform work in the Building and common areas, which work may create noise, dust or leave debris in the Project and common areas. Tenant hereby agrees that such Renovations and Landlord's actions in connection with such Renovations shall in no way constitute a constructive eviction of Tenant nor entitle Tenant to any abatement of rent or damages from Landlord. Landlord shall use commercially reasonable good faith efforts to minimize interference with Tenant’s use of or access to the Premises, the Outside Yard Area and Tenant’s parking areas in exercising Landlord’s rights set forth herein.

(v) Tenant acknowledges and agrees that it is exclusively responsible for compliance with California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (known as Proposition 65) on the Premises, including but not limited to the Building. Tenant specifically agrees that it is responsible to determine whether the Premises require Proposition 65 warning(s), and when warning obligation(s) are triggered, Tenant must provide

clear and reasonable Proposition 65 warnings to persons as provided in the Proposition 65 statutes and regulations. Both parties expressly acknowledge that Landlord is not responsible to assess the Premises for compliance with Proposition 65 or review the adequacy of warnings provided by Tenant. To the extent the Premises are leased to Tenant with Proposition 65 warnings already thereon, these warnings are not a representation by Landlord that the Premises are currently compliant with Proposition 65, and Tenant expressly agrees it retains responsibility to maintain, update, and supplement those warnings, as is necessary for compliance. Tenant agrees to indemnify, defend and hold harmless Landlord and the Indemnitees from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) and all losses and damages arising from any alleged violation of Proposition 65 on the Premises.

(w) Subject to Landlord's approval of the plans and specifications related thereto and subject further to the terms and conditions contained in Paragraph 12 above, which consent Landlord shall not unreasonably withhold, condition, or delay, and subject to any Legal Requirements (including without limitation the approval applicable design review committee[s] and/or owners association[s]), Tenant shall be entitled to install and fuel (including, without limitation, by diesel or gas) one (1) or more additional back up electrical generator(s) in the Premises (collectively, the "**Generator**") in a location to be mutually agreed upon by Landlord and Tenant, and (ii) Tenant's proprietary SOFC generators ("**Bloom Boxes**"). The Generator and Bloom Boxes shall be constructed by Tenant in accordance with plans and specifications approved in advance by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), which plans shall include fencing and such curbing as is reasonably necessary to contain any fuel spill. The Generator shall be used only for periodic testing and in the event Tenant's primary electrical service is interrupted. The Generator and Bloom Boxes shall maintained at all times in good condition and repair and in compliance with Legal Requirements, including receipt of any applicable permit therefor, and in accordance with reasonable rules and regulations by Landlord from time to time. The Generator shall be used only for backup power, and may not be used as a primary power source, nor may it be used by any other occupant of the Project. Upon expiration or earlier termination of this Lease, Tenant shall remove the Generator and all Bloom Boxes and associated equipment and installations (if any), restore the pads for such Generators and Bloom Boxes to a clean, paved condition, and repair any damage caused by such removal.

(x) If either Landlord or Tenant shall bring any action or legal proceeding to enforce, protect or establish any term or covenant of this Lease, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and experts' fees as may be fixed by an arbiter or the court.

38. **Modification**. Should any current or prospective mortgagee or ground lessor for the Building or Project or the City of Fremont in connection with the City's approval of the Project require a modification of this Lease, which modification will not materially and adversely change the rights and obligations of Tenant hereunder, then and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) business days following a written request therefor.

39. INTENTIONALLY OMITTED.

40. **Limitation of Liability of Landlord's Partners, and Others**. Tenant agrees that any obligation or liability whatsoever of Landlord which may arise at any time under this Lease, or any obligation or liability which may be incurred by Landlord pursuant to any other instrument, transaction, or undertaking contemplated hereby, shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of the constituent partners of Landlord or any of their respective directors, officers, representatives, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

41. **OFAC**. Tenant represents and warrants to Landlord that Tenant is currently in compliance with and shall at all times during the Lease Term (including any extension thereof) remain in compliance with the regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

42. **Waiver**. Tenant hereby agrees that any supervening event, whether foreseeable or unforeseeable, which makes the conduct of Tenant's business from the Premises unprofitable, less profitable or more difficult, shall not excuse Tenant from timely paying any rent or other amount due from Tenant under this Lease.

43. **Easements; CC&R's**. Landlord reserves to itself the right, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of parcel maps, easement agreements and covenants, conditions and restrictions and other recorded matters, including, without limitation, certain Declaration of Covenants, Conditions, Restrictions and Easements for Pacific Commons South dated December 7, 2017 and recorded in the Official Records of Alameda County on January 19, 2018 as Instrument No. 2018010717, for the efficient operation of the Project, so long as such easements, rights, dedications, maps and covenants, conditions and restrictions do not unreasonably interfere with the Permitted Use of the Premises by Tenant. Tenant shall sign any of the aforementioned documents within ten (10) business days after receipt of written request of Landlord and failure to do so shall constitute a material breach of this Lease.

44. **Transportation Management**. Landlord may develop a transportation systems management plan which seeks to reduce vehicular trips and to improve vehicle occupancy by encouraging employees to seek alternate transportation modes, such as carpooling, vanpooling, city bus service, bicycles, and motorcycles, among other methods. Other programs, such as flexible working hours or staggered shifts, also may be encouraged. Tenant agrees to cooperate with Landlord to the extent reasonably practicable to achieve the objectives of any applicable governmental authority, including participation in a transportation program at a level of participation consistent with the number of employees of Tenant. In addition, Tenant shall fully comply with all present or future programs intended to manage parking, transportation or traffic in and around the Building and/or Project, and in connection therewith, Tenant shall take responsible action for the transportation planning and management of all employees located at the Premises by working directly with Landlord, any governmental transportation management organization or any other transportation-related committees or entities.

45. INTENTIONALLY OMITTED

46. **Option to Extend**. Landlord hereby grants to Tenant one (1) option to extend the Lease Term ("**Option**") for a period of seven (7) years ("**Option Term**") commencing upon the expiration of the initial Lease Term, upon each of the following conditions and terms:

(a) Tenant shall give to Landlord, and Landlord shall actually receive, on a date which is at least twelve (12) months and not more than fifteen (15) months prior to the expiration date of the Lease Term, a written notice of Tenant's exercise of the Option (the "**Option Notice**"), time being of the essence. If the Option Notice is not timely so given and received, the Option shall automatically expire.

(b) Tenant shall have no right to exercise the Option, notwithstanding any provision hereof to the contrary, (1) during the time commencing from the date Landlord gives to Tenant a notice of default pursuant to this Lease and continuing until the noncompliance alleged in said notice of default is cured, or (2) during the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and unpaid (without any necessity for notice thereof to Tenant except as otherwise expressly set forth in this Lease) and continuing until the obligation is paid.

(c) The period of time within which the Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise the Option because of the provisions of Paragraph 46(b) above.

(d) All Option rights of Tenant under this Paragraph 46 shall terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise of the Option, if, during the period commencing after such exercise and ending on the commencement date for the Option Term, (1) Tenant fails to pay to Landlord a monetary obligation of Tenant for a period of ten (10) days after such obligation becomes due (without any necessity of Landlord to give notice thereof to Tenant except as expressly set forth in this Lease), or (2) Tenant fails to commence to cure any other default under this Lease within ten (10) days after the date that Landlord gives notice

to Tenant of such default and/or Tenant fails thereafter to diligently prosecute said cure to completion within thirty (30) days after the date of such notice (provided, however, that Tenant shall not be in default hereunder if the default is not capable of cure within thirty (30) days but Tenant commences the cure within the thirty (30)- day period and thereafter diligently prosecutes the cure to completion)..

(e) The Option is personal to the original Tenant named in this Lease (the "**Original Tenant**") and any Permitted Transferee which has assumed Tenant's obligations under this Lease and may be exercised only by the Original Tenant or Permitted Transferee which has assumed Tenant's obligations under this Lease while occupying the entire Premises without the intent of thereafter assigning this Lease or subletting the Premises or any portion thereof, and may not be exercised or be assigned, voluntarily or involuntarily, by or to any person or entity other than Original Tenant or a Permitted Transferee which has assumed Tenant's obligations under this Lease. The Option is not assignable separate and apart from this Lease, nor may the Option be separated from this Lease in any manner, either by reservation or otherwise.

(f) All of the terms and conditions of this Lease except where specifically modified by this Paragraph 46 or as otherwise stated to be applicable only to the initial Lease Term shall apply during any extended Lease Term.

(g) The initial monthly Base Rent payable during the Option Term shall be equal to the greater of (i) then-current fair market rental value for similar industrial buildings in the Fremont/Silicon Valley industrial real estate submarket, and (ii) 103% of the monthly Base Rent in effect in the calendar month immediately preceding the commencement of the Option Term, and such Base Rent shall be subject to annual market escalations during the Option Term. The then-current fair market rental value shall be determined taking into consideration all relevant factors, including, without limitation, such factors as credit-worthiness of the Tenant, the duration of the term, any rental or other concessions such as improvement allowances granted, whether a broker’s commission or finder’s fee will be paid, responsibility for Operating Expenses, for an extended term , as follows:

(1) Promptly following receipt by Landlord of Tenant's Option Notice, Landlord and Tenant shall negotiate in good faith to reach agreement on the Base Rent for the applicable Option Term, which Base Rent shall be set in accordance with the criteria described above. If Landlord and Tenant are able to agree on the Base Rent for the Option Term, Landlord and Tenant shall immediately execute an amendment to this Lease stating the Base Rent for such Option Term.

(2) If the parties are unable to agree on the Base Rent for an Option Term within forty-five (45) days following Landlord's receipt of an Option Notice, then each party, at its cost and by giving notice to the other party, shall have ten (10) days within which to appoint a licensed commercial real estate broker with at least seven (7) years' experience in the in the market area in which the Premises are located, to determine and set the Base Rent for the Option Term at the then-current fair market rental value of the Premises based on rental values of direct leases of similar industrial buildings in the Fremont/Silicon Valley industrial real estate submarket (but not less than 103% of the monthly Base Rent payable during the month immediately preceding the Option Term) for a term equal to the Option Term. If a party does not appoint a broker within such ten (10) day period, the single broker appointed shall be the sole broker and shall set the Base Rent for the Option Term. If two brokers are appointed by the parties as stated in this paragraph, they shall meet promptly and attempt to set the Base Rent for the Option Term. If they are unable to agree within forty five (45) days after the second broker has been appointed, they shall attempt to select a third broker meeting the qualifications stated in this paragraph within ten (10) days after the last day the two brokers are given to set the Base Rent for the Option Term. If they are unable to agree on the third broker, either of the parties to this Lease, by giving ten (10) days notice to the other party, may apply to the presiding judge of the court of the county in which the Premises are located, for the selection of a third broker who meets the qualifications stated in this paragraph. Each of the parties shall bear the cost of its own broker and one- half (1/2) of the cost of appointing the third broker and of paying the third broker's fee. The third broker, however selected, shall be a person who has not previously acted in any capacity for either party.

(3) Within twenty (20) days after the selection of the third broker, a majority of the brokers shall set the Base Rent for the applicable Option Term. If a majority of the brokers are unable to agree upon the Base Rent within the stipulated period of time, the two closest brokers shall be added together and their total divided by two, and the resulting quotient shall be the Base Rent for the Premises during the Option Term.

(h) If the Base Rent for an Option Term has not been determined by the commencement date of the Option Term, then until such Base Rent is determined, Tenant shall pay Base Rent to Landlord at the rate of 103% of the Base Rent in effect immediately preceding the Option Term, and if the actual Base Rent for the Option Term is determined to be higher, then within fifteen (15) days after the determination of such higher Base Rent, Tenant shall pay to Landlord the difference for each month of the Option Term for which Base Rent has already become due.

47. **Counterparts and Electronic Signatures**. This Lease may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. Federal ESIGN Act of 2000, California's Uniform Electronic Transaction Act [Cal. Civil Code § 1633.1, et seq.] or other applicable law) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[signatures appear on next page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

LANDLORD:

PACIFIC COMMONS OWNER, LP,

a Delaware limited partnership

By: Fremont Industrial Partners GP, LLC, a Delaware limited liability company,

By:/s/ Shawn M. Soderberg__ Name: Shawn M. Soderberg
its

By: /s/ Timur Tecimer__
Timur Tecimer,
Manager

TENANT:

BLOOM ENERGY CORPORATION,

a Delaware corporation

Title:

EVP, General Counsel & Secretary

ADDENDUM 1

RULES AND REGULATIONS

In the event of a conflict between the following Rules and Regulations and the terms of the Lease to which this Addendum is attached, the terms of the Lease shall control.

1. The sidewalk, entries, and driveways of the Project shall not be obstructed by Tenant, or its agents, or used by them for any purpose other than ingress and egress to and from the Premises.

2. Except as expressly set forth in the Lease, Tenant shall not place any objects, including antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Project.

3. Except for licensed service animals (where access of the same is required by applicable Legal Requirements), no animals shall be allowed in the offices, halls, or corridors in the Project.

4. Tenant shall not disturb the occupants of the Project or adjoining buildings by the use of any radio or musical instrument or by the making of loud or improper noises.

5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will reasonably direct the electrician as to where and how the wires may be introduced; and, without such direction, no boring or cutting of wires will be permitted. Any such installation or connection shall be made at Tenant's expense.

6. Tenant shall not install or operate any steam or gas engine or boiler, or other mechanical apparatus in the Premises, except as specifically approved in the Lease. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Project.

7. Parking any type of recreational vehicles is specifically prohibited on or about the Project. Except for the overnight parking of operative vehicles or as expressly permitted in the Lease, no vehicle of any type shall be stored in the parking areas at any time. In the event that a vehicle is disabled, it shall be removed within 48 hours. There shall be no "For Sale" or other advertising signs on or about any parked vehicle. All vehicles shall be parked in the designated parking areas in conformity with all signs and other markings. Except as expressly set forth in the Lease, all parking will be open parking, and no reserved parking, numbering or lettering of individual spaces will be permitted except as specified by Landlord.

8. Tenant shall not wash or service any vehicles in or about the Premises or the Project.

9. Tenant shall maintain the Premises free from rodents, insects and other pests.

10. Landlord reserves the right to exclude or expel from the Project any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the Rules and Regulations of the Project.

11. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Landlord shall not be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to the effects of Tenant by the janitors or any other employee or person.

12. Tenant shall give Landlord prompt notice of any defects in the water, lawn sprinkler, sewage, gas pipes, electrical lights and fixtures, heating apparatus, or any other service equipment affecting the Premises.

13. Except as expressly set forth in the Lease, Tenant shall not permit storage outside the Premises, including without limitation, outside storage of trucks and other vehicles, or dumping of waste or refuse or permit any harmful materials to be placed in any drainage system or sanitary system in or about the Premises.

14. All moveable trash receptacles provided by the trash disposal firm for the Premises must be kept in the trash enclosure areas, if any, provided for that purpose.

15. No auction, public or private, will be permitted on the Premises or the Project.

16. No awnings shall be placed over the windows in the Premises except with the prior written consent of Landlord.

17. The Premises shall not be used for lodging, sleeping or cooking or for any illegal purposes or for any purpose other than that specified in the Lease. No gaming devices shall be operated in the Premises.

18. Tenant shall ascertain from Landlord the maximum amount of electrical current which can safely be used in the Premises, taking into account the capacity of the electrical wiring in the Project and the Premises and the needs of other tenants, and shall not use more than such safe capacity. Landlord's consent to the installation of electric equipment shall not relieve Tenant from the obligation not to use more electricity than such safe capacity.

19. Tenant assumes full responsibility for protecting the Premises from theft, robbery and pilferage.

20. Tenant shall not install or operate on the Premises any machinery or mechanical devices of a nature not directly related to Tenant's ordinary use of the Premises and shall keep all such machinery free of vibration, noise and air waves which may be transmitted beyond the Premises.

21. Tenant shall not introduce, disturb or release asbestos or PCBs onto or from the Premises.

22. Tenant shall at all times conduct its operations in a good and workmanlike manner, employing best management practices to minimize the threat of any violation of Environmental Laws.

EXHIBIT A

PREMISES

EXHIBIT A-1

PROJECT

Ex.
A 15/9100

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EXHIBIT B

BASE BUILDING SPECIFICATIONS

[OMITTED]

EXHIBIT C

TENANT WORK LETTER

1. **Definitions**. As used in this Work Letter and in the Lease, the term "**Tenant Improvements**" shall mean only those improvements relating to the interior portion of the Premises, which are set forth on the Final Tenant Plans (as defined in Section 5(b) of this Work Letter). Landlord shall deliver the Premises to Tenant in its currently existing "as is" condition, without representation or warranty, except as otherwise expressly set forth in the Lease, and Tenant shall accept the Premises in such condition.

2. Completion of Tenant Improvements. Tenant shall use its reasonable and diligent efforts to cause the Contractor (as defined in Section 7 of this Work Letter) to complete the construction and installation of the Tenant Improvements in accordance with the terms of this Work Letter. Landlord acknowledges that Tenant shall construct the Tenant Improvements in two phases. Conceptually, Phase 1 of the Tenant Improvements shall consist of the following: the interior improvements for approximately 45,000 square feet to support the first two production lines as well as other assorted production equipment, no exterior improvements (the "**Phase 1 Improvements**"). Conceptually, Phase 2 of the Tenant Improvements shall consist of the following: the interior improvements for the remaining section of the building including general office space, additional restroom core(s), additional production lines and processes, as well as exterior equipment yard(s) to locate the assorted building system infrastructure (Chilled Water system, CDA, Liquid Nitrogen tank, Hydrogen tank, DI Water System, and RTO system (the "**Phase 2 Improvements**"). References herein to the "Tenant Improvements" shall mean, collectively, the Phase 1 Improvements and the Phase 2 Improvements.

3. **Designation of Representatives**. Tenant has designated Rick Patten (email: rick@facilicorp.com) 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 the Tenant as required in this Work Letter. Landlord has designated Michael Johnson (email: mjohnson@omprop.com) as its sole representative with respect to the matters set forth in this Work Letter, who, until further notice to Tenant, shall have full authority and responsibility to act on behalf of the Landlord as required in this Work Letter.

4. **Architect**. Tenant shall engage the architect (the "**Architect**") with respect to the design and construction of the Tenant Improvements. Landlord reserves the right to retain a development consultant to assist Landlord in performing its obligations under this Work Letter and under the Lease. All costs associated with the Architect and any such development consultant shall be included within the cost of the Tenant Improvements.

5. **Tenant Improvement Plans**.

(a) Landlord and Tenant shall work with the Architect to develop a space plan and other information and proposed specifications for Phase 1 and Phase 2 of the Tenant Improvements (the "**Preliminary Plans**"). Landlord shall reasonably approve or disapprove the Preliminary Plans for each Phase within five (5) business days after receipt of same from the Architect. If Landlord reasonably disapproves of the Preliminary Plans for a Phase, Tenant shall resubmit the same to Landlord, and Landlord shall have three (3) business days to reasonably approve or disapprove of the same. This process shall be repeated until the Preliminary Plans for each Phase are ultimately approved by Landlord and Tenant.

(b) Following Landlord's approval of the Preliminary Plans for a Phase, Tenant shall cause the Architect and Tenant's designated engineers to prepare final plans and construction and engineering drawings for the Tenant Improvements for that Phase (the "**Proposed Final Plans**"). Within ten (10) business days of Landlord's receipt of the Proposed Final Plans for a Phase, Landlord shall either approve the same or specify proposed changes in writing. If Landlord disapproves of the Proposed Final Plans, Tenant shall revise such Proposed Final Plans within ten (10) business days after receipt of Landlord's disapproval and resubmit the revised Proposed Final Plans back to Landlord for Landlord's review. Thereafter, within ten (10) business days following receipt of same, Landlord will either approve or disapprove the Proposed Final Plans. This process shall be repeated until the Proposed Final Plans are ultimately approved by Landlord and Tenant such that they become Final Tenant Plans for the Phase at issue. The final working drawings, plans and specifications for the Phase 1 Improvements and the Phase 2 Improvements, as applicable, each as approved by Landlord and Tenant above, are hereinafter referred to as the

"**Final Tenant Plans**" or the "**Final Plans**" for the applicable Phase. Tenant shall submit the same to the City of Fremont and diligently pursue its receipt of all applicable building permits for each Phase. Tenant hereby agrees that neither Landlord nor Landlord's consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that obtaining the same shall be Tenant's responsibility; provided, however, that Landlord shall cooperate with Tenant in executing permit applications and performing other ministerial acts reasonably necessary to enable Tenant to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Final Tenant Plans for a Phase may be made without the prior written consent of Landlord, which consent may not be unreasonably withheld, conditioned or delayed.

6. **Tenant's Agents.**

a. Contractor. The general contractor to be engaged by Tenant for the construction of the Tenant Improvements shall be licensed and reasonably acceptable to Landlord ("**Contractor**"). Landlord hereby approves the following general contractors: [McLarney, Devcon and Novo].

b. Tenant's Agents. All subcontractors, laborers, materialmen, and suppliers used by Tenant (such subcontractors, laborers, materialmen, and suppliers, and the Contractor to be known collectively as "**Tenant's Agents**") must be approved in writing by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. If Landlord does not approve any of Tenant's proposed subcontractors, laborers, materialmen or suppliers, Tenant shall submit other proposed subcontractors, laborers, materialmen or suppliers for Landlord's written approval.

c. Landlord's General Conditions for Tenant's Agents and Tenant Improvement Work. Tenant's and Tenant's Agent's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in a good and workmanlike manner, using only new materials, and in strict accordance with the Final Plans, Legal Requirements, and all permits, governmental approvals and conditions of approval (Tenant shall provide Landlord with copies of such permits and approvals prior to commencing construction of the Tenant Improvements); and (ii) Tenant shall abide by all commercially reasonable rules made by Landlord's Project manager with respect to the use of loading docks, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Tenant Work Letter, including, without limitation, the construction of the Tenant Improvements.

d. Warranties. Each of Tenant's Agents shall warrant to Tenant that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Tenant agrees that Landlord shall have the benefit of all such guarantees available to Tenant and relating to the portions of the Premises that Landlord is responsible for maintaining. In furtherance of the foregoing, Tenant shall assign such warranties to Landlord on a nonexclusive basis to the extent such assignment is permitted and necessary in order to make any such warranties available to Landlord. Each of Tenant's Agents shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the completion of the work performed by such contractor or subcontractors. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Premises that may be damaged or disturbed thereby. All such warranties as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the Contract or subcontract. If, despite the foregoing, Landlord is unable to directly enforce such warranties, then Tenant shall reasonably cooperate with Landlord to enforce such guarantees with respect to the portions of the Premises that Landlord is responsible for maintaining

e. Lien-Free Basis. Tenant's Contractor and Tenant's Agents shall perform all work on a lien-free basis. If a lien is filed or recorded against the Premises due to, or in any way associated with, the construction of the Tenant Improvements, then Section 28 of the Lease shall govern and control.

f. Insurance Requirements. All of Tenant's Agents shall comply with Section 9(a)(H) of the Lease.

g. Governmental Compliance. The Tenant Improvements shall comply in all respects with the following: (i) the Code and other state, federal, city or quasi-governmental laws, codes, ordinances and regulations, Legal Requirements as each may apply according to the rulings of the controlling public official, agent or other person; (ii) applicable standards of the American Insurance Association (formerly, the National Board of Fire Underwriters) and the National Electrical Code; and (iii) Project material manufacturer's specifications.

h. Inspection. Subject to the terms and conditions of the Lease including, without limitation, Paragraph 19 thereof, Landlord shall have the right to inspect the Tenant Improvements at all reasonable times during the course of the construction thereof, provided however, that Landlord's failure to inspect the Tenant Improvements shall in no event constitute a waiver of any of Landlord's rights hereunder nor shall Landlord's inspection of the Tenant Improvements constitute Landlord's approval of the same. Should Landlord disapprove any portion of the Tenant Improvements (which disapproval shall be limited to Tenant's failure to complete the same in accordance with the terms of this Work Letter), Landlord shall notify Tenant in writing of such disapproval and shall specify the items disapproved. Any defects or deviations in, and/or disapproval by Landlord of, the Tenant Improvements shall be rectified by Tenant at no expense to Landlord, provided however, that in the event Landlord disapproves of any matter in connection with any portion of the Tenant Improvements and such matter is reasonably likely to cause imminent danger to persons or property, adversely affect the mechanical, electrical, plumbing, heating, ventilating and air conditioning or life-safety systems of the Premises, the structure or exterior appearance of the Premises and Tenant fails to commence to cure the same within five (5) business days of its receipt of Landlord's written notice, then Landlord may take such action as Landlord reasonably deems necessary, at Tenant's expense and without incurring any liability on Landlord's part, to correct any such matter, including, without limitation, causing the cessation of performance of the construction of the Tenant Improvements until such time as the matter is corrected to Landlord's reasonable satisfaction.

8. **Construction of the Tenant Improvements**. Tenant shall enter into a construction contract with Contractor ("**Construction Contract**") for the construction and installation of each Phase of the Tenant Improvements in accordance with the Final Plans for such Phase.

9. **Payment for Cost of the Tenant Improvements**.

(a) Tenant Improvement Allowance. Tenant shall be entitled to a one-time tenant improvement allowance (the "**Tenant Improvement Allowance**") for the work described on the Final Tenant Plans of up to a maximum amount of Two Million Four Hundred Sixty-Four Thousand Three Hundred Ninety-Five and No/100 Dollars ($2,464,395.00) (based on $15.00 per RSF of the Premises). Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree that the Tenant Improvement Allowance shall be applied in its entirety to the Phase 1 Improvements, and that Tenant shall be responsible, at Tenant's sole cost and expense, of the entirety of the Phase 2 Improvements. Notwithstanding the foregoing to the contrary, in the event the Tenant Improvement Allowance exceeds the Cost of Tenant Improvements (as defined below) for the Phase 1 Improvements, any balance thereof shall be applied to the Cost of Tenant Improvements for the Phase 2 Improvements. If the Tenant Improvement Allowance exceeds the combined Cost of the Improvements for Phase 1 and Phase 2, Tenant shall not be entitled to such excess, but rather such excess funds shall belong to and be the sole property of Landlord. The Tenant Improvement Allowance is to be used only for the following costs (collectively, the "**Cost of Tenant Improvements**"):

(i) Payment of the cost of preparing the Preliminary Plans relative to the Tenant Improvements (including, without limitation, the Architect's fees and costs) and the Final Tenant Plans, including, without limitation, mechanical, electrical, plumbing and structural drawings and of all other aspects necessary to complete the Final Tenant Plans.

(ii) The payment of plan check, permit and license fees relating to construction of the Tenant Improvements.

(iii) The costs of construction of the Tenant Improvements as provided in the Final Tenant Plans, including without limitation, the following:

1. Installation within the Premises of all partitioning, doors, floor coverings, ceilings, wall coverings and painting and similar items;

2. All electrical wiring, lighting fixtures, outlets and switches, and other electrical work necessary for the Premises;

3. The furnishings, installation and screening of all HVAC units, duct work, terminal boxes, diffusers and accessories necessary for the heating, ventilation and air conditioning systems within the office portions of the Premises;

4. Any additional improvements to the Premises required for Tenant's use of the Premises including, but not limited to, odor control, special heating, ventilation and air conditioning, noise or vibration control or other special systems or improvements, and all mechanical systems necessary for the operation of Tenant's business in the Premises;

5. All fire and life safety control systems such as fire walls, sprinklers, halon, fire alarms, including piping, wiring and accessories, necessary for the Premises;

6. All plumbing, fixtures, pipes and accessories necessary for the Premises;

7. Testing and inspection costs; and

8. Fees for the Contractor and tenant improvement coordinator including, but not limited to, fees and costs attributable to general conditions associated with the construction of the Tenant Improvements; and

(iv) An administrative and supervision fee payable to Landlord in an amount equal to three percent (3%) of the Tenant Improvement Allowance.

In no event will the Tenant Improvement Allowance be used to pay for Tenant's moving expenses or for furniture, trade fixtures, equipment, telephone systems or any other item of personal property which are not affixed to the Premises. Any unused portion of the Tenant Improvement Allowance will not be refunded to Tenant, but rather shall be retained by Landlord.

For avoidance of doubt, the entire Tenant Improvement Allowance shall be paid by Landlord to Tenant during the construction of the Phase 1 Improvements (unless, upon completion of the Phase 1 Improvements, a balance remains, in which case the balance shall be applied to the Cost of the Improvements for the Phase 2 Improvements) in accordance with the provisions of Sections 9(c) below.

(b) Costs in Excess of Tenant Improvement Allowance. The cost of each item referenced in Section 9(a) above shall be charged against the Tenant Improvement Allowance. Notwithstanding anything to the contrary contained in this Work Letter, if the Cost of Tenant Improvements exceeds the Tenant Improvement Allowance ("**Excess Cost of Tenant Improvements**"), Tenant shall be responsible for payment of such Excess Cost of Tenant Improvements.

(c) Disbursement of Tenant Improvement Allowance. Payments of the Excess Cost of the Improvements shall be made on a pari passu basis with funding by Landlord of the Tenant Improvement Allowance in the respective proportions that Tenant Improvement Allowance and the Excess Cost of the Improvements bear to the expected total cost of the Tenant Improvements. Landlord shall pay the applicable portion of the Tenant Improvement Allowance pursuant to approved invoices with respect to costs related to the construction of the Tenant Improvement Allowance Items described above, up to but not in excess of the Tenant Improvement Allowance. In connection with the foregoing, not more than once each month Tenant shall deliver a request for payment to Landlord, and Landlord shall deliver a check to Tenant from the Tenant Improvement Allowance for Landlord's pari passu share of requested amount (not to exceed the Tenant Improvement Allowance) within thirty

(30) days following the date that Landlord has received the following from Tenant, so long as, at the time of Tenant's submission, there is no Event of Default under the Lease: (i) a description of the specific portion of the Tenant Improvements that has been completed, together with waivers of lien in accordance with California law and certificates of all subcontractors and materialmen covering all work and materials furnished in connection of with such portion of the Tenant Improvements that has been completed, and (ii) such invoices, contracts or other supporting data as Landlord may reasonably require, all in compliance with the construction and mechanics' lien laws of the State of California. As a condition to each payment request, Landlord shall have the right to reasonably determine, within a reasonable period following receipt of the payment request, that (1) no substandard work exists which adversely affects the Building Systems or Building Structural Elements or the exterior appearance of the Premises, and (2) Tenant has completed all of the Tenant Improvements for the Phase at issue in substantial conformity with the Final Tenant Plans, all building permits issued in connection with the Tenant Improvements, all Legal Requirements and the terms and provisions of this Exhibit C. Within thirty (30) days after completion of the Phase 1 Improvements (or, if applicable, the Phase 2 Improvements), Tenant shall deliver to Landlord the following:
(a) a copy of a final or permanent (i.e. not temporary or conditional) certificate of occupancy (or local equivalent) for the Phase 1 Improvements and the Phase 2 Improvements, as applicable issued by the appropriate governmental authority; (b) a certificate of completion issued by Tenant's Architect or Tenant's Contractor, certifying that the applicable Phase of the Tenant Improvements has been completed in substantial conformity with the Final Tenant Plans for that Phase; (c) copies of paid invoices; (d) final, unconditional lien waivers, in accordance with applicable laws (including, without limitation, the appropriate provisions of California Civil Code Sections 8132-8138), from Tenant's general contractor and all subcontractors, materialmen and suppliers that have performed work or supplied materials in connection with the Tenant Improvements; and (e) copies of all applicable permits evidencing final approval and sign of the applicable Phase of the Tenant Improvements by the municipal building inspector(s). Further, within sixty (60) days following the conclusion of construction of each Phase of the Tenant Improvements Tenant shall cause the Contractor (A) to update the Final Tenant Plans for the applicable Phase as necessary to reflect all changes made to the Final Tenant Plans for such Phase during the course of construction, (B) to deliver to Landlord one (1) set of such as-built drawings (in .PDF form) for each Phase of the Tenant Improvements, (C) to deliver to Landlord a computer disk containing the Final Tenant Plans for each Phase in AutoCAD format; and (2) Tenant shall deliver to Landlord a copy of all warranties, guaranties, and operating manuals and information relating to the Tenant Improvements, equipment, and systems in the Premises. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance to the extent costs are incurred by Tenant for Tenant Improvement Allowance Items. All Tenant Improvement Allowance Items for which the Tenant Improvement Allowance has been made available shall be deemed Landlord's property under the terms of the Lease upon the expiration or earlier termination of the Lease; provided, however, Landlord reserves the right to require Tenant to remove all or any portion of the Tenant Improvements at the expiration or earlier termination of the Lease so long as Landlord so notifies Tenant at the time Landlord approves the Tenant Improvement(s) that removal will be required. Failure of Landlord to notify Tenant at the time that Landlord issues its consent that a Tenant Improvement must be removed shall mean that Tenant shall not be obligated to remove the Tenant Improvement at the expiration or earlier termination of the Lease. For avoidance of doubt, Landlord shall only be permitted to require removal of a Tenant Improvement if such Tenant Improvement is not a customary tenant improvement for general industrial and warehouse space used for manufacturing, assembly, storage, distribution and wholesale sales of products and merchandise and research and development.

10. **Notice of Completion**. No fewer than ten (10) days prior to the anticipated date of completion of construction of the Tenant Improvements, Tenant shall provide Landlord with a Notice of Completion for Landlord's review and shall cause the same to be recorded in the office of the Recorder of the County in which the Premises is located, and shall furnish a copy thereof to Landlord upon such recordation. Tenant shall also, within ten (10) days following recordation of the Notice of Completion, provide a copy of the recorded Notice of Completion, pursuant to California Civil Code §8190, to (i) Contractor, (ii) Tenant's Agents, and (iii) any other claimant that has issued a preliminary notice in conjunction with the Tenant Improvements; and Tenant shall provide Landlord with evidence of proof of service to all such parties. If Tenant fails to perform any of the foregoing, without limiting any of the foregoing remedies contained herein or in the Lease, Landlord may do so as Tenant's agent for such purpose (at Tenant's sole cost and expense.

11 **No Warranty**. Landlord shall have no responsibility for the Tenant Improvements and Tenant will remedy, at Tenant's own expense, and be responsible for any and all defects in the Tenant Improvements that may appear during or after the completion thereof whether the same shall affect the Tenant Improvements in

particular or any parts of the Premises in general. Tenant shall indemnify, defend and hold harmless and reimburse Landlord for any costs or expenses incurred by Landlord by reason of any defect in any portion of the Tenant Improvements constructed by Tenant or Tenant's contractor or subcontractors, or by reason of inadequate cleanup following completion of the Tenant Improvements where Tenant fails to cure such inadequate cleanup within a reasonable period of time after Tenant's receipt of written notice from Landlord.

12. **Miscellaneous**.

a. Coordination with Lease. Nothing herein contained shall be construed as constituting (i) Tenant as Landlord's agent for any purpose whatsoever, or (ii) a waiver by Landlord of any of the terms or provisions of the Lease. Any default by Tenant with respect to any portion of this Work Letter, shall be deemed a breach of the Lease for which Landlord shall have all the rights and remedies as in the case of a breach of the Lease by Tenant.

b. Building Systems. Tenant agrees to be entirely responsible for the maintenance or the balancing of any heating, ventilating or air conditioning system installed by Tenant and/or maintenance of the electrical or plumbing work or life safety improvements installed by Tenant and/or for maintenance of lighting fixtures, partitions, doors, hardware or any other installations made by Tenant.

c. Approval of Plans. Landlord will not check Tenant drawings for building code compliance. Approval of the Final Plans by Landlord is not a representation that the drawings are in compliance with the requirements of governing authorities, and it shall be Tenant's responsibility to meet and comply with all federal, state, and local code requirements. Approval of the Final Plans does not constitute assumption of responsibility by Landlord or its architect for their accuracy, sufficiency or efficiency, and Tenant shall be solely responsible for such matters.

d. Failure to Pay Tenant Improvement Allowance When Due. If Landlord fails to timely fulfill its obligation to fund any portion of the Tenant Improvement Allowance in accordance with the provisions of this Work Letter, then Tenant shall be entitled to deliver written notice (the "**Payment Notice**") to Landlord. If Landlord still fails to fulfill any such obligation within thirty (30) days after Landlord's receipt of the Payment Notice from Tenant and if Landlord fails to deliver notice to Tenant within such thirty (30) day period explaining Landlord's reasons that Landlord in good faith believes that the amounts described in Tenant's Payment Notice are not due and payable by Landlord (the "**Refusal Notice**"), then Tenant shall be entitled to offset the amount so owed to Tenant by Landlord but not paid by Landlord (or if Landlord delivers a Refusal Notice but only with respect to a portion of the amount set forth in the Payment Notice and Landlord fails to pay such undisputed amount as required by then next succeeding sentence, the undisputed amount so owed to Tenant) against Tenant's next obligations to pay Base Rent. Notwithstanding the foregoing, if Landlord delivers a Refusal Notice, then notwithstanding anything to the contrary contained herein, Tenant shall have no right whatsoever to withhold or offset any portion of the amount set forth in Tenant's Payment Notice, and Landlord shall pay to Tenant, concurrently with the delivery of the Refusal Notice, the undisputed portion of the amount set forth in the Payment Notice. However, if an Event of Default shall have occurred at the time that such offset would otherwise be applicable, Tenant shall not be entitled to such offset until such Event of Default is cured. If Landlord delivers a Refusal Notice, and if Landlord and Tenant are not able to agree on the disputed amounts to be so paid by Landlord, if any, within ten (10) days after Tenant's receipt of a Refusal Notice, Tenant shall have no right to offset whatsoever, but Tenant may proceed to claim a default by Landlord under this Lease, and if elected by either Landlord or Tenant, the matter shall proceed to resolution by arbitration. If Tenant prevails in the arbitration proceeding, the amount of the award (which shall include interest at the Interest Rate until the date Tenant receives such amount by payment or offset and reasonable attorneys' fees and related costs) may be deducted by Tenant from Base Rent next due and owing under the Lease.

EXHIBIT D

HAZARDOUS MATERIALS DISCLOSURE CERTIFICATE

Initially, the information provided by you in this Hazardous Materials Disclosure Certificate is necessary for the Landlord (identified below) to evaluate and finalize a lease with you as Tenant. After a lease is executed by you and Landlord (the "**Lease**"), on an annual basis in accordance with the provisions of Paragraph 30(a) of the Lease, you are to provide an update to the information initially provided by you in this Certificate. The information contained in the initial Hazardous Materials Disclosure Certificate and each annual Certificate provided by you thereafter will be maintained in confidence by Landlord subject to release and disclosure as required by (i) any lenders and owners and their respective environmental consultants, (ii) any prospective purchaser(s) of all or any portion of the Project in which the Premises are located, (iii) Landlord to defend itself or its lenders, partners or representatives against any claim or demand, and (iv) any laws, rules, regulations, orders, decrees or ordinances, including, without limitation, court orders or subpoenas. Any and all capitalized terms used herein, which are not otherwise defined herein, shall have the same meaning ascribed to such term in the Lease. Any questions regarding this Certificate should be directed to, and when completed, the certificate should be delivered to:

Landlord:

Name of (Prospective) Tenant: Bloom Energy Corporation

Mailing Address: 4353 North 1st Street, San Jose, CA 95134

Contact Person, Title and Telephone Number(s): Mike Hawkins, Facilities Manager

Contact Person for Hazardous Waste Materials Management and Manifests and Telephone Number(s):_____

Address of (Prospective) Premises: 44408 Pacific Commons Blvd., Fremont, CA 94538

Length of (Prospective) Initial Term: August 1, 2021 through February 28, 2029

1. **General Information**:

Describe the initial proposed operations to take place in, on or about the Premises, including, without limitation, principal products processed, manufactured or assembled services and activities to be provided or otherwise conducted. Existing tenants should describe any proposed changes to on-going operations.

2. Use, Storage and Disposal of Hazardous Materials

a. Will any Hazardous Materials be used, generated, stored or disposed of in, on or about the Premises? Existing tenants should describe any Hazardous Materials which continue to be used, generated, stored or disposed of in, on or about the Premises.

If Yes is marked, please explain:____

b. If Yes is marked in Section 2.1, attach a list of any Hazardous Materials to be used, generated, stored or disposed of in, on or about the Premises, including the applicable hazard class and an estimate of the quantities of such Hazardous Materials at any given time; estimated annual throughput; the proposed location(s) and method of storage (excluding nominal amounts of ordinary household cleaners and janitorial supplies which are not regulated by any Environmental Laws); and the proposed location(s) and method of disposal for each Hazardous Material, including, the estimated frequency, and the proposed contractors or subcontractors. Existing tenants should attach a list setting forth the information requested above and such list should include actual data from on-going operations and the identification of any variations in such information from the prior year's certificate.

- Flammable liquid waste: 55 gallon drums every 2 months.

3. Storage Tanks and Sumps

a. Is any above or below ground storage of gasoline, diesel, petroleum, or other Hazardous Materials in tanks or sumps proposed in, on or about the Premises? Existing tenants should describe any such actual or proposed activities.

Yes [x] No [ ]

If Yes, please explain:_____

4. Waste Management

b. Has your company been issued an EPA Hazardous Waste Generator I.D. Number? Existing tenants should describe any additional identification numbers issued since the previous certificate.

Yes [x] No [ ]

If Yes, provide the number(s):_____

c. Has your company filed a biennial or quarterly reports as a hazardous waste generator? Existing tenants should describe any new reports filed.

Yes [x] No [ ]

If Yes, attach a copy of the most recent report filed.

5. Wastewater Treatment and Discharge

d. Will your company discharge wastewater or other wastes to: no storm

drain? no sewer?

no surface water? no no wastewater or other wastes discharged.

Existing tenants should indicate any actual discharges. If so, describe the nature of any proposed or actual discharge(s).___

e. Will any such wastewater or waste be treated before discharge?

Yes [ ] No [x]

If Yes, describe the type of treatment proposed to be conducted. Existing tenants should describe the actual treatment conducted.___

6. Air Discharges

a. Do you plan for any air filtration systems or stacks to be used in your company's operations in, on or about the Premises that will discharge into the air; and will such air emissions be monitored? Existing tenants should indicate whether or not there are any such air filtration systems or stacks in use in, on or about the Premises which discharge into the air and whether such air emissions are being monitored.

Yes [x] No [ ]

If Yes, please describe:

b. Do you propose to operate any of the following types of equipment, or any other equipment requiring an air emissions permit? Existing tenants should specify any such equipment being operated in, on or about the Premises.

__ Spray booth(s) __x Incinerator(s)
__ Dip tank(s) __x Other (please describe)
x__ Drying oven(s) __ No Equipment Requiring Air Permits

If Yes, please describe:____

7. Hazardous Materials Disclosures

c. Has your company prepared or will it be required to prepare a Hazardous Materials management plan ("**Management Plan**") pursuant to Fire Department or other governmental or regulatory agencies' requirements? Existing tenants should indicate whether or not a Management Plan is required and has been prepared.

Yes [x] No [ ]

If Yes, attach a copy of the Management Plan. Existing tenants should attach a copy of any required updates to the Management Plan.

d. Are any of the Hazardous Materials, and in particular chemicals, proposed to be used in your operations, in on or about the Premises regulated under Proposition 65? Existing tenants should

indicate whether or not there are any new Hazardous Materials being so used which are regulated under Proposition 65.

Yes [x] No [ ]

If Yes, please explain:____

8. Enforcement Actions and Complaints

a. With respect to Hazardous Materials or Environmental Laws, has your company ever been subject to any agency enforcement actions, administrative orders, or consent decrees or has your company received requests for information, notice or demand letters, or any other inquiries regarding its operations? Existing tenants should indicate whether or not any such actions, orders or decrees have been, or are in the process of being, undertaken or if any such requests have been received.

Yes [x] No [ ]

If Yes, describe the actions, orders or decrees and any continuing compliance obligations imposed as a result of these actions, orders or decrees and also describe any requests, notices or demands, and attach a copy of all such documents. Existing tenants should describe and attach a copy of any new actions, orders, decrees, requests, notices or demands not already delivered to Landlord pursuant to the provisions of Paragraph 30(a) of the signed Lease.

b. Have there ever been, or are there now pending, any lawsuits against your company regarding any environmental or health and safety concerns?

Yes [ ] No [x]

If Yes, describe any such lawsuits and attach copies of the complaint(s), cross-complaint(s), pleadings and all other documents related thereto as requested by Landlord. Existing tenants should describe and attach a copy of any new complaint(s), cross-complaint(s), pleadings and other related documents not already delivered to Landlord pursuant to the provisions of Paragraph 30(a) of the Lease.___

c. Have there been any problems or complaints from adjacent tenants, owners or other neighbors at your company's current facility(ies) with regard to environmental or health and safety concerns? Existing tenants should indicate whether or not there have been any such problems or complaints from adjacent tenants, owners or other neighbors at, about or near the Premises.

Yes [ ] No [x]

If Yes, please describe. Existing tenants should describe any such problems or complaints not already disclosed to Landlord under the provisions of the Lease.___

9. Permits and Licenses

a. Attach copies of all Hazardous Materials permits and licenses including a Transporter Permit number issued to your company with respect to its proposed operations in, on or about the Premises, including, without limitation, any wastewater discharge permits, air emissions permits, and use permits or approvals. Existing tenants should attach copies of any new permits and licenses as well as any renewals of permits or licenses previously issued.

The undersigned hereby acknowledges and agrees that (A) this Hazardous Materials Disclosure Certificate is being delivered in connection with, and as required by, Landlord in connection with the evaluation and finalization of a Lease and will be attached thereto as an exhibit; (B) that this Hazardous Materials Disclosure Certificate is being delivered in accordance with, and as required by, the provisions of Paragraph 30(a) of the Lease; and (C) that Tenant shall have and retain full and complete responsibility and liability with respect to any of the Hazardous Materials disclosed in the HazMat Certificate notwithstanding Landlord's/Tenant's receipt and/or approval of such Certificate. Tenant further agrees that none of the following described acts or events shall be construed or otherwise interpreted as either (a) excusing, diminishing or otherwise limiting Tenant from the requirement to fully and faithfully perform its obligations under the Lease with respect to Hazardous Materials, including, without limitation, Tenant's indemnification of the Indemnitees and compliance with all Environmental Laws, or (b) imposing upon Landlord, directly or indirectly, any duty or liability with respect to any such Hazardous Materials, including, without limitation, any duty on Landlord to investigate or otherwise verify the accuracy of the representations and statements made therein or to ensure that Tenant is in compliance with all Environmental Laws: (i) the delivery of such Certificate to Landlord and/or Landlord's acceptance of such Certificate, (ii) Landlord's review and approval of such Certificate, (iii) Landlord's failure to obtain such Certificate from Tenant at any time, or (iv) Landlord's actual or constructive knowledge of the types and quantities of Hazardous Materials being used, stored, generated, disposed of or transported on or about the Premises by Tenant or Tenant's representatives. Notwithstanding the foregoing or anything to the contrary contained herein, the undersigned acknowledges and agrees that Landlord and its partners, lenders, agents and representatives may, and will, rely upon the statements, representations, warranties, and certifications made herein and the truthfulness thereof in entering into the Lease and the continuance thereof throughout the Term of the Lease, and any renewals thereof.

I, (print name)___, acting with full authority to bind the (proposed) Tenant and on behalf of the (proposed) Tenant, certify, represent and warrant that the information contained in this Certificate is true and correct.

(Prospective) Tenant:

__, a __

By:__ Name:__ Title:__ Date:__

EXHIBIT E

PROJECT SIGNAGE CRITERIA

[OMITTED]

EXHIBIT F-1

CONTRACTOR RULES AND REGULATIONS

Any and all Alterations, improvements or additions performed by Tenant will be performed in accordance with this Exhibit F-1, and any modifications thereto by Landlord, notwithstanding any more permissive local building codes or ordinances.

1. WORK APPROVAL

The general contractor ("**Contractor**") and all subcontractors must be approved to conduct their trades in the jurisdiction in which the Building is located by any and all governmental entities with such authority. Tenant or Contractor must provide Landlord with names, addresses and phone numbers for all subcontractors prior to commencement of work by the subcontractor. Construction drawings must be approved by Landlord prior to the start of construction. All projects shall be reviewed for potential impact to reduction targets and environmental programs. An agent or representative of Contractor must be present on the site at all times when work is in process.

2. INSURANCE

Prior to commencement of work, Contractor shall provide to Landlord a certificate of insurance in the form of an ACORD certificate with the approved limits of coverage and additional insureds as provided in Sections 21 and 22 of these rules and regulations.

3. PERMITS

Permits and licenses necessary for the onset of all work shall be secured and paid for by Contractor and posted as required by applicable Law.

4. INSPECTIONS

All inspections which must be performed by testing any or all of the life safety system, e.g., alarms, annunciator, voice activated, strobe lights, etc., must be performed prior to 7:00 a.m. or after 6:00 p.m., and the on-site engineer must be present. At least 48 hours' notice must be provided to the Property Manager and the on-site engineer advising that an inspection has been requested.

5. NON-CONSTRUCTION AREAS

Contractor shall take all necessary precautions to protect all areas outside of the work area and shall repair or replace damaged property without cost to Landlord.

6. EROSION AND SEDIMENT CONTROL

Contractor agrees to provide a management plan prior to any exterior ground work being performed to prevent loss of soil during construction by stormwater runoff and/or wind erosion, including protecting topsoil by stockpiling for reuse, preventing sedimentation of storm sewer or receiving streams, and preventing pollution of the air with dust and particulate matter. Contractor shall log building operations and maintenance activity to ensure that the plan has been followed.

7. GREEN BUILDINGS

Contractor agrees to incorporate Sustainability Standards into the preparation of the Plans and Specifications, including, without limitation, those "Energy and Sustainability Construction Guidelines and Requirements" attached hereto as Exhibit F-2, when such compliance will not cause a material increase in Construction Costs.

8. WATER AND ELECTRICITY

Sources of water and electricity will be furnished to Contractor without cost, in reasonable quantities for use in lighting, power tools, drinking water, water for testing, etc. "Reasonable quantities" will be determined on a case- by-case basis, but are generally intended to mean quantities comparable to the water and electrical demand Tenant would use upon taking occupancy. Contractor shall make all connections, furnish any necessary extensions, and remove same upon completion of work.

9. DEMOLITION AND DUSTY WORK

Demolition of an area in excess of 100 square feet must be performed before 7:00 a.m. or after 6:00 p.m. Contractor shall notify the Building engineer's office at least one full business day prior to commencement of extremely dusty work (sheet rock cutting, sanding, extensive sweeping, etc.) so arrangements can be made for additional filtering capacity on the affected HVAC equipment. Failure to make such notification will result in Contractor incurring the costs to return the equipment to its proper condition. All lights must be covered during high dust construction due to a plenum return air system.

10. CONSTRUCTION MANAGEMENT PLAN FOR INDOOR AIR QUALITY

Contractor agrees to develop and implement an Indoor Air Quality (IAQ) Management Plan for the construction and occupancy phases of the area being built out as follows:

- During construction, meet or exceed the recommended Design Approaches of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guideline for Occupied Buildings Under Construction, 1995, Chapter 3.
- Protect stored on-site or installed absorptive materials from moisture damage.
- If air handlers must be used during construction, use filtration media with a Minimum Efficiency Reporting Value (MERV) of 8 at each return air grill, as determined by ASHRAE 52.2-1999.
- Replace all filtration media immediately prior to occupancy.
- Make every reasonable effort to minimize the off-gassing of volatile organic compounds used in construction materials within the Building. Efforts may include the use of no- and low-VOC products and materials, allowing products to off-gas before being brought into the Building, and flushing out the space with outside air or air purifiers.

11. WATER USE EFFICIENCY

Contractor agrees to comply with the following:

- Maintain maximum fixture water efficiency within the Building to reduce the burden on potable water supply and wastewater systems.
- Keep fire systems, domestic water systems, and landscape irrigation systems as separate systems to be maintained and metered separately. Modifications to the water systems must maintain the integrity of these three systems.
- Submeter process water used directly by tenant and for the sole benefit of tenant.
- Irrigation lines are not to be connected to domestic supply lines.

12. REMOVAL OF WASTE MATERIALS

Any and all existing building materials removed and not reused in the construction shall be disposed of by Contractor as waste or unwanted materials, unless otherwise directed by the Property Manager. Contractor shall comply with all Laws and Landlord's waste and recycling practices. Contractor shall at all times keep areas outside the work area free from waste material, rubbish and debris and shall remove waste materials from the Building on a daily basis.

13. CLEANUP

Upon construction completion, Contractor shall remove all debris and surplus material and thoroughly clean the work area and any common areas impacted by the work.

14. HOUSEKEEPING PRACTICES

Contractor agrees to comply with Landlord's cleaning and maintenance practices.

15. MATERIAL SAFETY DATA SHEETS (MSDS)

Contractor agrees to provide the Property Manager with at least 72 hours' advance notice of all chemicals to be used on site through written notice and delivery of MSDS sheets.

16. WORKING HOURS

Standard construction hours are 6:30 a.m. - 5:00 p.m. The Building engineer must be notified at least two full business days in advance of any work that may disrupt normal business operations, e.g., drilling or cutting of the concrete floor slab. The Property Manager reserves the right to determine what construction work is considered inappropriate for normal business hours. Work performed after standard construction hours requires an on-site engineer, who shall be billed at the then overtime rate, payable by Contractor.

17. WORKER CONDUCT

Contractor and subcontractors are to use care and consideration for others in the Building when using any public areas. No abusive language or actions on the part of the workers will be tolerated. It will be the responsibility of Contractor to enforce this regulation on a day-to-day basis. Contractor and subcontractors shall remain in the designated construction area so as not to unnecessarily interrupt other tenants. No sleeveless shirts are allowed. Long pants and proper work shoes are required. All workers must wear company identification.

18. CONSTRUCTION INSPECTIONS

Contractor is to perform a thorough inspection of all common areas to which it requires access prior to construction to document existing Building conditions. Upon completion of work, if necessary, Contractor shall return these areas to the same condition in which they were originally viewed. Any damage caused by Contractor shall be corrected at its sole cost.

19. SIGNAGE

Contractor or subcontractor signage may not be displayed in areas of the Building visible from the exterior of the Premises.

20. POSTING OF RULES AND REGULATIONS

A copy of these rules and regulations must be posted on the job site in a manner allowing easy access by all workers. It is Contractor's responsibility to instruct all workers, including subcontractors, to familiarize themselves with these rules and regulations.

21. INSURANCE REQUIREMENTS

Contractor will provide and maintain at its own expense the following minimum insurance:

(a) Commercial General Liability insurance on an occurrence basis in amounts not less than $2,000,000 ($1,000,000 of which may be in excess umbrella coverage) naming Landlord, the Property Manager and

Invesco Advisers, Inc. as additional insureds for ongoing and completed operations using ISO Forms CG 2010 04/13 and CG 2037 04/13 (or other equivalent forms approved in writing by Landlord).

a. Workers' compensation insurance in amounts required by statute and employer's liability coverage with limits of not less than $500,000 each accident for bodily injury by accident, $500,000 each employee for bodily injury by disease, and $500,000 policy limit for bodily injury by disease.

b. Business Automobile Liability insurance (including owned, non-owned and hired automobiles) on an occurrence basis naming Landlord, the Property Manager and Invesco Advisers, Inc. as additional insureds with limits not less than:

Bodily Injury $1,000,000 each person
$1,000,000 each accident
Property Damage $1,000,000 each accident

c. Umbrella/Excess Liability with limits of not less than $5,000,000 per occurrence in excess of (a-c) above for work considered high hazard in accordance with Invesco Advisers, Inc.'s industry risk matrix (a copy of which is available upon request).

22. CERTIFICATE OF INSURANCE

NAMED INSUREDS: OWNER, THE PROPERTY MANAGER FOR OWNER, INVESCO ADVISERS, INC., AND ANY MORTGAGEE AND/OR GROUND LESSOR OF THE BUILDING AND/OR THE LAND

Certificates of Insurance in the form of an ACORD 25-S certificate evidencing the required coverages and naming the additional insureds as stated MUST be furnished thirty (30) days prior to starting the contract work. Each certificate will contain a provision that no cancellation or material change in the policies will be effective except upon thirty (30) days' prior written notice.

23. EMERGENCY PROCEDURES

In case of an emergency, Contractor shall call the police/fire department and/or medical services, followed immediately by a call to the Property Manager.

24. DELIVERIES

At no time will the Building staff accept deliveries on behalf of Contractor or any subcontractor.

25. CHANGES

THESE CONTRACTOR RULES AND REGULATIONS ARE SUBJECT TO CHANGE AND ARE NOT LIMITED TO WHAT IS CONTAINED HEREIN. LANDLORD AND THE PROPERTY MANAGER RESERVE THE RIGHT TO IMPLEMENT ADDITIONAL RULES AND REGULATIONS AS MAY BE PRUDENT BASED ON EACH INDIVIDUAL PROJECT.

EXHIBIT F-2

ENERGY AND SUSTAINABILITY CONSTRUCTION GUIDELINES AND REQUIREMENTS

Any and all Alterations, improvements, or additions performed by Tenant will be performed in accordance with this Exhibit F-2, and any modifications thereto by Landlord, notwithstanding any more permissive local building codes or ordinances.

HVAC Equipment

- Tenant-installed HVAC and refrigeration equipment and fire suppression systems ***shall not*** contain CFCs.
- Ensure tenant-installed HVAC systems tie into the Building's Building Automation System.
- Avoid the installation of HVAC and refrigeration equipment containing HCFCs when reasonable.

Appliances and Equipment

Install only ENERGY STAR-certified appliances. ***Recommend*** the use of ENERGY STAR-certified office equipment, electronics and commercial food service equipment in all instances where such product is available.

Plumbing

Install only new plumbing fixtures that meet the following:

- Lavatory faucets: 0.5 gallons per minute (GPM) tamper-proof aerators
- Pantry/Kitchenette faucets: 1.5 GPM tamper-proof aerators
- Water closets: 1.28 gallons per flush (GPF)
- Urinals: 0.125 GPF
- Showerheads: Meet the requirements of EPA WaterSense-labeled products
- Commercial Pre-rinse Spray valves (for food service applications): 1.6 or less GPM

Lighting

- ***Recommend*** lighting loads do not exceed ASHRAE/IES Standard 90.1-2010. For example, the Maximum Lighting Power Density for office use is 0.9 watts per square foot; warehouse is 0.66 watts per square foot.

- If the Premises contains regularly occupied office spaces, ***at a minimum***, install occupancy/vacancy sensors with manual override capability in all regularly occupied office spaces. Lighting controls shall be tested prior to occupancy to ensure that control elements are calibrated, adjusted and in proper working condition to achieve optimal energy efficiency.

- ***Recommend*** installation of daylight-responsive controls in all regularly occupied office spaces within 15 feet of windows.

Data Center within the Premises

Tenant may not operate a Data Center within the Premises without the express written consent of Landlord. The term "**Data Center**" shall have the meaning set forth in the U.S. Environmental Protection Agency's ENERGY STAR® program and is a space specifically designed and equipped to meet the needs of high-density computing equipment, such as server racks, used for data storage and processing. The space will have dedicated, uninterruptible power supplies and cooling systems. Data Center functions may include traditional enterprise services, on-demand enterprise services, high-performance computing, internet facilities and/or hosting facilities. A Data Center does not

include space within the Premises utilized as a "server closet" or for a computer training area. In conjunction with the completion and operation of the Data Center, Tenant shall furnish the following information to Landlord:

(1)Within ten (10) days of completion, Tenant shall report to Landlord the total gross floor area (in square feet) of the Data Center measured between the principal exterior surfaces of the enclosing fixed walls and including all supporting functions dedicated for use in the Data Center, such as any raised-floor computing space, server rack aisles, storage silos, control console areas, battery rooms, mechanical rooms for cooling equipment, administrative office areas, elevator shafts, stairways, break rooms and restrooms. If Tenant alters or modifies the area of the Data Center, Tenant shall furnish an updated report to Landlord on the square footage within ten (10) days following completion of the alterations or modifications.

(2)Within ten (10) days following the close of each month of operation of the Data Center, monthly IT Energy Readings at the output of the Uninterruptible Power Supply (UPS), measured in total kWh utilized for the preceding month (as opposed to instantaneous power readings), failing which in addition to same being an Event of Default under the Lease, Tenant shall be obligated to pay to Landlord the Late Reporting Fee referenced in the Lease.

Building Materials

- Architect and general contractor ***shall endeavor*** to specify low-VOC paints, coatings, primers, adhesives, sealants, sealant primers, coatings, stains, finishes and the like. Suggested VOC limits are at the end of this document.
- Architect and general contractor ***shall endeavor*** to specify materials that meet the following criteria:

    - Harvested and processed or extracted and processed within a 500-mile radius of the project site.
    - Contain at least 10% post-consumer or 20% pre-consumer materials.
    - Contain material salvaged from offsite or on-site.
    - Contain rapidly renewable material.
    - Made of wood-based materials, excluding movable furniture, certified as harvested from sustainable sources, specifically Forest Stewardship Council (FSC)-certified wood.
    - Carpet meeting or exceeding the requirements of the CRI Green Label Plus Testing Program and recyclable where available.
    - Carpet cushion meeting or exceeding the requirements of the CRI Green Label Testing Program.
    - Preferably, at least 25% of the hard surface flooring (not carpet) will be FloorScore-certified.
    - Composite wood or agrifiber products shall contain no added urea-formaldehyde resins.

Contractor Practices

- General Contractor ***shall implement*** the Building's Waste Management Plan to reuse, recycle and salvage building materials and waste during both demolition and construction phases.
- General Contractor ***shall implement*** appropriate Indoor Air Quality Protocols for construction activity.

Resources

For actual regulations, rules and standards visit:

SCAQMD BAAQMD
Green Seal

SCAQMD VOC Limits—January 7, 2005

Architectural Coatings	**VOC Limit [g/L less water]**
Clear Wood Finishes - Varnish	350
Clear Wood Finishes - Lacquer	550
Waterproofing Sealers	250
Sanding Sealers	275
All Other Sealers	200
Shellacs - Clear	730
Shellacs - Pigmented	550
All Stains	250

Architectural Applications	**VOC Limit less [g/L water]**	**Specialty Applications**	**VOC Limit less [g/L water]**
Indoor Carpet Adhesives	50	PVC Welding	510
Carpet Pad Adhesives	50	CPVC Welding	490
Wood Flooring Adhesives	100	ABS Welding	325
Rubber Floor Adhesives	60	Plastic Cement Welding	250
Subfloor Adhesives	50	Adhesive Primer for Plastic	550
Ceramic Tile Adhesives	65	Contact Adhesive	80
VCT & Asphalt Adhesives	50	Special Purpose Contact Adhesive	250
Drywall & Panel Adhesives	50	Structural Wood Member Adhesive 140	
Cover Base Adhesives	50	Sheet Applied Rubber Lining Operations	850
Multipurpose Construction Adhesives	70	Top & Trim Adhesive	250
Structural Glazing Adhesives	100		
Single-Ply Roof Membrane Adhesives	250		

Substrate Specific Applications	**VOC Limit less [g/L water]**	**Sealants**	**VOC Limit less [g/L water]**
Metal to Metal	30	Architectural	250
Plastic Foams	50	Nonmembrane Roof	300
Porous Material (except wood)	50	Roadway	250
Wood	30	Single-Ply Roof Membrane	450
Fiberglass	80	Other	420

Sealant Primers	**VOC Limit less [g/L water]**
Architectural Non Porous	250
Architectural Porous	775
Other	750

Green Seal Standard VOC Limits—October 19, 2000

Paints	**VOC Limit (g/L less water)**
Flat	50
Non-flat	150
Anti-corrosive/anti-rust	250

Aerosol Adhesives	VOC Weight (g/L minus water)
General Purpose Mist Spray	65% VOCs by weight
General Purpose Mist Spray	55% VOCs by weight
Special Purpose Aerosol Adhesives (all types)	70% VOCs by weight

BAAQMD VOC Limits—August 2001

Architectural	VOC Limit [g/L less water]	Specialty Applications	VOC Limit [g/L less water]
Indoor Floor Covering Installation	150	Computer Diskette Jacket Manufacturing	850
Multipurpose Construction	200	ABS Welding	400
Nonmembrane Roof Installation/Repair	300	CPVC Welding	490
Outdoor Floor Covering Installation	250	PVC Welding	510
Single-Ply Roof Material Installation/Repair	250	Other Plastic Welding	500
Structural Glazing	100	Thin Metal Laminating	780
Ceramic Tile Installation	130	Tire Retread	100
Cove Base Installation	150	Rubber Vulcanization Bonding	850
Perimeter Bonded Sheet Vinyl Flooring	660	Waterproof Resorcinol Glue	170
		Immersible Product Manufacturing	650
		Top and Trim Installation	540
Adhesive Primers	**VOC Limit [g/L less water]**	**Contact Bond Adhesives**	**VOC Limit [g/L less water]**
Automotive Glass Primer	700	Contact Bond Adhesive	250
Pavement Marking Tape Primer	150	Contact Bond Adhesive – Special Substrates	400
Plastic Welding Primer	650		
Other	250		
Adhesive Projects	**VOC Limit [g/L less water]**	**Sealants**	**VOC Limit [g/L less water]**
Metal	30	Architectural	250
Porous Materials	120	Marine Deck	760
Wood	120	Roadways	250
Pre-formed Rubber Products	250	Single-Ply Roof Material Installation/Repair	450
All Other Substrates	250	Nonmembrane Roof Installation/Repair	300
		Other	420
		Sealant Primers	**VOC Limit [g/L less water]**
		Architectural – Nonporous	250
		Architectural – Porous	775
		Other	750

EXHIBIT G

FORM OF LETTER OF CREDIT

[OMITTED]

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EXHIBIT H

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[OMITTED]

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 March 31, 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: May 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 March 31, 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: May 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 March 31, 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 1934, 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: May 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 1934, 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: May 6, 2021

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