UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarter ended: June 30, 2020

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 Number)
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 Securities Exchange 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 Act). Yes ☐ No ☑

The number of shares of the registrant's common stock outstanding as of July 30, 2020 was as follows:

Class A Common Stock $0.0001 par value 103,162,077 shares

Class B Common Stock $0.0001 par value 29,391,554 shares

Bloom Energy Corporation

Quarterly Report on Form 10-Q for the Three and Six Months Ended June 30, 2020

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

Explanatory Note

As previously disclosed, we restated the relevant unaudited interim condensed consolidated financial statements as of and for the quarterly periods ended September 30, 2019, June 30, 2019, and March 31, 2019. The quarterly restatements are or will be effective with the filing of our 2020 Quarterly Reports on Form 10-Q. See Note 2, *Restatement of Previously Issued Condensed Consolidated Financial Statements*, in Item 1, *Financial Statements*, for additional information related to the restatement of our condensed consolidated financial statements as of and for the three and six months ended June 30, 2019.

Part I

ITEM 1 - FINANCIAL STATEMENTS

Bloom Energy Corporation
Condensed Consolidated Balance Sheets
(in thousands, unaudited)

	June 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents[1]	$ 144,072	$ 202,823
Restricted cash[1]	40,393	30,804
Accounts receivable[1]	49,614	37,828
Inventories	112,479	109,606
Deferred cost of revenue	68,233	58,470
Customer financing receivable[1]	5,254	5,108
Prepaid expenses and other current assets[1]	20,747	28,068
Total current assets	440,792	472,707
Property, plant and equipment, net[1]	601,566	607,059
Customer financing receivable, non-current[1]	48,111	50,747
Restricted cash, non-current[1]	139,664	143,761
Deferred cost of revenue, non-current	6,421	6,665
Other long-term assets[1]	40,989	41,652
Total assets	$ 1,277,543	$ 1,322,591
Liabilities, Redeemable Noncontrolling Interest, Stockholders' Deficit and Noncontrolling Interest		
Current liabilities:		
Accounts payable[1]	$ 64,896	$ 55,579
Accrued warranty	10,175	10,333
Accrued expenses and other current liabilities[1]	88,052	70,284
Deferred revenue and customer deposits[1]	102,944	89,192
Financing obligations	11,603	10,993
Current portion of recourse debt	14,697	304,627
Current portion of non-recourse debt[1]	11,367	8,273
Current portion of recourse debt from related parties	—	20,801
Current portion of non-recourse debt from related parties[1]	—	3,882
Total current liabilities	303,734	573,964
Derivative liabilities[1]	22,281	17,551
Deferred revenue and customer deposits, net of current portion[1]	114,684	125,529
Financing obligations, non-current	440,444	446,165
Long-term portion of recourse debt	347,664	75,962
Long-term portion of non-recourse debt[1]	218,316	192,180
Long-term portion of recourse debt from related parties	53,675	—
Long-term portion of non-recourse debt from related parties[1]	—	31,087
Other long-term liabilities[1]	27,276	28,013
Total liabilities	1,528,074	1,490,451
Commitments and contingencies (Note 14)		
Redeemable noncontrolling interest	118	443
Stockholders' deficit:		
Preferred stock	—	—
Common stock	13	12
Additional paid-in capital	2,747,890	2,686,759
Accumulated other comprehensive income (loss)	(9)	19
Accumulated deficit	(3,064,845)	(2,946,384)
Total stockholders' deficit	(316,951)	(259,594)

Noncontrolling interest	66,302	91,291
Total liabilities, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest	$ 1,277,543	$ 1,322,591

[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 13, Power Purchase Agreement Programs*).

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
		As Restated		As Restated
Revenue:				
Product	$ 116,197	$ 144,081	$ 215,756	$ 235,007
Installation	29,839	13,076	46,457	25,295
Service	26,208	23,026	51,355	46,493
Electricity	15,612	20,143	30,987	40,532
Total revenue	187,856	200,326	344,555	347,327
Cost of revenue:				
Product	83,127	113,228	155,616	202,000
Installation	38,287	17,685	59,066	33,445
Service	28,652	18,763	59,622	46,684
Electricity	11,541	22,300	24,071	35,284
Total cost of revenue	161,607	171,976	298,375	317,413
Gross profit	26,249	28,350	46,180	29,914
Operating expenses:				
Research and development	19,377	29,772	42,656	58,631
Sales and marketing	11,427	18,194	25,376	38,567
General and administrative	24,945	43,662	54,043	82,736
Total operating expenses	55,749	91,628	122,075	179,934
Loss from operations	(29,500)	(63,278)	(75,895)	(150,020)
Interest income	332	1,700	1,151	3,585
Interest expense	(14,374)	(22,722)	(35,128)	(44,522)
Interest expense to related parties	(794)	(1,606)	(2,160)	(3,218)
Other income (expense), net	(3,913)	(222)	(3,921)	43
Loss on extinguishment of debt	—	—	(14,098)	—
Gain (loss) on revaluation of embedded derivatives	412	(540)	696	(1,080)
Loss before income taxes	(47,837)	(86,668)	(129,355)	(195,212)
Income tax provision	141	258	265	466
Net loss	(47,978)	(86,926)	(129,620)	(195,678)
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(5,466)	(5,015)	(11,159)	(8,847)
Net loss attributable to Class A and Class B common stockholders	$ (42,512)	$ (81,911)	(118,461)	(186,831)
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.34)	$ (0.72)	$ (0.95)	$ (1.66)
Weighted average shares used to compute net loss per share attributable to Class A and Class B common stockholders, basic and diluted	125,928	113,622	124,823	112,737

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

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
		As Restated		As Restated
Net loss	$ (47,978)	$ (86,926)	$ (129,620)	$ (195,678)
Other comprehensive income (loss), net of taxes:				
Unrealized gain (loss) on available-for-sale securities	(23)	9	(23)	26
Change in derivative instruments designated and qualifying in cash flow hedges	(503)	(3,502)	(8,717)	(5,693)
Other comprehensive loss, net of taxes	(526)	(3,493)	(8,740)	(5,667)
Comprehensive loss	(48,504)	(90,419)	(138,360)	(201,345)
Less: comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	(5,968)	(8,355)	(19,870)	(14,235)
Comprehensive loss attributable to Class A and Class B stockholders	$ (42,536)	$ (82,064)	$ (118,490)	$ (187,110)

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

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

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

	Three Months Ended June 30, 2019							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Gain (Loss)	Accumulated Deficit	Total Stockholders' Deficit	Noncontrolling Interest
		Shares	Amount					
Balances at March 31, 2019 (as Restated)	$ 58,802	113,214,063	$ 11	$ 2,552,011	$ 5	$ (2,746,890)	$ (194,863)	$ 114,664
Issuance of restricted stock awards	—	543,636	—	—	—	—	—	—
Exercise of stock options	—	191,644	—	828	—	—	828	—
Stock-based compensation expense	—	—	—	51,195	—	—	51,195	—
Unrealized gain on available for sale securities	—	—	—	—	9	—	9	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(162)	—	(162)	(3,340)
Distributions to noncontrolling interests	(3,255)	—	—	—	—	—	—	(1,595)
Mandatory redemption of noncontrolling interests	(55,684)	—	—	—	—	—	—	—
Net income (loss) (as restated)	642	—	—	—	—	(81,911)	(81,911)	(5,657)
Balances at June 30, 2019 (as Restated)	$ 505	113,949,343	$ 11	$ 2,604,034	$ (148)	$ (2,828,801)	$ (224,904)	$ 104,072

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

	Six Months Ended June 30, 2019							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock[1]		Additional Paid-In Capital	Accumulated Other Comprehensive Gain (Loss)	Accumulated Deficit	Total Stockholders' Deficit	Noncontrolling Interest
		Shares	Amount					
Balances at December 31, 2018 (as Restated)	$ 57,261	109,421,183	$ 11	$ 2,481,352	$ 131	$ (2,624,104)	$ (142,610)	$ 125,110
Cumulative effect upon adoption of new accounting standard (Note 3)	—	—	—	—	—	(17,996)	(17,996)	—
Issuance of restricted stock awards	—	3,504,098	—	—	—	—	—	—
ESPP purchase	—	696,036	—	6,916	—	—	6,916	—
Exercise of stock options	—	328,026	—	1,405	—	—	1,405	—
Stock-based compensation expense	—	—	—	114,361	—	—	114,361	—
Unrealized gain on available-for-sale securities	—	—	—	—	26	—	26	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(305)	—	(305)	(5,388)
Distributions to noncontrolling interests	(3,537)	—	—	—	—	—	—	(4,208)
Mandatory redemption of noncontrolling interests	(55,684)	—	—	—	—	—	—	—
Cumulative effect of hedge accounting	—	—	—	—	—	130	130	(130)
Net income (loss) (as restated)	2,465	—	—	—	—	(186,831)	(186,831)	(11,312)
Balances at June 30, 2019 (as Restated)	$ 505	113,949,343	$ 11	$ 2,604,034	$ (148)	$ (2,828,801)	$ (224,904)	$ 104,072

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

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

	Six Months Ended June 30,	
	2020	**2019**
		As Restated
Cash flows from operating activities:		
Net loss	$ (129,620)	$ (195,678)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Depreciation and amortization	25,852	37,034
Write-off of property, plant and equipment, net	—	2,704
Impairment of equity method investment	4,236	—
Write-off of PPA II and PPA IIIb decommissioned assets	—	25,613
Debt make-whole expense	—	5,934
Revaluation of derivative contracts	(72)	1,636
Stock-based compensation	41,650	119,186
Loss on long-term REC purchase contract	2	60
Loss on extinguishment of debt	14,098	—
Amortization of debt issuance and premium cost, net	(470)	11,255
Changes in operating assets and liabilities:		
Accounts receivable	(11,787)	49,741
Inventories	(3,532)	22,197
Deferred cost of revenue	(9,995)	(38,793)
Customer financing receivable and other	2,490	2,713
Prepaid expenses and other current assets	7,314	10,227
Other long-term assets	(3,574)	(272)
Accounts payable	8,831	(5,461)
Accrued warranty	(159)	(6,696)
Accrued expenses and other current liabilities	13,665	5,581
Deferred revenue and customer deposits	2,907	51,913
Other long-term liabilities	(2,071)	4,722
Net cash provided by (used in) operating activities	(40,235)	103,616
Cash flows from investing activities:		
Purchase of property, plant and equipment	(19,560)	(23,619)
Payments for acquisition of intangible assets	—	(970)
Proceeds from maturity of marketable securities	—	104,500
Net cash provided by (used in) investing activities	(19,560)	79,911
Cash flows from financing activities:		
Proceeds from issuance of debt	70,000	—
Proceeds from issuance of debt to related parties	30,000	—
Repayment of debt	(82,248)	(83,997)
Repayment of debt to related parties	(2,105)	(1,220)
Debt make-whole payment	—	(5,934)
Debt issuance costs	(3,371)	—
Proceeds from financing obligations	—	20,333
Repayment of financing obligations	(5,111)	(4,006)
Payments to noncontrolling and redeemable noncontrolling interests	—	(18,690)
Distributions to noncontrolling and redeemable noncontrolling interests	(5,815)	(7,753)
Proceeds from issuance of common stock	5,186	8,321
Net cash provided by (used in) financing activities	6,536	(92,946)
Net increase (decrease) in cash, cash equivalents, and restricted cash	(53,259)	90,581
Cash, cash equivalents, and restricted cash:		

Beginning of period	377,388	280,485
End of period	$ 324,129	$ 371,066
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	$ 34,487	$ 35,702
Cash paid during the period for taxes	224	497
Non-cash investing and financing activities:		
Liabilities recorded for property, plant and equipment	$ 494	$ 4,662
Liabilities recorded for noncontrolling and redeemable noncontrolling interest	—	36,994
Equity investment in PPA II assets	—	27,809
Accrued distributions to Equity Investors	2	566
Accrued interest for notes	—	888
Accrued debt issuance costs	1,220	—
Conversion of notes	41,130	—
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 Condensed Consolidated Financial Statements

1. Nature of Business, Liquidity, Basis of Presentation and Summary of Significant Accounting Policies

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 were originally incorporated in Delaware under the name of Ion America Corporation on January 18, 2001 and on September 16, 2006, we changed our name to Bloom Energy Corporation.

Liquidity

We have generally incurred operating losses and negative cash flows from operations since our inception. On March 31, 2020, we extended the maturity of our current debt to reduce our required debt payments in the next 12 months. After the following debt extensions were completed, the current portion of our total recourse and non-recourse debt was $26.1 million as of June 30, 2020. Notable elements of our debt extension are as follows:

- On March 31, 2020, we entered into an Amendment Support Agreement with the beneficial owners of our outstanding 6% Convertible Notes due December 1, 2020 pursuant to the maturity date of the outstanding 6% Convertible Notes was extended to December 1, 2021, the interest rate increased from 6% to 10%, and the strike price on the conversion feature was reduced from $11.25 to $8.00 per share. The Amendment Support Agreement required that we repay at least $70.0 million of these 10% Convertible Notes on or before September 1, 2020, which we satisfied through a cash payment of $70.0 million on May 1, 2020. The amended terms are reflected in the Amended and Restated Indenture between Bloom and US Bank National Association dated April 20, 2020.
- In conjunction with entering into the Amendment Support Agreement on March 31, 2020, we also entered into a 10% Convertible Note Purchase Agreement with Foris Ventures, LLC, a new Noteholder, and New Enterprise Associates 10, Limited Partnership, an existing Noteholder, and we issued an additional $30.0 million aggregate principal amount of 10% Convertible Notes. The Amended and Restated Indenture was also amended to reflect a new principal amount of $290.0 million to accommodate the additional $30.0 million in new 10% Convertible Notes.
- On March 31, 2020, we entered into an Amended and Restated Subordinated Secured Convertible Note Modification Agreement (the “Constellation Note Modification Agreement”) with Constellation NewEnergy, Inc. (“Constellation”), pursuant to which Constellation agreed to extend the maturity date to December 31, 2021, increase the interest rate from 5% to 10% and reduce the strike price on the conversion feature from $38.64 to $8.00 per share.
- On May 1, 2020, we entered into a note purchase agreement pursuant to which certain investors purchased $70.0 million of 10.25% Senior Secured Notes due 2027 in a private placement. The proceeds from this note were used to extinguish the $70.0 million of 10% Convertible Notes on May 1, 2020.
- On June 18, 2020, Constellation exercised their voluntary conversion feature and exchanged their entire Constellation Note at the conversion price of $8.00 per share into 4.7 million shares of Class A common stock. At the time of this exchange the unamortized premium of $3.4 million was recorded as an adjustment to additional paid-in capital.

The impact of COVID-19 on our ability to execute our business strategy and on our financial position and results of operations is uncertain. Our future cash flow requirements may vary materially from those currently planned and 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, the expansion of sales and marketing activities, market acceptance of our product, our ability to secure financing for customer use, the timing of installations, and overall economic conditions including the impact of COVID-19 on our ongoing and future operations. However, 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, but we may access capital markets opportunistically to continue to improve our capital structure and to address outstanding debt principal repayments that are due in December 2021 if market conditions are favorable.

For additional information, see Note 7, *Outstanding Loans and Security Agreements* and Note 17, *Subsequent Events*.

Basis of Presentation

We have prepared the unaudited 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, the condensed consolidated financial statements do not include all disclosures required by generally accepted accounting principles as applied in the United States ("U.S. GAAP"). However, we believe that the disclosures herein are adequate to ensure the information presented is not misleading. The condensed consolidated balance sheets as of June 30, 2020 and December 31, 2019 (the latter has been derived from the audited consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019), and the condensed consolidated statements of operations, of comprehensive loss, of redeemable noncontrolling interest, total stockholders' deficit and noncontrolling interest, and of cash flows for the periods ended June 30, 2020 and 2019, and related notes, should be read in conjunction with the audited financial statements and the notes thereto included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2019, as filed with the SEC on March 31, 2020.

We believe that all necessary adjustments, which consisted only of normal recurring items, have been included in the accompanying financial statements to fairly state the results of the interim periods. The results of operations for the interim periods presented are not necessarily indicative of the operating results to be expected for any subsequent interim period or for our fiscal year ending December 31, 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 ("VIE"), which we refer to as our power purchase agreement entities ("PPA Entities"). This approach focuses on determining whether we haves 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, other than with respect to the PPA II and PPA IIIb Entities, as discussed in Note 13, *Power Purchase Agreement Programs*. 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 in consolidation.

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, assumptions to compute the fair value of lease and non-lease components and related financing obligations such as incremental borrowing rates, estimated output, efficiency and residual value of the Energy Servers, warranty, product performance guaranties and extended maintenance, derivative valuations, estimates for recapture of U.S. Treasury grants and similar grants, 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 COVID-19 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 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, China, India, and the Republic of Korea (collectively, the "Asia Pacific region"). In the three and six months ended June 30, 2020, total revenue in the Asia Pacific

region was 30% and 33%, respectively, of our total revenue. In the three and six months ended June 30, 2019, total revenue in the Asia Pacific region was 21% and 26%, respectively, of our total revenue.

Credit Risk - At June 30, 2020, one customer, Kaiser Foundation Hospitals, accounted for approximately 26% of accounts receivable. At December 31, 2019, two customers, Costco Wholesale Corporation and The Kraft Group LLC, accounted for approximately 19% and 17% of accounts receivable, respectively. At June 30, 2020 and December 31, 2019, we did not maintain any allowances for doubtful accounts as we deemed all of our receivables fully collectible. To date, we have neither provided an allowance for uncollectible accounts nor experienced any credit loss.

Customer Risk - In the quarter ended June 30, 2020, revenue from three customers, Duke Energy, SK Engineering & Construction Co., Ltd. ("SK E&C") and NextEra Energy, accounted for approximately 32%, 29%, and 12%, respectively, of our total revenue. In the six months ended June 30, 2020, revenue from two customers, SK E&C and Duke Energy, accounted for approximately 32% and 32%, respectively, of our total revenue. In the quarter ended June 30, 2019, revenue from two customers, The Southern Company and SK E&C accounted for approximately 56% and 21%, respectively, of our total revenue. In the six months ended June 30, 2019, revenue from two customers, The Southern Company and SK E&C accounted for approximately 44% and 26%, respectively, of our total revenue. Duke Energy and The Southern Company wholly own a Third-Party PPA which purchases Energy Servers from us, however, such purchases and resulting revenue are made on behalf of various customers of these two Third-Party PPAs.

Summary of Significant Accounting Policies

The significant accounting policies used in preparation of these condensed consolidated financial statements for the periods ended June 30, 2020 are consistent with those discussed in Note 1 to the consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2019, except as described below.

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 2020

Fair Value Measurement - In August 2018, the Financial Accounting Standards Board ("FASB") issued ASU 2018-13, *Fair Value Measurement Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"). ASU 2018-13 has eliminated, amended and added disclosure requirements for fair value measurements. Entities will no longer be required to disclose the amount of, and reasons for, transfers between Level 1 and Level 2 of the fair value hierarchy, the policy of timing of transfers between levels of the fair value hierarchy and the valuation processes for Level 3 fair value measurements. Companies will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. ASU 2018-13 was effective for annual and interim periods beginning after December 15, 2019. Early adoption was permitted. We adopted ASU 2018-13 as of January 1, 2020 and the adoption did not have a material effect on our financial statements and related disclosures.

Stock Compensation - In June 2018, the FASB issued ASU 2018-07, *Compensation - Stock Compensation: Improvements to Nonemployee Share-Based Payment Accounting* ("ASU 2018-07") which aligns the accounting for share-based payment awards issued to employees and nonemployees. Measurement of equity-classified nonemployee awards will now be valued on the grant date and will no longer be remeasured through the performance completion date. ASU 2018-07 also changes the accounting for nonemployee awards with performance conditions to recognize compensation cost when achievement of the performance condition is probable, rather than upon achievement of the performance condition, as well as eliminating the requirement to reassess the equity or liability classification for nonemployee awards upon vesting, except for certain award types. ASU 2018-07 was effective for us for interim and annual reporting periods beginning after December 15, 2019. Early adoption was permitted. We adopted ASU 2018-07 using a modified retrospective approach in January 2020 and the adoption of ASU 2018-07 did not have a material effect on our financial statements and related disclosures.

Accounting Guidance Not Yet Adopted

Leases - In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842), as amended* (“ASC 842”), which provides new authoritative guidance on lease accounting. Among its provisions, the standard changes the definition of a lease, requires lessees to recognize right-of-use assets and lease liabilities on the balance sheet for operating leases and also requires additional qualitative and quantitative disclosures about lease arrangements. All leases in scope will be classified as either operating or financing. Operating and financing leases will require the recognition of an asset and liability to be measured at the

present value of the lease payments. ASC 842 also makes a distinction between operating and financing leases for purposes of reporting expenses on the income statement. We are the lessee under various agreements for facilities and equipment that are currently accounted for as operating leases and expect to continue to enter into new such leases. Additionally, we expect to continue to enter into Managed Services related financing leases in the future and are the lessor of Energy Servers that are subject to power purchase arrangements with customers under our PPA and Managed Services programs that are currently accounted for as leases.

We are currently evaluating the impact of the adoption of this update on our financial statements. We will be assessing the impacts of whether new power purchase arrangements with customers meet the new definition of a lease and recognizing right of use assets and lease liabilities for arrangements currently accounted for as operating leases where we are the lessee. We anticipate that we will no longer be an emerging growth company beginning on December 31, 2020, after which we will not be able to take advantage of the reduced disclosure requirements applicable to emerging growth companies. As a result, we expect to adopt this guidance on a modified retrospective basis on December 31, 2020 and to reflect the adoption as of January 1, 2020 in our annual results for the period ended December 31, 2020.

Financial Instruments - In June 2016, the FASB issued ASU 2016-13, *Financial Instruments- Credit Losses (Topic 326) as amended,* ("Topic 326"), including in February 2020, the FASB issued ASU 2020-02, which provides guidance regarding methodologies, documentation, and internal controls related to expected credit losses. The pronouncement eliminates the incurred credit loss impairment methodology and replaces it with an expected credit loss concept based on historical experience, current conditions, and reasonable and supportable forecasts. Early adoption is permitted. Topic 326 requires a modified retrospective approach by recording a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. We anticipate that we will no longer be an emerging growth company beginning on December 31, 2020, after which we will not be able to take advantage of the reduced disclosure requirements applicable to emerging growth companies. As a result, we expect to adopt this guidance on a modified retrospective basis on December 31, 2020 and reflect the adoption as of January 1, 2020 in our annual results for the period ended December 31, 2020. We are currently evaluating the impact of the adoption of this update on our financial statements.

Income taxes - In December 2019, the FASB issued ASU 2019-12, *Simplifying the Accounting for Income Taxes (Topic 740)* ("ASU 2019-12"), wherein the accounting for income taxes is simplified by eliminating certain exceptions and implementing additional requirements which result in a more consistent application of ASC 740 *Income Taxes*. ASU 2019-12 is effective as for public business entities, for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. We anticipate that we will no longer be an emerging growth company beginning on December 31, 2020, after which we will not be able to take advantage of the reduced disclosure requirements applicable to emerging growth companies. We expect to adopt this guidance on a prospective basis on January 1, 2021. We are evaluating the effect on our financial statements and related disclosures.

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 and exceptions for applying GAAP to contract modifications and hedging relationships, subject to meeting certain criteria, that reference London Interbank Offered Rate ("LIBOR") or another reference rate expected to be discontinued. The amendments in ASU 2020-04 are effective for all entities as of March 12, 2020 through December 31, 2022. An entity may elect to apply the amendments for contract modifications as of any date from the beginning of an interim period that includes or is subsequent to March 12, 2020, or prospectively from a date within an interim period that includes or is subsequent to March 12, 2020, up to the date that the financial statements are available to be issued. We are currently evaluating the impact of the adoption of this update on our financial statements.

We do not expect any other new accounting standards to have a material impact on our financial position, results of operations or cash flows when they become effective.

2. Restatement of Previously Issued Condensed Consolidated Financial Statements

We have restated herein our condensed consolidated financial statements as of and for the three and six months ended June 30, 2019. We have also restated related amounts within the accompanying footnotes to the condensed consolidated financial statements.

Restatement Background

As previously disclosed in our Annual Report on Form 10-K as filed on March 31, 2020, on February 11, 2020, our management, in consultation with the Audit Committee of our Board of Directors, determined that our previously issued consolidated financial statements as of and for the year ended December 31, 2018, as well as financial statements as of and for

the three month period ended March 31, 2019, the three and six month periods ended June 30, 2019 and 2018 and the three and nine month periods ended September 30, 2019 and 2018 should no longer be relied upon due to misstatements related to our Managed Services Agreements and similar arrangements and we would restate such financial statements to make the necessary accounting corrections. The revenue for the Managed Services Agreements and similar transactions will now be recognized over the duration of the contract instead of upfront. The restatement also includes corrections for additional identified immaterial misstatements in certain of the impacted periods.

The misstatements impacting as of and for the three and six months ended June 30, 2019 are described in greater detail below.

Description of Misstatements

Under our Managed Services program, we sell our equipment to a bank financing party under a sale-leaseback transaction, which pays us for the Energy Server and takes title to the Energy Server. We then enter into a service contract with an end customer, who pays the bank a fixed, monthly fee for its use of the Energy Server and pays us for our maintenance and operation of the Energy Server.

The majority of these Managed Services Agreements and similar transactions were originally recorded as sales, subject to an operating lease, in which revenues and associated costs were recognized at the time of installation and acceptance of the Energy Server at the customer site.

In December 2019, in the course of reviewing a Managed Services transaction that closed on November 27, 2019, an issue was identified related to the accounting for our Managed Services transactions. The issue primarily related to whether the terms of our Managed Services Agreements and similar arrangements, including the events of default provisions, satisfied the requirements for sales under the revenue accounting standards. Subsequently, it was determined that the previous accounting for the Managed Services Agreements and similar transactions was misstated, as the Managed Services Agreements and similar transactions should have been accounted for as financing transactions under lease accounting standards.

The impact of the correction of the misstatement is to recognize amounts received from the bank financing party as a financing obligation, and the Energy Server is recorded within property, plant and equipment, net, on our consolidated balance sheets. We recognize revenue for the electricity generated by the systems, based on payments received by the bank from the customer, and the corresponding financing obligations to the bank is also amortized as these payments are received by the bank from the customer, with interest thereon being calculated on an effective interest rate basis. Depreciation expense is also recognized over the estimated useful life of the Energy Server.

In addition, it was determined that stock-based compensation costs relating to manufacturing employees that were previously expensed as incurred incorrectly, should have been capitalized as a component of Energy Server manufacturing costs to inventory, deferred cost of revenues, construction-in-progress and property, plant and equipment in accordance with SEC Staff Accounting Bulletin Topic 14. These costs will now be expensed on consumption of the related inventory and over the economic useful life of the property, plant and equipment, as applicable.

Also, as part of a review of historical revenue agreements as a result of the above errors, it was noted that we failed to identify embedded derivatives in certain revenue agreements for an escalator price protection ("EPP") feature given to our customers. As a result, we have recorded a derivative liability, with an offset to product revenue, to account for the fair value of this feature at inception and will record the liability at its then fair value at each period end with any changes in fair value recognized in gain (loss) on revaluation of embedded derivatives.

In addition to the impact of the restatement described above, in preparation of the condensed consolidated financial statements for the three months ended March 31, 2020, errors in our condensed consolidated statements of comprehensive loss were discovered. For the three and six month periods ended June 30, 2019, the presentation of this statement and other errors identified in this statement have been corrected, which resulted in an additional $5.0 million and $8.8 million increase to comprehensive loss, and an increase of $5.0 million and $8.8 million in comprehensive loss attributable to noncontrolling interest and redeemable noncontrolling interests, respectively. The condensed consolidated statements of comprehensive loss for the three and nine months ended September 30, 2019 will also be corrected when those periods are next reported. In the consolidated statements of comprehensive loss for the years ended December 31, 2019 and 2018, comprehensive loss as previously reported is understated by $5.8 million and overstated by $1.8 million, respectively. In addition, the reconciliation of comprehensive loss to comprehensive loss attributable to Class A and Class B stockholders was erroneously omitted. As it relates to the impact of the errors to the consolidated statements of comprehensive loss for the years ended December 31, 2019 and 2018, management evaluated the impact of the errors to the previously issued financial statements and concluded the impacts were not material. Accordingly, these items are and will be corrected when those periods are next reported.

Finally, there were certain other immaterial misstatements identified or which had been previously identified that are also being corrected in connection with the restatement of previously issued financial statements.

Description of Restatement Reconciliation Tables

In the following tables, we have presented a reconciliation of our condensed consolidated balance sheet and statements of operations and cash flows from our prior periods as previously reported to the restated amounts as of and for the three and six months ended June 30, 2019. In addition to the errors to the condensed consolidated statement of comprehensive loss discussed above, that Statement has been restated for the restatement impact to net loss. The condensed consolidated statement of redeemable noncontrolling interest, total stockholders' deficit and noncontrolling interest for the three and six months ended June 30, 2019 has also been restated for the restatement impact to net loss. See the condensed consolidated statements of operations reconciliation table below for additional information on the restatement impact to net loss.

Bloom Energy Corporation
Condensed Consolidated Balance Sheet
(in thousands)

	June 30, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Assets					
Current assets:					
Cash and cash equivalents	$ 308,009	$ —		$ —	$ 308,009
Restricted cash	23,706	—		—	23,706
Accounts receivable	38,296	4,172	1	(2,430)	40,038
Inventories	104,934	1,955	2	—	106,889
Deferred cost of revenue	86,434	(6,127)	3	—	80,307
Customer financing receivable	5,817	—		—	5,817
Prepaid expenses and other current assets	25,088	1,252	4	143	26,483
Total current assets	592,284	1,252		(2,287)	591,249
Property, plant and equipment, net	406,610	234,649	5	—	641,259
Customer financing receivable, non-current	64,146	—		—	64,146
Restricted cash, non-current	39,351	—		—	39,351
Deferred cost of revenue, non-current	59,213	(55,367)	3	—	3,846
Other long-term assets	60,975	9,118	6	2,743	72,836
Total assets	$ 1,222,579	$ 189,652		$ 456	$ 1,412,687
Liabilities, Redeemable Noncontrolling Interest, Stockholders' Deficit and Noncontrolling Interests					
Current liabilities:					
Accounts payable	$ 61,427	$ —		$ —	$ 61,427
Accrued warranty	12,393	(1,154)	7	(999)	10,240
Accrued expenses and other current liabilities	109,722	(4,329)	8	—	105,393
Financing obligations	—	10,027	9	—	10,027
Deferred revenue and customer deposits	129,321	(13,847)	10	3,264	118,738
Current portion of recourse debt	15,681	—		—	15,681
Current portion of non-recourse debt	7,654	—		—	7,654
Current portion of non-recourse debt from related parties	2,889	—		—	2,889
Total current liabilities	339,087	(9,303)		2,265	332,049
Derivative liabilities	13,079	5,096	11	—	18,175

Deferred revenue and customer deposits, net of current portion	181,221	(95,840)	10	25,369	110,750
Financing obligations, non-current	—	400,078	9	—	400,078
Long-term portion of recourse debt	362,424	—		—	362,424
Long-term portion of non-recourse debt	219,182	—		—	219,182
Long-term portion of recourse debt from related parties	27,734	—		—	27,734
Long-term portion of non-recourse debt from related parties	32,643	—		—	32,643
Other long-term liabilities	58,417	(28,438)	8	—	29,979
Total liabilities	1,233,787	271,593		27,634	1,533,014
Redeemable noncontrolling interest	505	—		—	505
Stockholders' deficit:					
Preferred stock	—	—		—	—
Common stock	11	—		—	11
Additional paid-in capital	2,603,279	755	12	—	2,604,034
Accumulated other comprehensive loss	(148)	—		—	(148)
Accumulated deficit	(2,718,927)	(82,696)		(27,178)	(2,828,801)
Total stockholders' deficit	(115,785)	(81,941)		(27,178)	(224,904)
Noncontrolling interest	104,072	—		—	104,072
Total liabilities, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest	$ 1,222,579	$ 189,652		$ 456	$ 1,412,687

1 Accounts receivable — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements, for which the amount recorded to accounts receivable represents amounts invoiced for capacity billings to end customers which have not yet been collected by the financing entity as of the period end.

2 Inventories — The correction of these misstatements resulted from the change of accounting for inventory, including net capitalization of stock-based compensation cost of $2.0 million.

3 Deferred cost of revenue, current and non-current — The correction of these misstatements resulted from reclassifying deferred cost of revenue to property, plant and equipment, net, for the leased Energy Servers under the Managed Services Agreements and similar sale-leaseback arrangements of $7.4 million (short-term) and $55.4 million (long-term), net capitalization of stock-based compensation costs of $3.7 million into current deferred cost of revenue, and the correction of certain other immaterial misstatements identified to relieve installation deferred cost of revenue of $2.5 million.

4 Prepaid expenses and other current assets — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby prepaid property tax and insurance payments are now classified within prepaid expenses, rather than offset against deferred revenue.

5 Property, plant and equipment, net — The correction of these misstatements resulted from the change of accounting for Managed Services transactions and similar arrangements, whereby product and install cost of revenue are now recorded as property, plant and equipment, net in the cases where the risks of ownership have not completely transferred to the financing party of $230.9 million. This includes a net capitalization of stock-based compensation cost for these assets of $3.7 million.

6 Other long-term assets — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby the timing difference of capacity billings to end customers and the payments received from the financing entity is recorded within long term receivables and prepaid property tax and insurance payments are now classified within other long-term assets, rather than offset against long-term deferred revenue.

7 Accrued warranty — The correction of these misstatements resulted from the change of accounting for accrued warranty, which is now recorded on an as-incurred basis for our Managed Services Agreements and similar arrangements, reducing accrued warranty by $0.2 million and the change of accounting for the grid pricing escalation guarantees we provided in some of our sales arrangements, which are now recorded as derivative liabilities, reducing accrued warranty by $0.9 million.

8 Accrued expense and other current liabilities and other long-term liabilities — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements, for which historical accrued liabilities recorded at inception of the agreements, as well as subsequent reductions of those liabilities, were reversed.

9 Financing obligations, current and non-current — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby instead of recognizing the upfront proceeds received from the bank as revenue, the proceeds received are classified as financing obligations.

10 Deferred revenue and customer deposits, current and non-current — The correction of these misstatements resulted from the change of accounting for the recognition of product and installation revenue from upfront or ratable recognition to recognition of the capacity payments received from the end customer as power is generated by the Energy Servers as electricity revenue.

11 Derivative liabilities — The correction of these misstatements resulted from the change of accounting for embedded derivatives related to grid pricing escalation guarantees we provided in some of our sales arrangements. These are now recorded as derivative liabilities and were previously treated as an accrued liability.

12 Additional paid-in capital — Relates to the correction of an unadjusted misstatement in the valuation of our 6% Notes derivative, resulting in a credit to additional paid-in capital and additional expense of $0.8 million recorded within other expense, net.

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Bloom Energy Corporation
Condensed Consolidated Statement of Operations
(in thousands)

	Three Months Ended June 30, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Revenue:					
Product	$ 179,899	$ (22,757)	a	$ (13,061)	$ 144,081
Installation	17,285	(5,900)	a	1,691	13,076
Service	23,659	(586)	a	(47)	23,026
Electricity	12,939	7,204	a	—	20,143
Total revenue	233,782	(22,039)		(11,417)	200,326
Cost of revenue:					
Product	131,952	(19,005)	c, d	281	113,228
Installation	22,116	(4,431)	c	—	17,685
Service	19,599	920	b, d	(1,756)	18,763
Electricity	18,442	3,858	c	—	22,300
Total cost of revenue	192,109	(18,658)		(1,475)	171,976
Gross profit	41,673	(3,381)		(9,942)	28,350
Operating expenses:					
Research and development	29,772	—		—	29,772
Sales and marketing	18,359	17	e	(182)	18,194
General and administrative	43,662	—		—	43,662

Total operating expenses	91,793	17		(182)	91,628
Loss from operations	(50,120)	(3,398)		(9,760)	(63,278)
Interest income	1,700	—		—	1,700
Interest expense	(16,725)	(5,997)	f	—	(22,722)
Interest expense to related parties	(1,606)	—		—	(1,606)
Other expense, net	(222)	—		—	(222)
Loss on revaluation of warrant liabilities and embedded derivatives	—	(540)	g	—	(540)
Loss before income taxes	(66,973)	(9,935)		(9,760)	(86,668)
Income tax provision	258	—		—	258
Net loss	(67,231)	(9,935)		(9,760)	(86,926)
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(5,015)	—		—	(5,015)
Net loss attributable to Class A and Class B common stockholders	$ (62,216)	$ (9,935)		$ (9,760)	$ (81,911)

a Revenue impacted by Managed Services restatements — The correction of these misstatements resulted from the change from upfront recognition of product and installation revenue to recognition of the capacity payments received from the end customer as power is generated by the Energy Servers as electricity revenue over the term of our Managed Services Agreements and similar sale-leaseback arrangements, which also impacted our service revenue allocation.

b Service cost of revenue impacted by grid pricing escalation guarantees — The correction of these misstatements resulted in a change in the accounting for our grid escalation guarantees that resulted in a decrease in service cost of revenue of $0.1 million.

c Cost of revenue impacted by Managed Services restatements — The correction of these misstatements resulted from the change from upfront recognition of product and installation cost of revenue to recognition of the depreciation expense on the capitalized Energy Servers over their useful life of 21 years for our Managed Services Agreements and similar sale-leaseback transactions, resulting in a decrease in product cost of revenue of $18.1 million and installation cost of revenue of $5.2 million, offset by an increase in electricity cost of revenue of $3.8 million, together with the correction of certain other immaterial misstatements identified to record installation cost of revenue of $0.8 million.

d Cost of revenue impacted by stock-based compensation allocation — The correction of these misstatements resulted from the capitalization of stock-based compensation costs, with a net benefit to product cost of revenue of $0.9 million, and an increase in service cost of revenue of $1.0 million due to the expensing of stock-based compensation related to field replacement units.

e Sales and marketing and general and administrative expenses — The correction of these misstatements primarily resulted from the change of accounting for sales commission expense on an as earned basis, to accounting for the expense over the term of our Managed Services Agreements and similar sale-leaseback arrangements.

f Interest expense — The correction of these misstatements resulted from the change of accounting for sales that should have been accounted for as financing transactions, in which the upfront consideration received from the financing party is accounted for as a financing obligation and interest expense is recognized over the term of the Managed Services Agreement using the effective interest method.

g Gain (loss) on revaluation of warrant liabilities and embedded derivatives — The correction of these misstatements resulted from the change of accounting for the grid pricing escalation guarantees we provided in some of our sales arrangements which is now recorded as a derivative liability that needs to be fair valued each period end. The fair value increased in the period, resulting in a loss of $0.5 million.

Bloom Energy Corporation
Condensed Consolidated Statement of Operations
(in thousands)

	Six Months Ended June 30, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Revenue:					
Product	$ 321,633	$ (70,928)	a	$ (15,698)	$ 235,007
Installation	39,543	(17,095)	a	2,847	25,295
Service	46,949	(1,160)	a	704	46,493
Electricity	26,364	14,168	a	—	40,532
Total revenue	434,489	(75,015)		(12,147)	347,327
Cost of revenue:					
Product	255,952	(53,985)	c, d	33	202,000
Installation	46,282	(12,837)	c	—	33,445
Service	47,156	2,251	b, d	(2,723)	46,684
Electricity	27,671	7,613	c	—	35,284
Total cost of revenue	377,061	(56,958)		(2,690)	317,413
Gross profit	57,428	(18,057)		(9,457)	29,914
Operating expenses:					
Research and development	58,631	—		—	58,631
Sales and marketing	38,822	19	e	(274)	38,567
General and administrative	82,736	—		—	82,736
Total operating expenses	180,189	19		(274)	179,934
Loss from operations	(122,761)	(18,076)		(9,183)	(150,020)
Interest income	3,585	—		—	3,585
Interest expense	(32,687)	(11,835)	f	—	(44,522)
Interest expense to related parties	(3,218)	—		—	(3,218)
Other expense, net	43	—		—	43
Loss on revaluation of warrant liabilities and embedded derivatives	—	(1,080)	g	—	(1,080)
Loss before income taxes	(155,038)	(30,991)		(9,183)	(195,212)
Income tax provision	466	—		—	466
Net loss	(155,504)	(30,991)		(9,183)	(195,678)
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(8,847)	—		—	(8,847)
Net loss attributable to Class A and Class B common stockholders	$ (146,657)	$ (30,991)		$ (9,183)	$ (186,831)

a Revenue impacted by Managed Services restatements — The correction of these misstatements resulted from the change from upfront recognition of product and installation revenue to recognition of the capacity payments received

from the end customer as power is generated by the Energy Servers as electricity revenue over the term of our Managed Services Agreements and similar sale-leaseback arrangements, which also impacted our service revenue allocation.

[b] Service cost of revenue impacted by grid pricing escalation guarantees — The correction of these misstatements resulted in a change in the accounting for our grid escalation guarantees that resulted in a decrease in service cost of revenue of 0.2 million.

[c] Cost of revenue impacted by Managed Services restatements — The correction of these misstatements resulted from the change from upfront recognition of product and installation cost of revenue to recognition of the depreciation expense on the capitalized Energy Servers over their useful life of 21 years for our Managed Services Agreements and similar sale-leaseback transactions, resulting in a decrease in product cost of revenue of $55.6 million and installation cost of revenue of $14.4 million, offset by an increase in electricity cost of revenue of $7.5 million, together with the correction of certain other immaterial misstatements identified to record installation cost of revenue of $1.6 million.

[d] Cost of revenue impacted by stock-based compensation allocation — The correction of these misstatements resulted from the capitalization of stock-based compensation costs, with a net benefit to product cost of revenue of $1.6 million, and an increase in service cost of revenue of $2.4 million due to the expensing of stock-based compensation related to field replacement units.

[e] Sales and marketing and general and administrative expenses — The correction of these misstatements primarily resulted from the change of accounting for sales commission expense on an as earned basis, to accounting for the expense over the term of our Managed Services Agreements and similar sale-leaseback arrangements.

[f] Interest expense — The correction of these misstatements resulted from the change of accounting for sales that should have been accounted for as financing transactions, in which the upfront consideration received from the financing party is accounted for as a financing obligation and interest expense is recognized over the term of the Managed Services Agreement using the effective interest method.

[g] Gain (loss) on revaluation of warrant liabilities and embedded derivatives — The correction of these misstatements resulted from the change of accounting for the grid pricing escalation guarantees we provided in some of our sales arrangements which is now recorded as a derivative liability that needs to be fair valued each period end. The fair value increased in the period, resulting in a loss of $1.1 million.

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

	Six Months Ended June 30, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Cash flows from operating activities:					
Net loss	$ (155,504)	$ (30,991)		$ (9,183)	$ (195,678)
Adjustments to reconcile net loss to net cash provided by operating activities:					
Depreciation and amortization	31,023	6,011	A	—	37,034
Write-off of property, plant and equipment, net	2,704	—		—	2,704
Write-off of PPA II decommissioned costs	25,613	—		—	25,613
Debt make-whole payment	5,934	—		—	5,934
Revaluation of derivative contracts	555	1,081	B	—	1,636
Stock-based compensation	115,100	4,086	C	—	119,186
Loss on long-term REC purchase contract	60	—		—	60
Amortization of debt issuance cost	11,255	—		—	11,255
Changes in operating assets and liabilities:					
Accounts receivable	46,591	(274)	D	3,424	49,741
Inventories	27,542	(5,345)	E	—	22,197
Deferred cost of revenue	19,198	(57,991)	F	—	(38,793)
Customer financing receivable and other	2,713	—		—	2,713
Prepaid expenses and other current assets	8,477	1,752	G	(2)	10,227
Other long-term assets	1,028	(1,029)	H	(271)	(272)
Accounts payable	(5,461)	—		—	(5,461)
Accrued warranty	(6,843)	114	I	33	(6,696)
Accrued expense and other current liabilities	7,213	(1,632)	J	—	5,581
Deferred revenue and customer deposits	(25,411)	71,325	K	5,999	51,913
Other long-term liabilities	3,419	1,303	L	—	4,722
Net cash provided by operating activities	115,206	(11,590)		—	103,616
Cash flows from investing activities:					
Purchase of property, plant and equipment	(18,882)	(4,737)	M	—	(23,619)
Payments for acquisition of intangible assets	(970)	—		—	(970)
Proceeds from maturity of marketable securities	104,500	—		—	104,500
Net cash provided by investing activities	84,648	(4,737)		—	79,911
Cash flows from financing activities:					
Repayment of debt	(83,997)	—		—	(83,997)
Repayment of debt to related parties	(1,220)	—		—	(1,220)
Debt make-whole payment	(5,934)	—		—	(5,934)
Proceeds from financing obligations	—	20,333	N	—	20,333
Repayment of financing obligations	—	(4,006)	N	—	(4,006)
Payments to noncontrolling and redeemable noncontrolling interests	(18,690)	—		—	(18,690)
Distributions to noncontrolling and redeemable noncontrolling interests	(7,753)	—		—	(7,753)
Proceeds from issuance of common stock	8,321	—		—	8,321
Net cash used in financing activities	(109,273)	16,327		—	(92,946)
Net increase in cash, cash equivalents, and restricted cash	90,581	—		—	90,581
Cash, cash equivalents, and restricted cash:					
Beginning of period	280,485	—		—	280,485
End of period	$ 371,066	$ —		$ —	$ 371,066
				—	—
Supplemental disclosure of cash flow information:					
Cash paid during the period for interest	$ 23,867	$ 11,835	N	$ —	$ 35,702
Cash paid during the period for taxes	497	—		—	497

A Depreciation and amortization — The correction of these misstatements resulted from the change of accounting for Energy Servers under our Managed Services Program and similar arrangements that were previously expensed as product and install cost of revenue, but are now recorded as property, plant and equipment, net and depreciated over their useful lives of 21 years.

B Revaluation of derivative contracts — The correction of these misstatements resulted from the change of accounting for the grid pricing escalation guarantees we provided in some of our sales arrangements. These commitments were previously treated as an accrued liability. We now consider the commitments a derivative liability, with the initial value of recorded as a reduction in product revenue and then any changes in the value adjusted through other expense, net, each period thereafter.

C Stock-based compensation — The correction of these misstatements resulted from the change of accounting for stock-based compensation, including net capitalization of stock-based compensation cost into inventory of $4.7 million. The correction of this misstatement also resulted in the capitalization of $0.6 million of stock-based compensation costs related to assets under the Managed Services Programs now recorded as construction in progress within property, plant and equipment, net.

D Accounts receivable — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements, for which the amount recorded to accounts receivable represents amounts invoiced for capacity billings to end customers which have not yet been collected by the financing entity as of the period end.

E Inventories — The correction of these misstatements resulted from the change of accounting for inventories held for shipments planned to customers under our Managed Services Program and similar arrangements now being accounted for as construction in progress within property, plant and equipment, net.

F Deferred cost of revenue, current and non-current — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby leased Energy Servers of $56.5 million previously classified as deferred cost of revenue is now recorded as construction in progress within property, plant and equipment, net, and the net release of stock-based compensation expenses of $1.5 million.

G Prepaid expenses and other current assets — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby prepaid property tax and insurance payments are now classified within prepaid expenses.

H Other long-term assets — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby the timing difference of capacity billings to end customers and the payments received from the financing entity is recorded within long term receivables and prepaid property tax and insurance payments are now classified within other long-term assets, rather than offset against long-term deferred revenue.

I Accrued warranty — The correction of these misstatements resulted from the change of accounting for accrued warranty which is now recorded on an as-incurred basis for our Managed Services Agreements and similar arrangements. The correction of these misstatements resulted from the change of accounting for the grid pricing escalation guarantees we've provided in some of our sales arrangements. These commitments were previously treated as a contingent liability that was considered remote. We now maintain a $0.3 million accrual, with the initial value treated as a reduction in product revenue and then any changes in the value adjusted through other expense, net each period thereafter.

J Accrued expense and other current liabilities and other long-term liabilities — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements whereby instead of recognizing the bank financing as revenue, the bank financing loan proceeds received and due are classified as a financing liability.

K Deferred revenue and customer deposits, current and non-current — The correction of these misstatements resulted from the change of accounting for the recognition of product and installation revenue from upfront or ratable recognition to the recognition of the capacity payments received from the end customer as power is generated by the Energy Servers as electricity revenue.

L Other long-term liabilities — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements whereby instead of recognizing the bank financing as revenue, the bank financing loan proceeds received and due beyond the next 12 months are classified as a financing obligation.

M Purchase of property, plant and equipment — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby costs previously recognized as product and installation cost of revenue are now recorded as property, plant and equipment, net, in the cases where the risks of ownership have not completely transferred to the financing party.

N Proceeds and repayments from financing obligations — The correction of these misstatements resulted from the change of accounting for Managed Services Agreements and similar arrangements, whereby instead of recognizing the upfront proceeds received from the bank as revenue, the proceeds received and due are classified as proceeds from financing obligations and the capacity payments received from the end customer are classified as repayment of financing obligations and interest paid.

3. Revenue Recognition

Deferred Revenue and Customer Deposits

Deferred revenue and customer deposits as of June 30, 2020 and December 31, 2019 consisted of the following (in thousands):

	June 30, 2020	December 31, 2019
Deferred revenue	$ 162,186	$ 168,223
Deferred incentive revenue	7,067	7,397
Customer deposits	48,375	39,101
Deferred revenue and customer deposits	$ 217,628	$ 214,721

Deferred revenue activity during the three and six months ended June 30, 2020 and 2019 consisted of the following (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019 As Restated	2020	2019 As Restated
Beginning balance	$ 170,034	$ 140,734	$ 168,223	$ 140,130
Additions	159,142	189,138	297,254	307,497
Revenue recognized	(166,990)	(171,886)	(303,291)	(289,641)
Ending balance	$ 162,186	$ 157,986	$ 162,186	$ 157,986

Deferred revenue is equivalent to the total transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied, as of the end of the period. The significant component of deferred revenue at the end of the period consists of performance obligations relating to the provision of maintenance services under current contracts and future renewal periods. These obligations provide customers with material rights over a period that we estimate will be largely commensurate with the period of their expected use of the associated Energy Server. As a result, we expect to recognize these amounts as revenue over a period of up to 21 years, predominantly on a cost-to-cost basis that reflects the cost of providing these services. Deferred revenue also includes performance obligations relating to product acceptance and installation. A significant amount of this deferred revenue is reflected as additions and revenue recognized in the same period and we expect to recognize all amounts within a year.

Revenue by source

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019 As Restated	2020	2019 As Restated
Revenue from contracts with customers:				
Product revenue	$ 116,197	$ 144,081	$ 215,756	$ 235,007
Installation revenue	29,839	13,076	46,457	25,295
Services revenue	26,208	23,026	51,355	46,493
Electricity revenue	—	5,110	—	10,840
Total revenue from contract with customers	172,244	185,293	313,568	317,635
Revenue from contracts accounted for as leases:				
Electricity revenue	15,612	15,033	30,987	29,692
Total revenue	$ 187,856	$ 200,326	$ 344,555	$ 347,327

4. Financial Instruments

Cash, Cash Equivalents and Restricted Cash

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

	June 30, 2020	December 31, 2019
As Held:		
Cash	$ 88,092	$ 100,773
Money market funds	236,037	276,615
	$ 324,129	$ 377,388
As Reported:		
Cash and cash equivalents	$ 144,072	$ 202,823
Restricted cash	180,057	174,565
	$ 324,129	$ 377,388

Restricted cash consisted of the following (in thousands):

	June 30, 2020	December 31, 2019
Current:		
Restricted cash	$ 35,073	$ 28,494
Restricted cash related to PPA Entities [1]	5,320	2,310
Restricted cash, current	40,393	30,804
Non-current:		
Restricted cash	51	10
Restricted cash related to PPA Entities [1]	139,613	143,751
Restricted cash, non-current	139,664	143,761
	$ 180,057	$ 174,565

[1] We have variable interest entities that represent a portion of the consolidated balances recorded within the "restricted cash," and other financial statement line items in the consolidated balance sheets (see Note 13, *Power Purchase Agreement Programs*). In addition, the restricted cash held in PPA II and PPA IIIb entities as of June 30, 2020, includes $4.2 million and $0.3 million of current restricted cash, and $104.5 million and $20.0 million of non-current restricted cash, respectively, and these entities are not considered variable interest entities. The restricted cash held in PPA II and PPA IIIb entities as of December 31, 2019, includes $108.7 million and $20.0 million of non-current restricted cash, respectively, and these entities are not considered variable interest entities.

Derivative Instruments

We have derivative financial instruments related to natural gas fixed price forward contracts, embedded derivatives in sales contracts, and interest rate swaps. See Note 8, *Derivative Financial Instruments* for a full description of our derivative financial instruments.

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 were accounted for at fair value for the respective periods. The table does not include assets and liabilities that are measured at historical cost or any basis other than fair value (in thousands):

	Fair Value Measured at Reporting Date Using			
June 30, 2020	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 236,037	$ —	$ —	$ 236,037
	$ 236,037	$ —	$ —	$ 236,037
Liabilities				
Accrued expenses and other current liabilities	$ 1,451	$ —	$ —	$ 1,451
Derivatives:				
Natural gas fixed price forward contracts	—	—	5,185	5,185
Embedded EPP derivatives	—	—	5,480	5,480
Interest rate swap agreements	—	17,881	—	17,881
	$ 1,451	$ 17,881	$ 10,665	$ 29,997

	Fair Value Measured at Reporting Date Using			
December 31, 2019	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 276,615	$ —	$ —	$ 276,615
Interest rate swap agreements	—	3	—	3
	$ 276,615	$ 3	$ —	$ 276,618
Liabilities				
Accrued expenses and other current liabilities	$ 996	$ —	$ —	$ 996
Derivatives:				
Natural gas fixed price forward contracts	—	—	6,968	6,968
Embedded EPP derivatives	—	—	6,176	6,176
Interest rate swap agreements	—	9,241	—	9,241
	$ 996	$ 9,241	$ 13,144	$ 23,381

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 June 30, 2020, $2.0 million of the loss on the interest rate swaps accumulated in other comprehensive income (loss) is expected to be reclassified into earnings in the next 12 months.

Natural Gas Fixed Price Forward Contracts - Natural gas fixed price forward contracts are 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 are available, are classified as Level 3 liabilities.

The following table provides the number and fair value of our natural gas fixed price forward contracts (in thousands):

	June 30, 2020		December 31, 2019	
	Number of Contracts (MMBTU)[2]	Fair Value	Number of Contracts (MMBTU)[2]	Fair Value
Liabilities[1]:				
Natural gas fixed price forward contracts (not under hedging relationships)	1,407	$ 5,185	1,991	$ 6,968

[1] Recorded in current liabilities and derivative liabilities in the consolidated balance sheets.

[2] One MMBTU is a traditional unit of energy used to describe the heat value (energy content) of fuels.

For the three months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contracts and recorded an unrealized loss of $0.1 million and an unrealized loss of $1.1 million, respectively. For the three months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contracts and recorded a realized gain of $1.5 million and a realized gain of $1.1 million, respectively, on the settlement of these contracts in cost of revenue on our condensed consolidated statement of operations.

For the six months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contracts and recorded an unrealized loss of $0.7 million and an unrealized loss of $0.7 million, respectively. For the six months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contracts and recorded a realized gain of $2.5 million and a realized gain of $1.6 million, respectively, on the settlement of these contracts in cost of revenue on our condensed consolidated statement of operations.

Embedded EPP Derivative Liability in Sales Contracts - We estimated the fair value of the embedded EPP derivatives in certain sales contracts using a Monte Carlo simulation model which considers various potential electricity price curves over the sales contracts' terms. We use historical grid prices and available forecasts of future electricity prices to estimate future electricity prices. We have classified these derivatives as a Level 3 financial liability. For the three months ended June 30, 2020 and 2019, we marked-to-market the fair value of our embedded EPP derivatives and recorded an unrealized gain of $0.4 million and an unrealized loss of $0.5 million, respectively, in gain (loss) on revaluation of embedded derivatives on our condensed consolidated statement of operations.

For the six months ended June 30, 2020 and 2019, we marked-to-market the fair value of our embedded EPP derivatives and recorded an unrealized loss of $0.7 million and an unrealized loss of $1.1 million, respectively, in gain (loss) on revaluation of embedded derivatives on our condensed consolidated statement of operations.

There were no transfers between fair value measurement classifications during the three and six months ended June 30, 2020 and 2019. The changes in the Level 3 financial liabilities 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	(2,478)	—	(2,478)
Changes in fair value	695	(696)	(1)
Liabilities at June 30, 2020	$ 5,185	$ 5,480	$ 10,665

The following table presents the unobservable inputs related to our Level 3 liabilities:

	As of June 30, 2020					
Commodity Contracts	Derivative Liabilities	Valuation Technique	Unobservable Input	Units	Range	Average
	(in thousands)				($ per Units)	
Natural Gas	$ 5,185	Discounted Cash Flow	Forward basis price	MMBtu	$2.25 - $4.62	$ 3.07

	As of December 31, 2019					
Commodity Contracts	Derivative Liabilities	Valuation Technique	Unobservable Input	Units	Range	Average
	(in thousands)				($ per Units)	
Natural Gas	$ 6,968	Discounted Cash Flow	Forward basis price	MMBtu	$2.39 - $5.65	$ 3.23

The unobservable inputs used in the fair value measurement of the natural gas commodity types consist of inputs that are less observable due in part to lack of available broker quotes, supported by little, if any, market activity at the measurement date or are based on internally developed models. Certain basis prices (i.e., the difference in pricing between two locations) included in the valuation of natural gas contracts were deemed unobservable.

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 June 30, 2020 and December 31, 2019, 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 year 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 shall be 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 - We estimate fair value for customer financing receivables, senior secured notes, term loans and convertible promissory notes based on rates currently offered for instruments with similar maturities and terms (Level 3). The following table presents the estimated fair values and carrying values of customer receivables and debt instruments (in thousands):

	June 30, 2020		December 31, 2019	
	Net Carrying Value	Fair Value	Net Carrying Value	Fair Value
Customer receivables				
Customer financing receivables	$ 53,365	$ 44,157	$ 55,855	$ 44,002
Debt instruments				
Recourse:				
LIBOR + 4% term loan due November 2020	697	713	1,536	1,590
5% convertible promissory Constellation note due December 2021	—	—	36,482	32,070
10% convertible promissory notes due December 2021[1]	263,405	411,448	273,410	302,047
10% notes due July 2024	83,497	83,977	89,962	97,512
10.25% senior secured notes due March 2027	68,437	63,690	—	—
Non-recourse:				
7.5% term loan due September 2028	32,645	37,651	34,969	41,108
6.07% senior secured notes due March 2030	78,565	89,032	80,016	87,618
LIBOR + 2.5% term loan due December 2021	118,473	117,855	120,436	120,510

[1]The fair value on the 10% convertible notes increased due to the increase in the fair value of the conversion feature.

Long-Lived Assets - Our long-lived assets include property, plant and equipment and Energy Servers capitalized in connection with our Managed Services Program, Purchase Power Agreement Programs and other similar arrangements. The carrying amounts of our long-lived assets are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than originally estimated.

During the six months ended June 30, 2020, we upgraded 0.4 megawatts of Energy Servers in PPA IIIb by decommissioning these systems and selling and installing new Energy Servers. As a result of these upgrades, the useful lives of all other remaining Energy Servers included within our long-lived assets were reassessed and we concluded that no change in the useful lives or impairment of these remaining Energy Servers was identified in the period ended June 30, 2020. See Note 13, *Purchase Power Agreement Programs* for further information.

6. Balance Sheet Components

Inventories

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

	June 30, 2020	December 31, 2019
Raw materials	$ 70,555	$ 67,829
Work-in-progress	25,075	21,207
Finished goods	16,849	20,570
	$ 112,479	$ 109,606

The inventory reserves were $14.0 million and $14.6 million as of June 30, 2020 and December 31, 2019, respectively. In addition, we held Energy Server product inventory at customer locations pending installation and acceptance of $24.0 million and $14.6 million as of June 30, 2020 and December 31, 2019, respectively. As this Energy Server inventory was shipped to customer locations as a result of a signed sales contract, but where title has not transferred until acceptance occurs, these balances are recorded as deferred cost of revenues on the consolidated balance sheets.

Prepaid Expenses and Other Current Assets

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

	June 30, 2020	December 31, 2019
Government incentives receivable	$ 832	$ 893
Prepaid maintenance	3,158	3,763
Receivables from employees	6,089	6,130
Other prepaid expenses and other current assets	10,668	17,282
	$ 20,747	$ 28,068

Property, Plant and Equipment, Net

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

	June 30, 2020	December 31, 2019
Energy Servers	$ 648,273	$ 650,600
Computers, software and hardware	20,884	20,275
Machinery and equipment	103,892	101,650
Furniture and fixtures	8,313	8,339
Leasehold improvements	35,784	35,694
Building	46,686	40,512
Construction in progress	22,633	12,611
	886,465	869,681
Less: Accumulated depreciation	(284,899)	(262,622)
	$ 601,566	$ 607,059

Construction in progress increased $10.0 million from 2019, primarily due to an increase of $13.5 million of Energy Servers under our Managed Services sale-leaseback program pending acceptance, partially offset by $3.5 million primarily due to completion of Delaware plant expansion.

Depreciation expense related to property, plant and equipment was $12.8 million and $22.5 million for the three months ended June 30, 2020 and 2019, respectively. Depreciation expense related to property, plant and equipment was $25.9 million and $36.4 million for the six months ended June 30, 2020 and 2019, respectively.

Property, plant and equipment under operating leases by the PPA Entities was $368.0 million and $371.4 million as of June 30, 2020 and December 31, 2019, respectively. The accumulated depreciation for these assets was $104.2 million and $95.5 million as of June 30, 2020 and December 31, 2019, respectively. Depreciation expense related to our property, plant and equipment under operating leases by the PPA Entities was $5.9 million and $6.4 million for the three months ended June 30, 2020 and 2019, respectively. Depreciation expense related to our property, plant and equipment under operating leases by the PPA Entities was $12.1 million and $12.7 million for the six months ended June 30, 2020 and 2019, respectively.

Customer Financing Receivable

The components of investment in sales-type financing leases consisted of the following (in thousands):

	June 30, 2020	December 31, 2019
Total minimum lease payments to be received	$ 73,015	$ 76,886
Less: Amounts representing estimated executory costs	(18,759)	(19,931)
Net present value of minimum lease payments to be received	54,256	56,955
Estimated residual value of leased assets	890	890
Less: Unearned income	(1,781)	(1,990)
Net investment in sales-type financing leases	53,365	55,855
Less: Current portion	(5,254)	(5,108)
Non-current portion of investment in sales-type financing leases	$ 48,111	$ 50,747

The future scheduled customer payments from sales-type financing leases were as follows as of June 30, 2020 (in thousands):

	Remainder of 2020	2021	2022	2023	2024	Thereafter
Future minimum lease payments, less interest	$ 2,618	$ 5,428	$ 5,784	$ 6,155	$ 6,567	$ 25,923

Other Long-Term Assets

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

	June 30, 2020	December 31, 2019
Prepaid and other long-term assets	$ 30,862	$ 29,153
Deferred commissions	6,143	5,007
Equity-method investments	2,119	5,733
Long-term deposits	1,865	1,759
	$ 40,989	$ 41,652

Accrued Warranty

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

	June 30, 2020	December 31, 2019
Product warranty	$ 3,156	$ 2,345
Product performance	6,275	7,535
Maintenance services contracts	744	453
	$ 10,175	$ 10,333

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

Balances at December 31, 2019	$ 9,881
Accrued warranty, net	4,164
Warranty expenditures during period	(4,614)
Balances at June 30, 2020	$ 9,431

Accrued Expenses and Other Current Liabilities

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

	June 30, 2020	December 31, 2019
Compensation and benefits	$ 22,678	$ 17,173
Current portion of derivative liabilities	6,265	4,834
Sales related liabilities	393	416
Accrued installation	12,185	10,348
Sales tax liabilities	3,190	3,849
Interest payable	5,664	3,875
Accrued payables	26,640	18,650
Other	11,037	11,139
	$ 88,052	$ 70,284

Other Long-Term Liabilities

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

	June 30, 2020	December 31, 2019
Delaware grant	$ 10,469	$ 10,469
Other	16,807	17,544
	$ 27,276	$ 28,013

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. We have received $12.0 million of the grant which is contingent upon us meeting certain milestones related to the construction of the manufacturing facility and the employment of full-time workers at the facility through September 30, 2023. We paid $1.5 million in 2017 for recapture provisions, and no additional amounts have been paid. As of June 30, 2020, we have recorded $10.5 million in other long-term liabilities for potential repayments. See Note 14, *Commitments and Contingencies* for a full description of the grant.

7. Outstanding Loans and Security Agreements

The following is a summary of our debt as of June 30, 2020 (in thousands):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity	Interest Rate	Maturity Dates	Entity	Recourse
		Current	Long-Term	Total					
LIBOR + 4% term loan due November 2020	$ 714	$ 697	$ —	$ 697	$ —	LIBOR plus margin	November 2020	Company	Yes
10% convertible promissory notes due December 2021	249,299	—	263,405	263,405	—	10.0%	December 2021	Company	Yes
10% notes due July 2024	86,000	14,000	69,497	83,497	—	10.0%	July 2024	Company	Yes
10.25% senior secured notes due March 2027	70,000	—	68,437	68,437	—	10.25%	March 2027	Company	Yes
Total recourse debt	406,013	14,697	401,339	416,036	—				
7.5% term loan due September 2028	35,675	2,567	30,078	32,645	—	7.5%	September 2028	PPA IIIa	No
6.07% senior secured notes due March 2030	79,466	3,511	75,054	78,565	—	6.1%	March 2030	PPA IV	No
LIBOR + 2.5% term loan due December 2021	119,472	5,289	113,184	118,473	—	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	234,613	11,367	218,316	229,683	968				
Total debt	$ 640,626	$ 26,064	$ 619,655	$ 645,719	$ 968				

The following is a summary of our debt as of December 31, 2019 (in thousands):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity	Interest Rate	Maturity Dates	Entity	Recourse
		Current	Long-Term	Total					
LIBOR + 4% term loan due November 2020	$ 1,571	$ 1,536	$ —	$ 1,536	$ —	LIBOR plus margin	November 2020	Company	Yes
5% convertible promissory note due December 2020	33,104	36,482	—	36,482	—	5.0%	December 2020	Company	Yes
6% convertible promissory notes due December 2020	289,299	273,410	—	273,410	—	6.0%	December 2020	Company	Yes
10% notes due July 2024	93,000	14,000	75,962	89,962	—	10.0%	July 2024	Company	Yes
Total recourse debt	416,974	325,428	75,962	401,390	—				
7.5% term loan due September 2028	38,337	3,882	31,087	34,969	—	7.5%	September 2028	PPA IIIa	No
6.07% senior secured notes due March 2030	80,988	3,151	76,865	80,016	—	6.1%	March 2030	PPA IV	No
LIBOR + 2.5% term loan due December 2021	121,784	5,122	115,315	120,437	—	LIBOR plus margin	December 2021	PPA V	No
Letters of Credit due December 2021	—	—	—	—	1,220	2.25%	December 2021	PPA V	No
Total non-recourse debt	241,109	12,155	223,267	235,422	1,220				
Total debt	$ 658,083	$ 337,583	$ 299,229	$ 636,812	$ 1,220				

Recourse debt refers to debt that Bloom Energy Corporation has an obligation to pay. Non-recourse debt refers to debt that is recourse to only specified assets or our subsidiaries. The differences between the unpaid principal balances and the net carrying values apply to debt discounts and deferred financing costs. We were in compliance with all financial covenants as of June 30, 2020 and December 31, 2019.

Recourse Debt Facilities

LIBOR + 4% Term Loan due November 2020 - The weighted average interest rate as of June 30, 2020 and December 31, 2019 was 4.5% and 6.3%, respectively. As of June 30, 2020 and December 31, 2019, the unpaid principal balance of debt outstanding was $0.7 million and $1.6 million, respectively, and we are in compliance with all covenants, respectively.

10% Constellation Convertible Promissory Note due 2021 - On March 31, 2020, we entered into an Amended and Restated Subordinated Secured Convertible Note Modification Agreement (the "Constellation Note Modification Agreement")

which amended the terms of the 5% Constellation Note to extend the maturity date to December 31, 2021 and increased the interest rate from 5% to 10% ("10% Constellation Note"). We further amended the 10% Constellation Note by reducing the strike price on the conversion feature from $38.64 per share to $8.00 per share.

When we evaluated the Constellation Note Modification Agreement in accordance with ASC 470-60, *Debt - Troubled Debt Restructurings by Debtors* ("ASC 470-60") and ASC 470-50, *Debt - Modifications and Extinguishments* ("ASC 470-50"), we concluded that the amendment did not constitute a troubled debt restructuring and, furthermore, the amendment qualified as a substantial modification as a result of the increase in the fair value of the conversion feature due to the reduced strike price. As a result, on March 31, 2020, the 10% Constellation Note, which consisted of $33.1 million in principal and $3.8 million in accrued and unpaid interest, was extinguished and the 10% Constellation Note was recorded at their fair market value which equaled $40.7 million. The difference between the fair market value of the 10% Constellation Note and the carrying value of the 5% Constellation Note of $3.8 million was recorded as a loss on extinguishment of debt in the condensed consolidated statement of operations.

On June 18, 2020, Constellation NewEnergy, Inc. exchanged their entire 10% Constellation Note at the conversion price of $8.00 per share into 4.7 million shares of Class A common stock. At the time of this exchange the unamortized premium of $3.4 million was recorded as an adjustment to additional paid-in capital.

10% Convertible Promissory Notes due December 2021 - On March 31, 2020, we entered into an Amendment Support Agreement (the "Amendment Support Agreement") with the noteholders of our outstanding 6% Convertible Notes pursuant to which such Noteholders agreed to extend the maturity date of the outstanding 6% Convertible Notes to December 1, 2021 and increase the interest rate from 6% to 10%, ("10% Convertible Notes"). Additionally, the debt is convertible at the option of the Noteholders into common stock at any time through the maturity date and we further amended the 10% Convertible Notes by reducing the strike price on the conversion feature from $11.25 to $8.00 per share. In conjunction with entering into the Amendment Support Agreement, on March 31, 2020, we also entered into a Convertible Note Purchase Agreement (the "10% Convertible Note Purchase Agreement") and issued an additional $30.0 million aggregate principal amount of 10% Convertible Notes to Foris Ventures, LLC, a new Noteholder, and New Enterprise Associates 10, Limited Partnership, an existing Noteholder. The 10% Convertible Notes and the $30.0 million new 10% Convertible Notes were all reflected in the Amended and Restated Indenture between the Company and U.S. Bank National Association dated April 20, 2020. The Amendment Support Agreement required that we repay at least $70.0 million of the 10% Convertible Notes on or before September 1, 2020. In return, collateral was released to support the collateral required under the 10.25% Senior Secured Notes, and 50% of the proceeds from the consummation of certain transactions, including equity offerings or additional indebtedness, will be applied to redeem the 10% Convertible Notes at a redemption price equal to 100% of the principal amount of the 10% Convertible Notes, plus accrued and unpaid interest, the aggregate sum of all remaining scheduled interest payments, discounted by a rate equal to the treasury rate plus fifty basis points, multiplied by a certain percentage ("Applicable Percentage") that ranges from 0% to 100% which is determined based on the time of redemption. If the redemption were to occur on or before October 21, 2020, the Applicable Percentage would be 0% and therefore no redemption penalty would be incurred. If the redemption were to happen after October 21, 2020, the Applicable Percentage would be between 25% and 100%, determined based on the time of redemption. On May 1, 2020, we repaid $70.0 million of the 10% Convertible Notes and accrued and unpaid interest and recorded an adjustment to the unamortized debt premium of $4.3 million.

We evaluated the Amendment Support Agreement in accordance with ASC 470-60 and 470-50 and concluded that the amendment did not constitute a troubled debt restructuring and, furthermore, the amendment qualified as a substantial modification as a result of the increase in the fair value of the conversion feature due to the reduced strike price. As a result, on March 31, 2020, we recorded a $10.3 million loss on extinguishment of debt in the condensed consolidated statement of operations, which was calculated as the difference between the reacquisition price of the 6% Convertible Notes and the carrying value of the 6% Convertible Notes. The total carrying value of the 6% Convertible Notes equaled $279.0 million, which consisted of $289.3 million in principal and $1.4 million in accrued and unpaid interest, reduced by $10.7 million in unamortized discount and $1.0 million in unamortized debt issuance costs. The total reacquisition price of the 6% Convertible Notes equaled $289.3 million which consisted of the $340.7 million fair value of the 10% Convertible Notes, $1.4 million in accrued and unpaid interest, and $1.2 million of fees paid to Noteholders as part of the amendment, reduced by $24.0 million, the fair value at March 31, 2020 of the embedded derivative relating to the equity classified conversion feature was reclassified from additional paid-in capital at the time of the debt extinguishment, $20.0 million cash received from the additional 10% Convertible Notes that were issued to New Enterprise Associates 10, Limited Partnership, and the $10.0 million issuance to Foris Ventures, LLC.

The new net carrying amount of the 10% Convertible Notes of $263.4 million, which consists of the $249.3 million principal of the 10% Convertible Notes, $14.1 million net of premium paid for the 10% Convertible Notes and debt issuance

costs was classified as non-current as of June 30, 2020. Furthermore, the $14.1 million deemed premium net of debt issuance cost is being amortized over the term of the 10% Convertible Notes using the effective interest method.

10% Notes due July 2024 - The outstanding unpaid principal balance of the 10% Notes of $14.0 million and $14.0 million were classified as current as of June 30, 2020 and December 31, 2019, respectively, and the net carrying amount of the 10% Notes of $69.5 million and $76.0 million were classified as non-current as of June 30, 2020 and December 31, 2019, respectively. The accrued unpaid interest balance on the 10% Notes was $3.6 million and $3.9 million as on June 30, 2020 and December 31, 2019, respectively.

10.25% Senior Secured Notes due March 2027 - On May 1, 2020, we issued $70.0 million of 10.25% Senior Secured Notes due 2027 (the "10.25% Senior Secured Notes") in a private placement (the "Senior Secured Notes Private Placement"). The 10.25% Senior Secured Notes are governed by an indenture (the "Senior Secured Notes Indenture") entered into among us, the guarantors 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 on May 1, 2020. The 10.25% Senior Secured Notes are supported by a $150.0 million indenture between us and US Bank National Association which contains an accordion feature for an additional $80.0 million of notes that can be issued within the next 18 months.

Interest on the 10.25% Senior Secured Notes is payable on March 31, June 30, September 30 and December 31 of each year, 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 June 30, 2020.

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 help 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 June 30, 2020 and December 31, 2019, respectively, and 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 2025 - 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 notes are secured by all the assets of the PPA IV. The note purchase agreement requires us to maintain a debt service reserve, the balance of which was $8.3 million as of June 30, 2020 and $8.0 million as of December 31, 2019, and 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 - The outstanding debt balance of the Term Loan of $5.3 million and $5.1 million were classified as current and $113.2 million and $115.3 million were classified as non-current as of June 30, 2020 and December 31, 2019, respectively.

In accordance with the credit agreement, PPA V was issued a 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.

Letters of Credit due December 2021 - In June 2015, PPA V entered into a $131.2 million term loan due December 2021. The agreement also included commitments to a LC facility with the aggregate principal amount of $6.4 million, later adjusted down to $6.2 million. The amount reserved under the letter of credit as of June 30, 2020 and December 31, 2019 was $5.2 million and $5.0 million, respectively. The unused capacity as of June 30, 2020 and December 31, 2019 was $1.0 million and $1.2 million, respectively.

Related Party Debt

Portions of the above described recourse and non-recourse debt are held by various related parties. See Note 16, *Related Party Transactions* for a full description.

Repayment Schedule and Interest Expense

The following table presents detail of our outstanding loan principal repayment schedule as of June 30, 2020 (in thousands):

Remainder of 2020	$	20,373
2021		395,201
2022		38,480
2023		44,768
2024		39,615
Thereafter		102,189
	$	640,626

Interest expense of $15.2 million and $24.3 million for the three months ended June 30, 2020 and 2019, respectively, was recorded in interest expense on the condensed consolidated statements of operations. Interest expense of $37.3 million and $47.7 million for the six months ended June 30, 2020 and 2019, respectively, was recorded in interest expense on the condensed consolidated statements of operations.

8. Derivative Financial Instruments

Interest Rate Swaps

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

The fair values of the derivatives designated as cash flow hedges as of June 30, 2020 and December 31, 2019 on our condensed consolidated balance sheets were as follows (in thousands):

		June 30, 2020		December 31, 2019
Assets				
Prepaid expenses and other current assets	$	—	$	3
	$	—	$	3
Liabilities				
Accrued expenses and other current liabilities	$	2,098	$	782
Derivative liabilities		15,783		8,459
	$	17,881	$	9,241

PPA Company V - In July 2015, PPA Company 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 21, 2021 and the remaining three will mature on September 30, 2031. We evaluate and calculate the effectiveness of the hedge at each reporting date. The effective change was

recorded in accumulated other comprehensive income (loss) and was recognized as interest expense on settlement. The notional amounts of the swaps were $183.2 million and $184.2 million as of June 30, 2020 and December 31, 2019, 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 recorded a gain of $35,600 and a gain of $36,000 attributable to the change in valuation during the three months ended June 30, 2020 and 2019, respectively, and were included in other income (expense), net in the condensed consolidated statements of operations. We recorded a gain of $71,000 and a gain of $12,000 attributable to the change in valuation during the six months ended June 30, 2020 and 2019, respectively, and were included in other income (expense), net in the condensed consolidated statement 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 were as follows (in thousands):

	Three Months Ended June 30,		Six months ended June 30,	
	2020	2019	2020	2019
Beginning balance	$ 17,415	$ 5,692	$ 9,238	$ 3,548
Loss recognized in other comprehensive loss	928	3,460	9,284	5,590
Amounts reclassified from other comprehensive loss to earnings	(425)	42	(567)	103
Net loss recognized in other comprehensive loss	503	3,502	8,717	5,693
Gain recognized in earnings	(37)	(48)	(74)	(95)
Ending balance	$ 17,881	$ 9,146	$ 17,881	$ 9,146

For the three months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contract and recorded an unrealized loss of $0.1 million and an unrealized loss of $1.1 million, respectively. For the six months ended June 30, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contract and recorded an unrealized loss of $0.7 million and an unrealized loss of $0.7 million, respectively.

For the three months ended June 30, 2020 and 2019, we recorded a realized gain of $1.5 million and realized gain of $1.1 million, respectively, on the settlement of these contracts. Gains and losses are recorded in cost of revenue on the condensed consolidated statement of operations. For the six months ended June 30, 2020 and 2019, we recorded a realized gain of $2.5 million and realized gain of $1.6 million, respectively, on the settlement of these contracts. Gains and losses are recorded in cost of revenue on the condensed consolidated statement of operations.

Embedded EPP Derivatives in Sales Contracts

Embedded EPP Derivatives in Sales Contracts - We estimated the fair value of the embedded EPP derivatives in certain sales contracts 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 recorded an unrealized gain of $0.4 million and an unrealized loss of $0.5 million attributable to the change in fair value for the three months ended June 30, 2020 and 2019, respectively. We recorded an unrealized gain of $0.7 million and an unrealized loss of $1.1 million attributable to the change in fair value for the six months ended June 30, 2020 and 2019, respectively. These gains and losses were included within loss on revaluation of embedded derivatives in the condensed consolidated statements of operations. The fair value of these derivatives was $5.5 million and $6.2 million as of June 30, 2020 and December 31, 2019, respectively.

9. Stockholders' Equity

Our capitalization as of June 30, 2020 and December 31, 2019 is described as follows:

	Authorized	Shares Issued and Outstanding	
		June 30, 2020	December 31, 2019
Total common stock - Class A[1]	600,000,000	99,233,074	84,549,511
Total common stock - Class B[1]	600,000,000	31,005,215	36,486,778
Total preferred stock	10,000,000	—	—
		130,238,289	121,036,289
Rights to acquire stock			
Stock Plans' options and awards outstanding:			
2002 stock plan		1,684,718	1,856,154
2012 equity incentive plan		13,530,104	16,638,850
2018 equity incentive plan		9,664,887	9,454,578
		24,879,709	27,949,582
Warrants outstanding:			
Common warrants [2]		494,121	494,121
		25,373,830	28,443,703
Total diluted shares		155,612,119	149,479,992
Total options/RSUs available for grant - 2018 EIP plan		22,789,740	17,233,144
Total shares available for grant - 2018 ESPP plan		3,532,380	3,030,407
		181,934,239	169,743,543

Unreserved Stock 503,245,441

Total authorized shares

[1] We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion rights. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible into one share of Class A common stock at the discretion of its holder, or automatically upon 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.

[2] As of June 30, 2020 and December 31, 2019, we had Class B common stock warrants outstanding to purchase 481,181 and 12,940 shares of Class B common stock at exercise prices of $27.78 and $38.64, respectively.

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 June 30, 2020, options to purchase 1,684,718 shares of Class B common stock were outstanding with a weighted average exercise price of $24.80 per share.

2012 Equity Incentive Plan

As of June 30, 2020, options to purchase 9,510,910 shares of Class B common stock were outstanding with a weighted average exercise price of $27.15 per share and no shares were available for future grant. As of June 30, 2020, we had outstanding RSUs that may be settled for 4,019,194 shares of Class B common stock under the plan.

2018 Equity Incentive Plan

As of June 30, 2020, options to purchase 5,975,977 shares of Class A common stock were outstanding with a weighted average exercise price of $9.25 per share and 3,688,910 shares of outstanding RSUs that may be settled for Class A common stock which were granted pursuant to the plan.

Stock-Based Compensation Expense

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	**2019**	**2020**	**2019**
Risk-free interest rate	0.6%	2.4%- 2.5%	0.6%	2.4% - 2.6%
Expected term (years)	6.6	6.4 - 6.7	6.6	6.4 - 6.7
Expected dividend yield	—	—	—	—
Expected volatility	71.0%	47.5%	71.0%	47.5% - 50.2%

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	**2019**	**2020**	**2019**
		As Restated		**As Restated**
Cost of revenue	$ 4,736	$ 10,538	$ 10,243	$ 28,850
Research and development	4,714	12,218	10,810	26,448
Sales and marketing	2,234	8,935	6,124	20,447
General and administrative	6,947	19,673	14,473	43,441
	$ 18,631	$ 51,364	$ 41,650	$ 119,186

Stock-based Compensation - During the three months ended June 30, 2020 and 2019, we recognized $18.6 million and $51.4 million of total stock-based compensation costs, respectively. During the six months ended June 30, 2020 and 2019, we recognized $41.7 million and $119.2 million of total stock-based compensation costs, respectively.

During the three months ended June 30, 2020 and 2019, we recognized $0.9 million and $6.2 million, respectively, of stock-based compensation expense previously capitalized in inventory and property, plant and equipment. During the six months ended June 30, 2020 and 2019, we recognized $1.8 million and $17.0 million, respectively, of stock-based compensation expense previously capitalized in inventory and property, plant and equipment.

Stock Option and RSU 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)
December 31, 2019	17,837,316	$ 20.76	6.94	$ 14,964
Granted	200,000	7.30		
Exercised	(170,873)	5.90		
Cancelled	(694,838)	22.46		
Balances at June 30, 2020	17,171,605	20.69	6.46	26,824
Vested and expected to vest at Current period end	16,555,245	21.08	6.37	24,325
Exercisable at Current period end	9,515,698	28.48	4.67	384

Stock Options - During the three months ended June 30, 2020 and 2019, we recognized $4.9 million and $9.0 million of stock-based compensation costs for stock options, respectively. During the six months ended June 30, 2020 and 2019, we recognized $10.5 million and $18.2 million of stock-based compensation costs for stock options, respectively.

We granted 200,000 options of Class A common stock during the three and six months ended June 30, 2020 and the weighted average grant-date fair value of those options was $7.30 per share.

As of June 30, 2020 and 2019, we had unrecognized compensation costs related to unvested stock options of $31.0 million and $56.8 million, respectively. This cost is expected to be recognized over the remaining weighted-average period of 2.2 years and 2.6 years, respectively. We had no excess tax benefits in the quarters ended June 30, 2020 and 2019. Cash received from stock options exercised totaled $1.0 million and $ 1.4 million ended June 30, 2020 and 2019, respectively.

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

	Number of Awards Outstanding	Weighted Average Grant Date Fair Value
Unvested Balance at December 31, 2019	10,112,266	$ 17.29
Granted	1,214,942	8.75
Vested	(3,320,153)	19.06
Forfeited	(298,951)	15.50
Balances at June 30, 2020	7,708,104	15.26

Restricted Stock Units - The estimated fair value of RSU awards is based on the fair value of our Class A common stock on the date of grant. For the three months ended June 30, 2020 and June 30, 2019, we recognized $10.5 million and $39.7 million of stock-based compensation costs for RSUs, respectively. For the six months ended June 30, 2020 and June 30, 2019, we recognized $23.7 million and $90.7 million of stock-based compensation costs for RSUs, respectively.

As of June 30, 2020, we had $35.3 million of unrecognized stock-based compensation cost related to unvested RSUs. This cost is expected to be recognized over a weighted average period of 1.2 years. As of June 30, 2019, we had $108.2 million of unrecognized stock-based compensation cost related to unvested RSUs. This expense was expected to be recognized over a weighted average period of 1.1 years.

The following table presents the stock activity and the total number of RSUs available for grant under our stock plans as of June 30, 2020:

	Plan Shares Available for Grant
Balances at December 31, 2019	17,233,144
Added to plan	6,654,552
Granted	(1,414,942)
Cancelled	992,262
Expired	(675,276)
Balances at June 30, 2020	22,789,740

2018 Employee Stock Purchase Plan

During the three months ended June 30, 2020 and 2019, we recognized $1.8 million and $2.4 million of stock-based compensation costs under our 2018 Employee Stock Purchase Plan (the "2018 ESPP"), respectively. During the six months ended June 30, 2020 and 2019, we recognized $4.7 million and $5.2 million of stock-based compensation costs for the 2018 ESPP, respectively. We issued 992,846 shares in the six months ended June 30, 2020. During the first six months of 2020, we added an additional 1,494,819 shares and there were 3,532,380 shares available for issuance as of June 30, 2020.

2019 and 2020 Executive Awards

In November 2019, the Board approved stock options ("2019 Executive Awards") to certain executive staff. The 2019 Executive Awards consist of three vesting tranches with a vesting schedule based on the attainment of market conditions and assuming continued employment and service through each vesting date. Stock-based compensation costs associated with the 2019 Executive Awards are recognized over the service period, even though no tranches of the 2019 Performance Awards vest unless a market condition is achieved. The grant date fair value of the options is determined using a Monte Carlo simulation.

In June 2020, the Board approved stock awards ("2020 Executive Awards") to certain executive staff. The 2020 Executive Awards consist of three vesting tranches with an annual vesting schedule based on the attainment of performance conditions and assuming continued employment and service through each vesting date. Stock-based compensation costs associated with the 2020 Executive Awards is recognized over the service period as we evaluate the probability of the achievement of the performance conditions.

11. Income Taxes

For the three months ended June 30, 2020 and 2019, we recorded provisions for income taxes of $0.1 million and $0.3 million on pre-tax losses of $47.8 million and $86.7 million for effective tax rates of (0.3)% and (0.3)%, respectively. For the six months ended June 30, 2020 and 2019, we recorded provisions for income taxes of $0.3 million and $0.5 million on pre-tax losses of $129.4 million and $195.2 million for effective tax rates of (0.2)%, and (0.2)%, respectively.

The effective tax rate for the three and six months ended June 30, 2020 and 2019 is lower than the statutory federal tax rate primarily due to a full valuation allowance against U.S. deferred tax assets.

12. Net Loss per Share Attributable to Common Stockholders

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
		As Restated		Restated
Numerator:				
Net loss attributable to Class A and Class B common stockholders	$ (42,512)	$ (81,911)	$ (118,461)	$ (186,831)
Denominator:				
Weighted average shares of common stock, basic and diluted	125,928	113,622	124,823	112,737
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.34)	$ (0.72)	$ (0.95)	$ (1.66)

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Convertible notes	$ 31,162	$ 27,253	$ 31,162	$ 27,253
Stock options and awards	4,788	6,480	4,889	5,811
	$ 35,950	$ 33,733	$ 36,051	$ 33,064

13. Power Purchase Agreement Programs

Overview

In mid-2010, we began offering our Energy Servers through our Bloom Electrons program, which we denote as Power Purchase Agreement Programs, financed via investment entities. For additional information, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2019.

PPA Entities' Activities Summary

The table below shows the details of the three Investment Companies' VIEs that were active during the six months ended June 30, 2020 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 June 30, 2020:			
Distributions to Equity Investor	$ 4,819	$ 8,582	$ 74,128
Debt repayment—principal	$ 9,293	$ 19,534	$ 11,765
Activity as of December 31, 2019:			
Distributions to Equity Investor	$ 4,803	$ 6,692	$ 70,591
Debt repayment—principal	$ 6,631	$ 18,012	$ 9,453

[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 June 30, 2020 and December 31, 2019. At June 30, 2020 and December 31, 2019, the carrying value of redeemable noncontrolling interests of $0.1 million and $0.4 million, respectively, exceeded the maximum redemption value.

PPA Entities' Aggregate Assets and Liabilities

Generally, Operating Company assets can be used to settle only the Operating Company obligations and Operating Company creditors do not have recourse to us. The aggregate carrying values of our VIEs, including PPA IIIa, PPA IV and PPA V, for their assets and liabilities in our condensed consolidated balance sheets, after eliminations of intercompany transactions and balances, were (in thousands):

	June 30, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 4,600	$ 1,894
Restricted cash	827	2,244
Accounts receivable	4,004	4,194
Customer financing receivable	5,254	5,108
Prepaid expenses and other current assets	1,030	3,587
Total current assets	15,715	17,027
Property and equipment, net	263,793	275,481
Customer financing receivable, non-current	48,111	50,747
Restricted cash	15,123	15,045
Other long-term assets	241	607
Total assets	$ 342,983	$ 358,907
Liabilities		
Current liabilities:		
Accrued expenses and other current liabilities	$ 2,312	$ 1,391
Deferred revenue and customer deposits	662	662
Current portion of debt	11,366	12,155
Total current liabilities	14,340	14,208
Derivative liabilities	15,783	8,459
Deferred revenue	6,405	6,735
Long-term portion of debt	218,316	223,267
Other long-term liabilities	2,627	2,355
Total liabilities	$ 257,471	$ 255,024

As of January 1, 2020, the flip date, we are the majority owner shareholder in the PPA IIIa entity receiving 95% of all cash distributions and profits and losses. In PPA IV and PPA V we consolidate as VIEs, we are the minority shareholder. PPA Entities contain debt that is non-recourse to us. The PPA Entities also own Energy Server assets for which we do not have title. Although we will continue to have Power Purchase Agreement Program entities in the future and offer customers the ability to purchase electricity without the purchase of our Energy Servers, we do not intend to be a minority investor in any new Power Purchase Agreement Program entities.

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 following table shows Bloom Energy's stand-alone, the PPA Entities combined and these consolidated balances as of June 30, 2020 and December 31, 2019 (in thousands):

	June 30, 2020			December 31, 2019		
	Bloom Energy	PPA Entities	Consolidated	Bloom Energy	PPA Entities	Consolidated
Assets						
Current assets	$ 425,077	$ 15,715	$ 440,792	$ 455,680	$ 17,027	$ 472,707
Long-term assets	509,483	327,268	836,751	508,004	341,880	849,884
Total assets	$ 934,560	$ 342,983	$ 1,277,543	$ 963,684	$ 358,907	$ 1,322,591
Liabilities						
Current liabilities	$ 274,696	$ 2,974	$ 277,670	$ 234,328	$ 2,053	$ 236,381
Current portion of debt	14,698	11,366	26,064	325,428	12,155	337,583
Long-term liabilities	579,870	24,815	604,685	599,709	17,549	617,258
Long-term portion of debt	401,339	218,316	619,655	75,962	223,267	299,229
Total liabilities	$ 1,270,603	$ 257,471	$ 1,528,074	$ 1,235,427	$ 255,024	$ 1,490,451

14. Commitments and Contingencies

Commitments

Facilities Leases

We lease most of our facilities, office buildings and equipment under operating leases that expire at various dates through December 2028. Our headquarters is used for administration, research and development and sales and marketing.

Additionally, we lease various manufacturing facilities in Sunnyvale, California and Mountain View, California. Our current lease for our Sunnyvale manufacturing facilities, entered into in April 2005, expires in 2020. Our current lease for our manufacturing facilities at Mountain View, entered into in December 2011, expired in December 2019 and is extended on a month to month arrangement. In June 2020, we signed a lease to replace a manufacturing facility in Mountain View, California that will expire in 2027. The existing leased plants together comprise approximately 370,601 square feet of space. We lease additional office space as field offices in the United States and around the world including in India, the Republic of Korea, China and Taiwan.

During the three months ended June 30, 2020 and 2019, rent expense for all occupied facilities was $1.9 million and $1.8 million, respectively. During the six months ended June 30, 2020 and 2019, rent expense for all occupied facilities was $4.0 million and $3.8 million, respectively.

Equipment Leases

We are a party to master lease agreements that provide for the sale of our Energy Servers to third parties and the simultaneous leaseback of the systems which we then sublease to customers. The lease agreements expire on various dates through 2025 and there was no recorded rent expense for the three and six months ended June 30, 2020 and 2019.

At June 30, 2020, future minimum lease payments under operating leases and financing obligations were as follows (in thousands):

	Operating Leases Obligations	Financing Obligations	Sublease Payments[1]
Remainder of 2020	$ 4,214	$ 19,054	$ (19,054)
2021	10,005	38,726	(38,726)
2022	6,110	39,680	(39,680)
2023	6,230	40,582	(40,582)
2024	6,416	38,442	(38,442)
Thereafter	24,087	117,592	(117,592)
Total lease payments	$ 57,062	294,076	$ (294,076)
Less: imputed interest		(170,557)	
Total lease obligations		123,519	
Less: current obligations		(11,603)	
Long-term lease obligations		$ 111,916	

[1] Sublease Payments primarily represents the fees received by the bank from our end 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.

Managed Services Financing Obligations - Our Managed Services arrangements are classified as capital leases and are recorded as financing transactions, while the sublease arrangements with the end customer are classified as operating leases. Payments received from the financier are recorded as financing obligations. These obligations are included in each agreements' contract value and are recorded as short-term or long-term liabilities based on the estimated payment dates. The long-term financing obligations were $440.4 million and $446.2 million as of June 30, 2020 and December 31, 2019, 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. We recognize revenue for the electricity generated by allocating the total proceeds of the sublease payments based on the relative standalone selling prices to electricity revenue and to service revenue.

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 its 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 June 30, 2020 and December 31, 2019, we had no material open purchase orders with our component suppliers and third-party manufacturers that are not cancellable.

Power Purchase Agreement Program - Under the terms of the Bloom Electrons program, customers agree to purchase power from our Energy Servers at negotiated rates, generally for periods of up to fifteen years. We are responsible for all operating costs necessary to maintain, monitor and repair the Energy Servers, including the fuel necessary to operate the systems under certain PPA contracts. The risk associated with the future market price of fuel purchase obligations is mitigated with commodity contract futures. For additional information on the Bloom Electrons program, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2019 and Note 13, *Power Purchase Agreement Programs.*

The PPA Entities 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 $5.7 million and $3.5 million for the six months ended June 30, 2020 and the year ended December 31, 2019, respectively.

Letters of Credit - In June 2015, PPA V entered into a $131.2 million credit agreement to fund the purchase and installation of our Energy Servers. The lenders have commitments to a LC facility with the aggregate principal amount of $6.2

million. The LC facility is to fund the Debt Service Reserve Account. The amount reserved under the LC as of June 30, 2020 was $5.2 million.

In 2019, pursuant to the PPA II upgrade of Energy Servers, we agreed to indemnify SPDS for losses that may be incurred in the event of certain regulatory, legal or legislative development and established a cash-collateralized letter of credit for this purpose. As of June 30, 2020, the balance of this cash-collateralized LC was $108.7 million, of which $4.2 million and $104.5 million is recorded 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 $20.0 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 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 June 30, 2020, we had 380 full time workers in Delaware and paid $135.1 million in cumulative compensation. As of December 31, 2019, we had 323 full time workers in Delaware and paid $120.1 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, including up to $2.6 million on September 30, 2021 and up to an additional $2.5 million on September 30, 2023. As of June 30, 2020, we paid $1.5 million for recapture provisions and have recorded $10.5 million in other long-term liabilities for potential recapture.

Investment Tax Credits ("ITCs") - 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 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 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. We do not believe claimant's claims supporting rescission have merit nor that claimants can remit to us the monetary benefits they already obtained under the Confidential Agreement. We have recorded no loss contingency related to this claim. On July 30, 2020, Claimants notified us that they intend to file a complaint in the Northern District of California seeking to stay the arbitration, and disqualify the arbitration panel on procedural grounds. We believe Claimants have no basis to bring this Complaint and that doing so will breach the Confidential Agreement.

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 has been stayed pending the outcome of the arbitration. We believe the complaint to be without merit and we have recorded no loss contingency related to this claim.

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 initial public offering 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 our July 25, 2018 initial public offering ("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 vigorously defend.

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 our 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 our initial public offering, claims under Sections 10b and 20a of the Securities Exchange Act of 1934 (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. We believe the complaint to be without merit and we intend to vigorously defend. On July 1, 2020, we filed a motion to dismiss the second amended complaint.

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 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. A trial date for this matter has been set for December 7, 2020. We believe the complaint to be without merit.

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 (PAGA). We are still investigating the Plantiff's allegations and intend to vigorously defend against the complaint, but any range of potential loss is not currently estimable.

15. Segment Information

Segment and the Chief Operating Decision Maker

Our chief operating decision makers ("CODMs"), our 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 Chief Executive Officer. 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.

16. Related Party Transactions

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Total revenue from related parties	$ 881	$ 81,572	$ 1,930	$ 82,354
Interest expense to related parties	794	1,606	2,160	3,218

Bloom Energy Japan Limited

In May 2013, we entered into a joint venture with Softbank Corp., which is accounted for as an equity method investment. Under this arrangement, we sell Energy Servers and provide maintenance services to the joint venture. For the three months ended June 30, 2020 and June 30, 2019, we recognized related-party total revenue of $0.9 million and $0.8 million, respectively. For the six months ended June 30, 2020 and June 30, 2019, we recognized related-party total revenue of $1.9 million and $1.6 million, respectively. Accounts receivable from this joint venture was $0.1 million as of June 30, 2020 and $2.4 million as of December 31, 2019.

Debt to Related Parties

The following is a summary of our debt and convertible notes from investors considered to be related parties as of June 30, 2020 (in thousands):

	Unpaid Principal Balance	Net Carrying Value		
		Current	Long-Term	Total
Recourse debt from related parties:				
10% convertible promissory notes due December 2021 from related parties	$ 50,801	$ —	$ 53,675	$ 53,675
Total debt from related parties	$ 50,801	$ —	$ 53,675	$ 53,675

The following is a summary of our debt and convertible notes from investors considered to be related parties as of December 31, 2019 (in thousands):

	Unpaid Principal Balance	Net Carrying Value		
		Current	Long-Term	Total
Recourse debt from related parties:				
6% convertible promissory notes due December 2020 from related parties	$ 20,801	$ 20,801	$ —	$ 20,801
Non-recourse debt from related parties:				
7.5% term loan due September 2028 from related parties	38,337	3,882	31,088	34,970
Total debt from related parties	$ 59,138	$ 24,683	$ 31,088	$ 55,771

In November 2019, one related-party note holder exchanged $6.9 million of their 6% Convertible Notes at the conversion price of $11.25 per share into 616,302 shares of Class A common stock. On March 31, 2020, we issued $30.0 million of new 10% Convertible Notes to two related-party note holders. In May 2020, the 7.5% term loan note holder ceased to be considered a related party. We made no payments to this note holder prior to them terminating their related party relationship with us in the three months ended June 30, 2020, and we paid $0.4 million on this non-recourse 7.5% term loan principal balance in the three months ended June 30, 2019. We paid no interest and $0.7 million of interest in the three months ended June 30, 2020 and June 30, 2019, respectively. We repaid $2.1 million and $1.2 million of the non-recourse 7.5% term loan principal balance in the six months ended June 30, 2020 and June 30, 2019, respectively, and we paid $0.7 million and $1.5 million of interest in the six months ended June 30, 2020 and June 30, 2019, respectively. See Note 7, *Outstanding Loans and Security Agreements* for additional information on our debt facilities.

17. Subsequent Events

Other Events

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

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

You should read the following discussion of our financial condition and results of operations in conjunction with the condensed consolidated financial statements and the notes thereto included elsewhere in this Quarterly Report on Form 10-Q. Some of the information contained in this discussion and analysis or set forth elsewhere in this Quarterly Report on Form 10-Q, including information with respect to our plans and strategy for our business, includes forward-looking statements that involve risks and uncertainties as described under the heading Special Note Regarding Forward-Looking Statements following the Table of Contents of this Quarterly Report on Form 10-Q. You should review the disclosure under Part II, Item 1A - Risk Factors in this Quarterly Report on Form 10-Q for a discussion of important factors that could cause actual results to differ materially from the results described in or implied by the forward-looking statements contained in the following discussion and analysis.

Overview

Restatement of Previously Issued Condensed Consolidated Financial Statements

We have restated our previously reported financial information as of and for the three and six months ended June 30, 2019 in this Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations, including but not limited to information within *Results of Operations* and *Liquidity and Capital Resources* sections.

See Note 2, *Restatement of Previously Issued Condensed Consolidated Financial Statements*, in Part I, Item 1, *Financial Statements*, for additional information related to the restatement, including descriptions of the misstatements and the impacts on our condensed consolidated financial statements.

Description of Bloom Energy

Our solution, the Bloom Energy Server, is a stationary power generation platform built for the digital age and capable of delivering highly reliable, uninterrupted, 24x7 constant power that is also clean and sustainable. The Bloom Energy Server converts standard low-pressure natural gas, biogas or hydrogen into electricity through an electrochemical process without combustion, resulting in very high conversion efficiencies and lower harmful emissions than conventional fossil fuel generation. A typical configuration produces 250 kilowatts of power in a footprint roughly equivalent to that of half of a standard thirty-foot shipping container, or approximately 125 times more space-efficient than solar power generation. 250 kilowatts of power is roughly equivalent to the constant power requirement of a typical big box retail store. Any number of our Energy Server systems can be clustered together in various configurations to form solutions from hundreds of kilowatts to many tens of megawatts. We currently primarily target commercial and industrial customers.

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 have been and will continue monitoring and adjusting 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. For the safety of our employees and others, many of our employees are still working 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 Bloom facilities are required to wear face coverings and are directed not to enter if they have COVID-19-like symptoms. We follow all CDC guidelines when notified of possible exposures. For more information regarding the risks posed to our company by the COVID-19 pandemic, refer to Risk Factors – Risks Relating 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

We have implemented measures to preserve cash and enhance liquidity, including suspending salary increases and bonuses, instituting a company-wide hiring freeze, eliminating business travel, reducing capital expenditures, and delaying or eliminating discretionary spending. We are also focused on managing our working capital needs, maintaining as much flexibility as possible around timing of taking and paying for inventory and manufacturing our product while managing potential changes or delays in installations.

In March 2020, we extended the terms of the 10% Convertible Notes and the 10% Constellation Note to December 2021. Since then, the 10% Constellation Note was converted into equity and the potential liabilities associated with the 10% Constellation Notes have been extinguished. This relieves some pressure on our liquidity position in the near term. While we will likely need to access the capital markets to raise sufficient capital to redeem the 10% Convertible Notes, we do not expect that it will be necessary to access capital markets for cash to operate our business for the next 12 months, unless the impact of COVID-19 to our business and financial position is more extensive than expected. Capital markets have been volatile and there is no assurance that we would have access to capital markets at a reasonable cost, or at all, at times when capital is needed. In addition, our existing debt has restrictive covenants that limit our ability to raise new debt or to sell assets, which would limit our ability to access liquidity by those means without obtaining consent from existing noteholders. The redemption penalty on our 10% Convertible Notes starting in October 2020 could also adversely affect our financial position if we are unable to access capital markets to refinance them on reasonable terms. Refer to Note 7, *Outstanding Loans and Security Agreements*; Management's Discussion and Analysis of Financial Condition and Results of Operations, Liquidity and Capital Resources; and Risk Factors – Risks Relating 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.

Operations and maintenance cash flows for certain PPAs, direct purchases and leases are pledged to the 10% Senior Secured Notes and 10.25% Senior Secured Notes. If there is delay in payment from customers, or if a customer does not renew a contract with us that we expect to be renewed, our ability to service existing debt would be adversely affected, which could trigger a default if non-payment extends beyond the grace period. Even if we are able to sustain debt service payments, if we do not meet certain minimum debt service coverage ratio levels specified in our debt agreements, excess cash after the debt has been serviced could not be released to support our operations and would negatively affect our liquidity position.

Sales

In some markets, we have experienced an increase in time to obtain new business as our customers deal with the impact of the COVID-19 pandemic. Decision makers in organizations such as education and entertainment have shifted their focus to the immediate needs of the pandemic, thus delaying their purchase decisions and capital outlays. While there may ultimately be a reduction in electricity needs due to decrease in economic activity, the current impact generally equates to a longer transaction cycle.

Our ability to continue to expand our business both domestically and internationally and develop customer relationships also has been negatively impacted by current travel restrictions. Our marketing efforts historically have often involved customer visits to our manufacturing centers in California or Delaware, which we have suspended.

On the other hand, a significant portion of our customers are hospitals, healthcare companies, retailers and data centers. These industries are composed of essential businesses that still need the resiliency and reliability offered by our products. We have seen an increase in demand for our products in these sectors where the COVID-19 pandemic has highlighted the benefits of always-on, on-site power in times of disaster and uncertainty. In addition, the pandemic has had no significant effect on our business in the Republic of Korea.

We have also had some unique opportunities to deploy our systems on an emergency basis to support temporary hospitals. We believe deploying clean electrical power with no oxides of nitrogen (NOx) or sulfur (SOx) emissions, especially as atmospheric pollutants, is important for facilities preparing to treat a respiratory disease like COVID-19. As a result of this opportunity to introduce our products to more healthcare providers, demand for our products at some permanent hospitals has also increased.

Customer Financing

COVID-19 has not yet had any significant impact on our ability to obtain financing for our customers' use of our products, but we are finding it more difficult to find financiers who are able to monetize tax credit. A majority of the installations we have planned in the United States in 2020 have obtained financing. However, we have actively been working with new sources of capital that could finance projects for our 2021 installations. We believe the current environment may increase the time to solidify new relationships, and thus negatively impact the time required to achieve funding. 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 may make it difficult for us to obtain 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 and, at present, cash flow and results of operations including revenue have not been impacted by our inability to obtain financing for customer installations.

Installations of Energy Servers

The COVID-19 pandemic has caused delays that affected nearly all of our installations with varying degrees of severity. Since we do not recognize revenue on the sales of our products until installation and acceptance, installation delays have a negative impact on our results of operations including revenue. Since we generally earn cash as we progress through the installation process, delays to installation activity also adversely affects our cash flows.

While our installation activity has been deemed "essential business" and allowed to proceed in many jurisdictions, the essential business designations for our activities (and those of our suppliers and other third party organizations that are critical to our success) has been inconsistent from region to region and across the various third parties upon whom we are critically dependent to complete our installations. As an example, in New York City, one of our installations was deemed essential while the other was not deemed essential and the utilities on whom we rely for water, gas and electric inter-connections were also not uniformly affected. This resulted in all of the projects in New York City being adversely affected to some extent. As another example, while the State of Massachusetts designated construction as an essential business, some local authorities in Massachusetts did not apply the same designation, resulting in delays and additional compliance costs.

In addition, we have experienced delays and interruptions to our installations where customers have shut down or otherwise limited access to their facilities.

Some of our backlog can only be deployed when the customer brings on sufficient load for our systems. Facility closings and diminished economic activity delay that load coming online, leading customers to postpone the completion of installations.

We use general contractors and sub-contractors, and need supplies of various types of ancillary equipment, for our installations. Some of our suppliers have had COVID-19 outbreaks among their workforces, which have caused installation delays. In addition, the availability and productivity of contractors, sub-contractors, and suppliers has generally been negatively impacted by social distancing requirements and other safety measures.

Nearly all of our installations completed in the quarter ended June 30, 2020 were impacted by COVID-19 to some extent and some installations were unable to achieve acceptance in light of the delays which impacted our cash flows and results of operation including revenue for the quarter ended June 30, 2020. As examples, our pre-contract installation planning activity was affected by access to potential customer sites, our permitting activity was affected in virtually all jurisdictions by delays in the permitting process as various cities and municipalities shut down or implemented limited services in response to COVID-19, and our utility related work was impacted as our gas and electric utility suppliers facing challenges brought on by COVID-19. We expect disruptions like those noted above to continue with the current COVID-19 restrictions.

Supply Chain

We have experienced COVID-19 related delays from certain vendors and suppliers, however, we have been able to find and qualify alternative suppliers and our production to date has not been impacted. At present, our supply chain has stabilized; however, if spikes in COVID-19 occur in regions in which our supply chain operates 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, we have continued to manufacture Energy Servers, but have adopted strict measures to keep our employees safe. These measures have decreased productivity to an 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 all CDC guidelines when notified of possible exposures. We also are now instituting testing of anyone who comes into any of 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 a couple positive tests and in such cases, we have followed CDC Guidelines. To date, it has not impacted our production.

If we become aware of any cases of COVID-19 among any of our employees, we notify those with whom the person is known to have been in contact, send the exposed employees home for at least 14 days and require each employee to be tested 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 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 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.

Purchase and Lease Options

Initially, we only offered our Energy Servers on a direct purchase basis, in which the customer purchases the product directly from us. In order to expand our offerings to customers who lack the financial capability to purchase our Energy Servers directly (including customers who are unable to monetize the tax credits available to purchasers of our Energy Servers) and/or who prefer to lease the product or contract for our services on a pay-as-you-go model, we subsequently developed the traditional lease ("Traditional Lease"), Managed Services, and power purchase agreement ("PPA") programs ("PPA Programs").

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 monetize the related investment tax credits, accelerated tax depreciation and other incentives. 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. The Traditional Lease, Managed Services and PPA Program options are limited by the creditworthiness of the customer. Additionally, the Managed Services and Traditional Lease options, 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.

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.

Under each purchase option, we provide warranties and performance guaranties regarding our Energy Servers' efficiency and output. We refer to a "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 "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 diminution in benefits resulting from such failure. Our obligation to make payments under the guaranty is always contractually capped and represents a contingency linked to our services obligation with no economic incentive for us to default and force an exercise of the payment obligation.

Under direct purchase and Traditional Lease, the warranties and guaranties are typically included in the price of our Energy Server for the first year. The warranties and guaranties may be renewed annually at the customer's option, as an operations and maintenance services agreement, at predetermined prices for a period of up to 30 years. Historically, our customers and financiers have almost always exercised their option to renew the warranties and guaranties under these operations and maintenance services agreements.

Under the Managed Services Program, the warranties and guaranties are included for the fixed period specified in the customer agreement. This period is typically 10 years, which may be extended at the option of the parties for additional years.

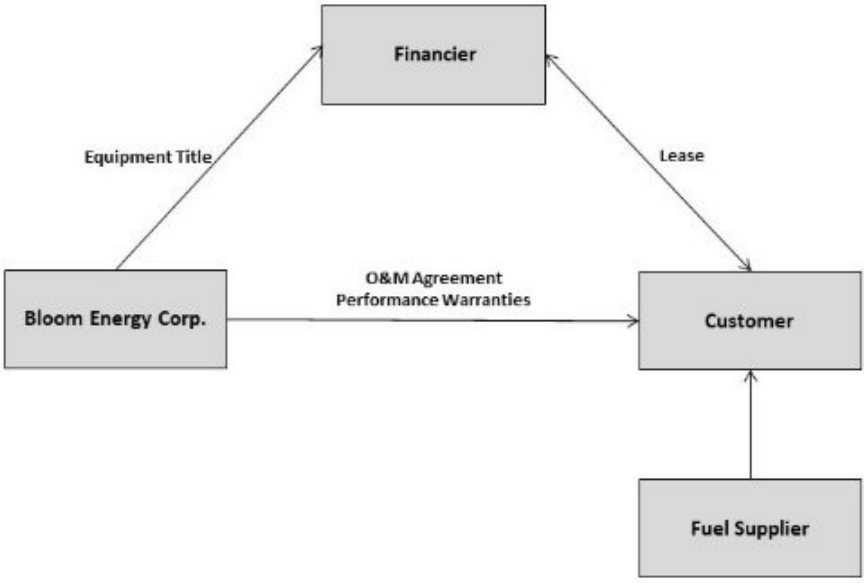
Under the PPA Programs, we typically provide warranties and guaranties regarding our Energy Servers' efficiency to the customer (i.e., the end user of the electricity generated by our Energy Servers, who is also responsible for the purchase of the fuel required for our Energy Servers' operations), and we provide warranties and guaranties regarding our Energy Servers' output to the financier(s) that purchases our Energy Servers. The warranties and guaranties are typically included in the price of our Energy Server for the first year and may be renewed annually at the financier's option, as an operations and maintenance services agreement, at predetermined prices for a period of up to 30 years. Historically, our financiers have almost always exercised their option to renew the warranties and guaranties under these operations and maintenance services agreements. We

also provide a fixed schedule of prices for each year of the term of our agreements with our customers and none of our customers have failed to renew our operations and maintenance agreements.

The substantial majority of bookings made in recent periods are pursuant to the PPA and the Managed Services Programs.

Each of our financing structures is described in further detail below.

Traditional Lease



Under the Traditional Lease arrangement, the customer enters into a lease directly with a financier, which pays us for our Energy Servers purchased pursuant to a sales agreement (see the description of the Financing Agreement below). 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 operations and maintenance services agreements 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 Financing Agreement. The term of a lease in a Traditional Lease ranges from five to eight years.

Under a Financing Agreement, we are generally paid the full price of our Energy Servers as if sold as a purchase by the customer based on four milestones. The four payment milestones are typically as follows: (i) 15% upon execution of the financier's entry into the lease with a customer, (ii) 25% on the day that is 180 days prior to delivery of the Energy Servers, (iii) 40% upon shipment of the Energy Servers, and (iv) 20% upon acceptance of the Energy Servers. The financier receives title to the Energy Servers upon installation at the customer site and the financier has risk of loss while our Energy Server is in operation on the customer's site.

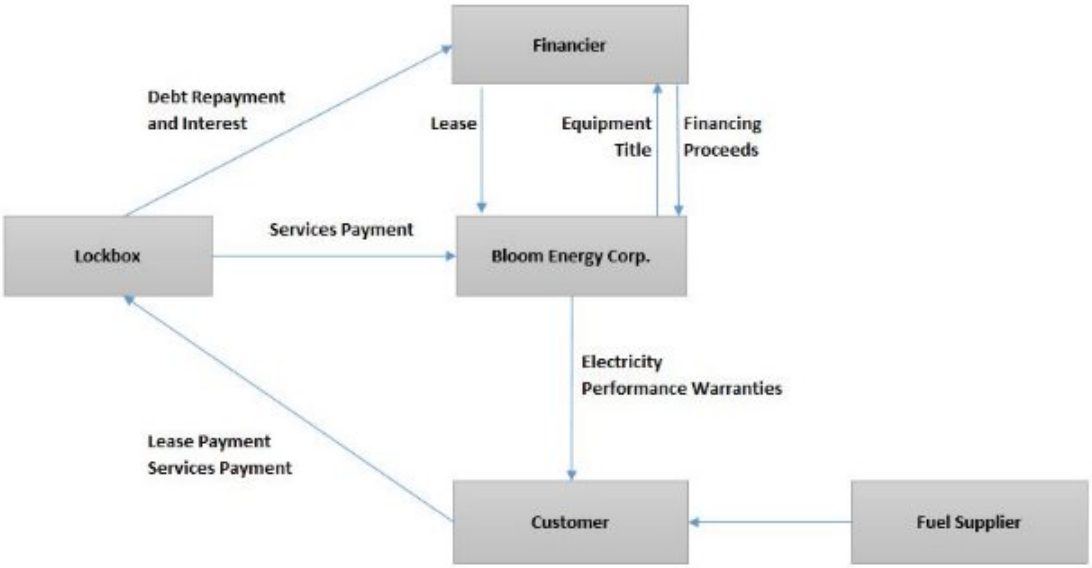
The Financing Agreement provides for the installation of our Energy Servers and includes a standard one-year warranty, to the financier, which includes the performance guaranties described below, with the warranty offered on an annually renewing basis at the discretion of, and to, the customer. The customer must provide fuel for the Bloom Energy Servers to operate.

Our direct lease deployments typically provide for warranties and guaranties of both the efficiency and output of our Energy Servers, all of which are written in favor of the customer and contained in the operations and maintenance services agreement. These warranties and guaranties may be measured on a monthly, annual, cumulative or other basis. As of June 30, 2020, we had incurred no liabilities due to failure to repair or replace our Energy Servers pursuant to these warranties. Our obligation to make payments for underperformance against the performance guaranties for Traditional Lease projects was capped contractually under the sales agreements 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 $4.1 million.

Remarketing at Termination of Lease

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

Managed Services Financing



Under our Managed Services Programs, we enter into a Managed Services Agreement with a customer, pursuant to which the customer is able to use the Energy Server for a certain term. Under the Managed Services Agreement, the customer makes a monthly payment for the use of the Energy Server. The customer payment typically has two components: (i) a fixed monthly capacity-based payment and (ii) a performance-based payment based on the output of electricity that month from 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 liability under the master lease with the financier. The performance payment is transferred to us as compensation for operations and maintenance services and recorded as services revenue within the condensed consolidated statements of operations. In some cases, the customer's monthly payment consists solely of the first component, a fixed monthly capacity-based payment.

Once a financier is identified and the Energy Server's installation is complete, we sell the Energy Server contemplated by the Managed Services Agreement directly to a financier and the financier, as lessor, leases it back to us, as lessee, pursuant to a master lease in a sale-leaseback transaction. The proceeds from the sale are recorded 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 financing proceeds for the Energy Server contemplated by the Managed Services Agreement on or shortly after acceptance.

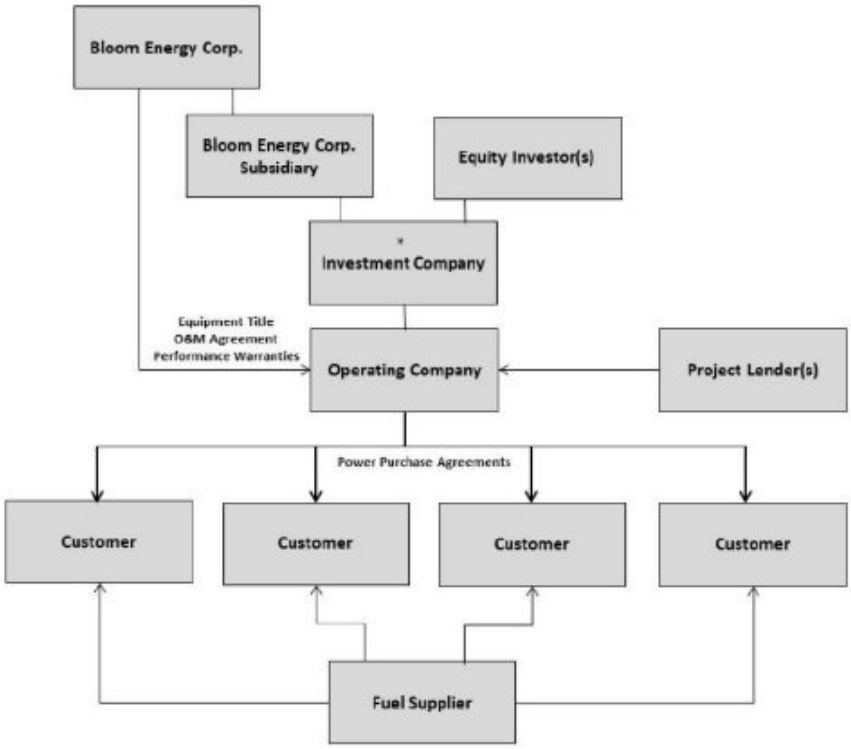
The fixed capacity payments made by the customer under the Managed Services Agreement are recognized as electricity revenue when billed and applied toward our obligation to pay the financing obligation under the master lease. Our Managed Services financings have historically shifted customer credit risk to the financier, as lessor, by providing in the master lease agreement that we have no liability for payment of rent except in certain enumerated circumstances, including in the event we are in breach of the Managed Services Agreement between us and the customer.

The duration of the master lease in a Managed Services financing is typically 10 years. The term of the master lease is typically the same as the term of the related Managed Services Agreement, but in some cases the term of the master lease is shorter than that of the Managed Services Agreement.

Our Managed Services deployments typically provide only for warranties of both the efficiency and output of the Energy Server(s), all of which are written in favor of the customer and contained in the operations and maintenance services agreement. These warranties may be measured on a monthly, annual, cumulative or other basis. Managed Services projects typically do not

include guaranties above the warranty commitments, but in projects where the customer agreement includes a service payment for our operations and maintenance, that payment is typically proportionate to the output generated by the Energy Server(s) and our pricing assumes service revenues at the 95% output level. This means that our service revenues may be lower than expected if output is less than 95% and higher if output exceeds 95%. As of June 30, 2020, we had incurred no liabilities due to failure to repair or replace our Energy Servers pursuant to these warranties and the fleet of our Energy Servers deployed pursuant to the Managed Services Program was performing at a lifetime average output of approximately 87%.

Power Purchase Agreement Programs



*Under the Third Party PPA arrangements, there is no link with an investment company, as we do not have an equity investment in these arrangements.

Under our PPA Programs, we sell our Energy Servers to an Operating Company, which sells the electricity generated by the Energy Servers to the ultimate end customers pursuant to a PPA, energy services agreement, or similar contract. Because the end customer's payment is stated on a dollar-per-kilowatt-hour basis, we refer to these agreements as Power Purchase Agreements ("PPAs"). Currently, our offerings for PPA Programs primarily include our Third-Party PPA Programs pursuant to which we recognize revenue on acceptance. Through 2017, as part of our PPA Programs, we had also offered the Bloom Electrons Program, which included an equity investment by us in the Operating Company and in which we recognized revenue as the electricity was produced. For further discussion on our Bloom Electrons Programs, see Note 13, *Power Purchase Agreement Programs,* in Part I, Item 1*, Financial Statements*.

In our PPA Program, we enter into an Energy Server sales, operations and maintenance agreement ("EPC and O&M Agreement") with the Operating Company that will own the Energy Servers. The Operating Company then enters into the PPA with the end customer which purchases electricity generated by the Energy Servers. The Operating Company receives all cash flows generated under the PPA(s), in addition to all investment tax credits, all accelerated tax depreciation benefits, and any other cash flows generated by the operation of the Energy Servers not allocated to the end customer under the PPA.

The sales of our Energy Servers to the Operating Company in connection with the various PPA Programs 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 and O&M 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 EPC and 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 obligations under the EPC and O&M Agreement.

We typically provide output warranties and output guaranties to the Operating Company pursuant to the applicable EPC and O&M Agreement with the Operating Company. The end customer agreement between the Operating Company and the end customer also provides efficiency warranties and efficiency guaranties to the end user, and we provide a backstop of all of the Operating Company's obligations under those agreements, including both the repair or replacement obligations pursuant to the warranties and any payment liabilities under the guaranties.

As of June 30, 2020, we had incurred no liabilities due to failure to repair or replace Energy Servers pursuant to these warranties. Our obligation to make payments for underperformance against the performance guaranties for PPA Program projects was capped at an aggregate total of approximately $106.5 million (including payments both for low output and for low efficiency) and our aggregate remaining potential liability under this cap was approximately $101.4 million.

Obligations to Operating Companies

In addition to our obligations to the end customers, our PPA Programs involve many obligations to the Operating Company that purchases our Energy Servers. These obligations are set forth in the applicable EPC and O&M Agreement(s), 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 Bloom Energy Servers, and maintaining such permits and approvals throughout the term of the EPC and O&M Agreements,
- operating and maintaining the Bloom Energy Servers in compliance with all applicable laws, permits and regulations,
- satisfying the efficiency and output warranties set forth in such EPC and O&M Agreements and the PPAs ("performance warranties"), and
- complying with any specific requirements contained in the PPAs with individual end-customers.

The EPC and O&M Agreements obligate us to repurchase the Energy Servers in the event the Energy Servers fail to comply with the performance warranties and in the event we otherwise breach the terms of the applicable EPC and O&M Agreements and we fail to remedy such failure or breach after a cure period, or in the event that a PPA terminates as a result of any failure by us to comply with the applicable EPC and O&M Agreements. In some PPA Program projects, our obligation to repurchase Energy Servers extends to the entire fleet of Energy Servers sold pursuant to the applicable EPC and O&M Agreements in the event such failure affects more than a specified number of Energy Servers.

In some PPA Programs, 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.

Indemnification of Performance Warranty Expenses Under PPAs - In addition to the performance warranties and guaranties in the EPC and O&M Agreements, we also have agreed to indemnify certain Operating Companies for any expenses they incur to any of the end customers resulting from failures of the applicable Energy Servers to satisfy any of the performance warranties and guaranties set forth in the applicable PPAs.

Administration of Operating Companies - In each of the Bloom Electrons programs, we perform certain administrative services 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 the Bloom Electrons Programs (other than PPA I) 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 entered into with us and the off take agreements entered into with the Operating Company's customers, and is senior to all other debt obligations of the Operating Company. As further collateral, the lenders receive a security interest in 100% of the membership interest of the Operating Company. However, as is typical in structured finance transactions of this nature, although the project debt is secured by all of the Operating Company's assets, the lenders have no recourse to us or to any of the other equity investors in the project. The applicable debt agreements include provisions that implement a customary "payment waterfall" that dictates the priority in which the Operating Company will use its available funds to satisfy its payment obligations to us, the lenders, the tax equity investors and other third parties.

We have determined that we are the primary beneficiary in the PPA Entities, subject to reassessments performed as a result of upgrade transactions (see Note 13, *Power Purchase Agreement Programs*, in Part I, Item 1, *Financial Statements*.) Accordingly, we consolidate 100% of the assets, liabilities and operating results of these entities, including the Energy Servers and lease income, in our consolidated financial statements. We recognize the tax 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 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 PPA Entities are separate and distinct legal entities, and Bloom Energy Corporation may not receive cash or other distributions from the PPA Entities 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 tax equity investors, or otherwise.

For further information about our PPA Programs, see Note 13, *Power Purchase Agreement Programs*, in Part I, Item 1, *Financial Statements*.

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. As described in the *Power Purchase Agreement Programs* section above, we offered the Bloom Electrons purchase program through the end of 2016 and no longer offer this financing structure to potential customers.

International Channel Partners

Prior to 2018, we consummated a small number of sales outside the United States, including in India and Japan.

India. In India, sales activities are currently conducted by Bloom Energy (India) Pvt. Ltd., our wholly-owned indirect subsidiary; however, we are currently evaluating 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. We expect the facility to be operational by mid-2020 subject to the completion of certain conditions precedent to the establishment of the joint venture company. Other than a nominal initial capital contribution by Bloom, 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 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.

In December 2019, we entered into fuel cell sales, installation, operations and maintenance agreements with two developers for the deployment of fuel cells pursuant to this Community Distributed Generation program. These agreements 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 each contract. A one-year service warranty is provided with the initial sale. After the expiration of the initial standard one-year warranty, the owner has the option to renew our operations and maintenance services for subsequent quarterly or annual periods for up to 30 years. We provide warranties and guaranties regarding both efficiency and output to the owners of the Energy Servers pursuant to the operations and maintenance services agreement with the Operating Company.

As of June 30, 2020, we had not yet completed the sale of any Energy Servers in connection with the New York Community Distributed Generation program.

Key Operating Metrics

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

- **Product accepted** - the number of customer acceptances of our Energy Servers in any period. We recognize revenue when an acceptance is achieved. We use this metric to measure the volume of deployment activity. We measure each Energy Server manufactured, shipped and accepted in terms of 100 kilowatt equivalents.
- **Billings for product accepted in the period** - the total contracted dollar amount of the product component of all Energy Servers that are accepted in a period. We use this metric to gauge the dollar value of the product acceptances and to evaluate the change in dollar amount of acceptances between periods.

- **Billings for installation on product accepted in the period** - the total contracted dollar amount billable with respect to the installation component of all Energy Servers that are accepted. We use this metric to gauge the dollar value of the installations of our product acceptances and to evaluate the change in dollar value associated with the installation of our product acceptances between periods.
- **Billings for annual maintenance service agreements** - the dollar amount billable for one-year service contracts that have been initiated or renewed. We use this metric to measure the cumulative billings for all service contracts in any given period. As our installation base grows, we expect our billings for annual maintenance service agreements to grow, as well.
- **Product costs of product accepted in the period (per kilowatt)** - the average unit product cost for the Energy Servers that are accepted in a period. We use this metric to provide insight into the trajectory of product costs and, in particular, the effectiveness of cost reduction activities.
- **Period costs of manufacturing expenses not included in product costs** - the manufacturing and related operating costs that are incurred to procure parts and manufacture Energy Servers that are not included as part of product costs. We use this metric to measure any costs incurred to run our manufacturing operations that are not capitalized (i.e., absorbed, such as stock-based compensation) into inventory and therefore, expensed to our condensed consolidated statement of operations in the period that they are incurred.
- I**nstallation costs on product accepted (per kilowatt)** - the average unit installation cost for Energy Servers that are accepted in a given period. This metric is used to provide insight into the trajectory of install costs and, in particular, to evaluate whether our installation costs are in line with our installation billings.

Comparison of the Three and Six Months Ended June 30, 2020 and 2019

Acceptances

We use acceptances as a key operating metric to measure the volume of our completed Energy Server installation activity from period to period. We typically define an acceptance as when an Energy Server is installed and running at full power as defined in the customer contract or the financing agreements. For orders where a third party performs the installation, acceptances are generally achieved when the Energy Servers are shipped.

The product acceptances in the periods were as follows:

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
Product accepted during the period (in 100 kilowatt systems)	306	271	35	12.9 %	562	506	56	11.1 %

Product accepted increased by approximately 35 systems and 56 systems, or 12.9% and 11.1%, for the three and six months ended June 30, 2020 compared to the three and six months ended June 30, 2019, respectively. Acceptance volume increased as demand increased for our Energy Servers.

As discussed in the Purchase and Lease Options section above, our customers have several purchase options for our Energy Servers. The portion of acceptances attributable to each purchase option in the three and six months ended June 30, 2020 and 2019 was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Direct Purchase (including Third Party PPAs and International Channels)	100 %	93 %	99 %	94 %
Traditional Lease	— %	1 %	— %	— %
Managed Services	— %	6 %	1 %	6 %
	100 %	100 %	100 %	100 %

As discussed in the Purchase and Lease Options section above, our customers have several purchase options for our Energy Servers. The portion of total revenue attributable to each purchase option in the period was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2020	2019	2020	2019
Direct Purchase (including Third Party PPAs and International Channels)	88 %	84 %	87 %	83 %
Traditional Lease	1 %	1 %	1 %	1 %
Managed Services	5 %	5 %	6 %	5 %
Bloom Electrons	6 %	10 %	6 %	11 %
	100 %	100 %	100 %	100 %

Billings Related to Our Products

Total billings attributable to each revenue classification for the three and six months ended June 30, 2020 and 2019 was as follows (in thousands, except percentages):

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
Billings for product accepted in the period	$ 117,483	$ 165,081	$ (47,598)	(28.8)%	$ 229,254	$ 271,810	$ (42,556)	(15.7)%
Billings for installation on product accepted in the period	27,841	13,169	14,672	111.4 %	42,452	27,632	14,820	53.6 %
Billings for annual maintenance services agreements	18,915	15,158	3,757	24.8 %	39,134	32,778	6,356	19.4 %

Billings for product accepted decreased by approximately $47.6 million, or 28.8%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The decrease is primarily due to a higher average selling price mix in the three months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the three months ended June 30, 2019. Billings for installation on product accepted increased $14.7 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Although product acceptances in the period increased 12.9%, billings for installation on product accepted increased 111.4% due to the mix in installation billings driven by site complexity, site size, personalized applications, and customer option to complete the installation of our Energy Servers themselves. Billings for annual maintenance service agreements increased $3.8 million, or 24.8%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This increase was driven primarily by the increase in our installed base.

Billings for product accepted decreased by approximately $42.6 million, or 15.7%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The decrease is primarily due to a higher average selling price mix in the six months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the six months ended June 30, 2019. Billings for installation on product accepted increased $14.8 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Although product acceptances in the period increased 11.1%, billings for installation on product accepted increased 53.6% due to the mix in installation billings driven by site complexity, site size, personalized applications, and customer option to complete the installation of our Energy Servers themselves. Billings for annual maintenance service agreements increased $6.4 million, or 19.4%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was driven primarily by the increase in our installed base.

Costs Related to Our Products

Total product related costs for the three and six months ended June 30, 2020 and 2019 was as follows:

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
Product costs of product accepted in the period	$2,409 /kW	$3,045 /kW	$(636) /kW	(20.9) %	$2,456 /kW	$3,120 /kW	$(664) /kW	(21.3) %
Period costs of manufacturing related expenses not included in product costs (in thousands)	$ 4,913	$ 3,321	$ 1,592	47.9 %	$ 11,267	$ 10,258	$ 1,009	9.8 %
Installation costs on product accepted in the period	$1,200 /kW	$627 /kW	$573 /kW	91.4 %	$1,011/kW	$650/kW	$361/kW	55.5 %

Product costs of product accepted decreased by approximately $636 per kilowatt, or 20.9%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The product cost reduction was driven generally by our ongoing cost reduction efforts to reduce material costs in conjunction with our suppliers and our reduction in labor and overhead costs through improved processes and automation at our manufacturing facilities.

Product costs of product accepted decreased by approximately $664 per kilowatt, or 21.3%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The product cost reduction was 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 increased by approximately $1.6 million, or 47.9%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This increase was driven primarily by additional one-time expenses incurred due to COVID-19.

Period costs of manufacturing related expenses increased by approximately $1.0 million, or 9.8%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was driven primarily by additional one-time expenses incurred due to COVID-19.

Installation costs on product accepted increased by approximately $573 per kilowatt, or 91.4%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. 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, and customer option to complete the installation of our Energy Servers themselves. As such, installation on a per kilowatt basis can vary significantly from period-to-period.

Installation costs on product accepted increased by approximately $361 per kilowatt, or 55.5%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. 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, and customer option to complete the installation of our Energy Servers themselves. As such, installation on a per kilowatt basis can vary significantly from period-to-period.

Results of Operations

A discussion regarding the comparison of our financial condition and results of operations for the three and six months ended June 30, 2020 and 2019 is presented below (in thousands, except percentage data).

Comparison of the Three and Six Months Ended June 30, 2020 and 2019

Revenue

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019 As Restated	Amount	%	2020	2019 As Restated	Amount	%
Product	$ 116,197	$ 144,081	$ (27,884)	(19.4) %	$ 215,756	$ 235,007	$ (19,251)	(8.2)%
Installation	29,839	13,076	16,763	128.2 %	46,457	25,295	21,162	83.7 %
Service	26,208	23,026	3,182	13.8 %	51,355	46,493	4,862	10.5 %
Electricity	15,612	20,143	(4,531)	(22.5) %	30,987	40,532	(9,545)	(23.5)%
Total revenue	$ 187,856	$ 200,326	$ (12,470)	(6.2)%	$ 344,555	$ 347,327	$ (2,772)	(0.8)%

Total Revenue

Total revenue decreased approximately $12.5 million, or 6.2%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was driven primarily driven by the decrease in product revenue for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, offset partially by the increase in installation revenue. The product revenue decrease is primarily due to a higher average selling price mix in the three months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the three months ended June 30, 2019.

Total revenue decreased approximately $2.8 million, or 0.8%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This decrease was primarily driven by the decrease in product revenue and electricity revenue for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, offset partially by the increase in installation revenue. The product revenue decrease is primarily due to a higher average selling price mix in the six months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the six months ended June 30, 2019.

Product Revenue

Product revenue decreased approximately $27.9 million, or 19.4%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The product revenue decrease was primarily due to a higher average selling price mix in the three months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the three months ended June 30, 2019.

Product revenue decreased approximately $19.3 million, or 8.2%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The product revenue decrease was, again, primarily due to a higher average selling price mix in the six months ended June 30, 2019, driven mainly by the PPA II upgrade that occurred in the six months ended June 30, 2019.

Installation Revenue

Installation revenue increased by approximately $16.8 million, or 128.2%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This increase was driven by the increase in product acceptances of approximately 35 systems, or 12.9%, for the three months ended June 30, 2020 and due to the change in mix of installations driven site complexity, site size, and customer option to complete the installation of our Energy Servers themselves.

Installation revenue increased approximately $21.2 million, or 83.7%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was driven by the increase in product acceptances of approximately 56 systems, or 11.1%, for the six months ended June 30, 2020 and due to the change in mix of installations driven by site complexity, site size, and customer option to complete the installation of our Energy Servers themselves.

Service Revenue

Service revenue increased approximately $3.2 million, or 13.8%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This was primarily due to the increase in the number of annual maintenance contract renewals driven by our growing fleet of installed Energy Servers.

Service revenue increased by approximately $4.9 million, or 10.5% for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This was primarily due to the increase in the number of annual maintenance contract renewals driven by our growing fleet of installed Energy Servers.

Electricity Revenue

Electricity revenue decreased by approximately $4.5 million, or 22.5%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, due to a reduction in electricity revenues resulting from the decommissioning and upgrade of PPA II in the three months ended June 30, 2019. Electricity revenue was driven by our former Bloom Electrons program, which included PPA II, as well as from our Managed Services agreements. When PPAs associated with our Bloom Electrons program are decommissioned, we no longer recognize electricity revenue for them.

Electricity revenue decreased by approximately $9.5 million, or 23.5%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, due to a reduction in electricity revenues resulting from the decommissioning and an upgrade of PPA II in the six months ended June 30, 2019. Electricity revenue was driven by our former Bloom Electrons program, which included PPA II, as well as from our Managed Services agreements. When PPAs associated with our Bloom Electrons program are decommissioned, we no longer recognize electricity revenue for them.

Cost of Revenue

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019 As Restated	Amount	%	2020	2019 As Restated	Amount	%
		(dollars in thousands)				(dollars in thousands)		
Cost of revenue:								
Product	$ 83,127	$ 113,228	$ (30,101)	(26.6) %	$ 155,616	$ 202,000	$ (46,384)	(23.0) %
Installation	38,287	17,685	20,602	116.5 %	59,066	33,445	25,621	76.6 %
Service	28,652	18,763	9,889	52.7 %	59,622	46,684	12,938	27.7 %
Electricity	11,541	22,300	(10,759)	(48.2) %	24,071	35,284	(11,213)	(31.8) %
Total cost of revenue	$ 161,607	$ 171,976	$ (10,369)	(6.0)%	$ 298,375	$ 317,413	$ (19,038)	(6.0)%

Total Cost of Revenue

Total cost of revenue decreased by approximately $10.4 million, or 6.0%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Included as a component of total cost of revenue, stock-based compensation decreased approximately $5.8 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Cost of revenue for the three months ended June 30, 2019 included $33.7 million of one-time expenses associated with the PPA II upgrade. Total cost of revenue, excluding stock-based compensation and the one-time expenses, increased approximately $29.1 million, or 22.8%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 due to the 12.9% increase in product acceptances and higher cost of installation revenue due to the change in mix of installations.

Total cost of revenue decreased by approximately $19.0 million, or 6.0%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Included as a component of total cost of revenue, stock-based compensation decreased approximately $18.6 million, or 64.5%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Cost of revenue for the six months ended June 30, 2019 included $33.7 million of one-time expenses associated with the PPA II upgrade. Total cost of revenue, excluding stock-based compensation and the one-time expenses, increased approximately $33.3 million, or 13.1%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019 due to the 11.1% increase in product acceptances and higher cost of installation revenue due to the change in mix of installations.

Cost of Product Revenue

Cost of product revenue decreased by approximately $30.1 million, or 26.6%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Stock-based compensation, which is included as a component of cost of product revenue, decreased approximately $3.9 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Cost of product revenue for the three months ended June 30, 2019 included $25.6 million of one-time expenses associated with the PPA II upgrade. Cost of product revenue, excluding stock-based compensation and the one-time expenses, decreased approximately $0.6 million, or 0.7%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 despite a 12.9% increase in product acceptances due to ongoing cost reduction efforts to reduce material, labor and overhead costs.

Cost of product revenue decreased by approximately $46.4 million, or 23.0%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Stock-based compensation, which is included as a component of cost of product revenue, decreased approximately $15.8 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Cost of product revenue for the six months ended June 30, 2019 included $25.6 million of one-time expenses associated with the PPA II upgrade. Cost of product revenue, excluding stock-based compensation and the one-time expenses, decreased approximately $4.9 million, or 3.2%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019 despite an 11.1% increase in product acceptances due to ongoing cost reduction efforts to reduce material, labor and overhead costs.

Cost of Installation Revenue

Cost of installation revenue increased by approximately $20.6 million, or 116.5%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, primarily due to the increase in product acceptances of approximately 35 systems, or 12.9%, for the three months ended June 30, 2020 and due to the change in mix of installations driven by site complexity, size, local ordinance requirements, location of utility interconnect, and customer option to complete the installation of our Energy Servers themselves.

Cost of installation revenue increased by approximately $25.6 million, or 76.6%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, primarily due to the increase in product acceptances of approximately 56 systems, or 11.1%, for the six months ended June 30, 2020 and due to the change in mix of installations driven by site complexity, size, local ordinance requirements, location of utility interconnect and, the customer's option to complete the installation of our Energy Servers themselves.

Cost of Service Revenue

Cost of service revenue increased by approximately $9.9 million, or 52.7%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This increase in service cost was primarily due to more power module replacements required in the fleet as our fleet of installed Energy Servers grows with acceptances and additional extended service contracts are executed and renewed.

Cost of service revenue increased by approximately $12.9 million, or 27.7%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase in service cost was primarily due to more power module replacements required in the fleet as our fleet of installed Energy Servers grows with acceptances and additional extended service contracts are executed and renewed.

Cost of Electricity Revenue

Cost of electricity revenue decreased by approximately $10.8 million, or 48.2%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, mainly due to the decommissioning and upgrade of PPA II in the three months ended June 30, 2019, offset by the increase in Managed Services Agreements acceptances and their associated costs of electricity revenue recognized over the period of the related agreement.

Cost of electricity revenue decreased by approximately $11.2 million, or 31.8%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, mainly due to the decommissioning and upgrade of PPA II in the six months ended June 30, 2019, offset by the increase in Managed Services Agreements acceptances and their associated costs of electricity revenue recognized over the period of the related agreement.

Gross Profit (Loss)

	Three Months Ended June 30,			Six Months Ended June 30,		
	2020	2019 As Restated	Change	2020	2019 As Restated	Change
	(dollars in thousands)					
Gross profit:						
Product	$ 33,070	$ 30,853	$ 2,217	$ 60,140	$ 33,007	$ 27,133
Installation	(8,449)	(4,609)	(3,840)	(12,609)	(8,150)	(4,459)
Service	(2,444)	4,263	(6,707)	(8,266)	(191)	(8,075)
Electricity	4,071	(2,157)	6,228	6,916	5,248	1,668
Total gross profit	$ 26,249	$ 28,350	$ (2,101)	$ 46,180	$ 29,914	$ 16,266
Gross margin:						
Product	28 %	21 %		28 %	14 %	
Installation	(28)%	(35)%		(27)%	(32)%	
Service	(9)%	19 %		(16)%	— %	
Electricity	26 %	(11)%		22 %	13 %	
Total gross margin	14 %	14 %		13 %	9 %	

Total Gross Profit

Gross profit decreased $2.1 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Stock-based compensation, which is included as a component of total cost of revenue, decreased approximately $5.8 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Total gross profit, excluding stock-based compensation, decreased approximately $7.9 million, or 20.3%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 due to the higher margin site mix of installations driven primarily by the PPA II upgrade in the three months ended June 30, 2019.

Gross profit improved $16.3 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Stock-based compensation, which is included as a component of total cost of revenue, decreased approximately $18.6 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Total gross profit, excluding stock-based compensation, decreased approximately $2.3 million, or 4.0%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, despite an 11.1% increase in product acceptances due to the higher margin site mix of installations driven primarily by the PPA II upgrade in the six months ended June 30, 2019.

Product Gross Profit

Product gross profit increased $2.2 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Excluding stock-based compensation, product gross profit decreased $1.7 million, or 4.5%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The product gross profit decrease in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 was primarily due to a higher margin site mix in the three months ended June 30, 2019, driven primarily by the PPA II upgrade that occurred in the three months ended June 30, 2019.

Product gross profit increased $27.1 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Excluding stock-based compensation, product gross profit increased $11.3 million, or 20.4%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was generally due to the increase in product acceptances and lower product cost driven by ongoing cost reduction activities.

Installation Gross Loss

Installation gross loss increased $3.8 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Excluding stock-based compensation, install gross loss increased $5.0 million, or 183.7%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 driven by the change in mix of installations driven by site complexity, size, local ordinance requirements, location of utility interconnect and, customer option to complete the installation of our Energy Servers themselves.

Installation gross loss increased $4.5 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Excluding stock-based compensation, install gross loss increased $6.7 million, or 153.9%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, driven by the change in mix of installations driven by site complexity, size, local ordinance requirements, location of utility interconnect and, the customer's option to complete the installation of our Energy Servers themselves.

Service Gross Profit (Loss)

Service gross profit (loss) worsened $6.7 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decline was primarily due to an increase in service cost driven primarily by the timing of our service schedule for power module replacements required in our fleet of installed Energy Servers.

Service gross loss increased $8.1 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was primarily due to an increase in service cost driven primarily by the timing of our service schedule for power module replacements required in our fleet of installed Energy Servers.

Electricity Gross Profit (Loss)

Electricity gross profit (loss) improved $6.2 million, or 288.8%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, mainly due to the decommissioning and upgrade of PPA II in the three months ended June 30, 2019.

Electricity gross profit increased $1.7 million, or 31.8%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, mainly due to the decommissioning and upgrade of PPA II in the six months ended June 30, 2019.

Operating Expenses

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
		As Restated				As Restated		
	(dollars in thousands)				(dollars in thousands)			
Research and development	$ 19,377	$ 29,772	$ (10,395)	(34.9)%	$ 42,656	$ 58,631	$ (15,975)	(27.2)%
Sales and marketing	11,427	18,194	(6,767)	(37.2)%	25,376	38,567	(13,191)	(34.2)%
General and administrative	24,945	43,662	(18,717)	(42.9)%	54,043	82,736	(28,693)	(34.7)%
Total operating expenses	$ 55,749	$ 91,628	$ (35,879)	(39.2)%	$ 122,075	$ 179,934	$ (57,859)	(32.2)%

Total Operating Expenses

Total operating expenses decreased $35.9 million, or 39.2%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Included as a component of total operating expenses, stock-based compensation expenses decreased approximately $26.9 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The decrease in stock-based compensation expense was primarily attributable to a lower stock-based compensation charge attributed to a one-time employee grant of restricted stock units ("RSUs") awarded prior to IPO with a performance condition of an IPO of the Company's securities. These RSUs have a two-year vesting period starting on the day of IPO and were issued as an employee retention vehicle to bring our stock-based compensation in line with our peer group. These RSUs completed their vesting in July of 2020, and stock-based compensation charge associated with these RSUs decreased quarter-over-quarter until the final vesting date. In addition to the one-time grant, stock-based compensation expense includes some previously granted RSUs with vesting beginning upon the completion of our IPO. Total operating expenses, excluding stock-based compensation, decreased approximately $8.9 million, or 17.6%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was primarily due to a $5.9 million one-time expense in the three months ended June 30, 2019 associated with the PPA II upgrade.

Total operating expenses decreased $57.9 million, or 32.2%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Included as a component of total operating expenses, stock-based compensation expenses decreased approximately $58.9 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The decrease in stock-based compensation expense was primarily attributable to a lower stock-based compensation charge attributed to a one-time employee grant of RSUs awarded prior to IPO with a performance condition of an IPO of the Company's securities. These RSUs have a two-year vesting period starting on the day of IPO and were issued as an employee retention vehicle to bring our stock-based compensation in line with our peer group. These RSUs completed their vesting in July of 2020, and the stock-based compensation charge associated with these RSUs decreased quarter-over-quarter until the final vesting date. In addition to the one-time grant, the stock-based compensation expenses include some previously granted RSUs with vesting beginning upon the completion of our IPO. Total operating expenses, excluding stock-based compensation expense, increased approximately $1.1 million, or 1.2%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was primarily due to compensation related expenses associated with hiring new employees, investments for next generation technology, and fees for restatement related expenses in 2020 offset by a $5.9 million one-time expense in six months ended June 30, 2019 associated with the PPA II upgrade.

Research and Development

Research and development expenses decreased approximately $10.4 million, or 34.9%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Included as a component of research and development expenses, stock-based compensation expenses decreased by approximately $7.5 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Total research and development expenses, excluding stock-based compensation expenses, decreased by approximately $2.9 million, or 16.5%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was primarily due to timing of investments made in our next generation technology development, sustaining engineering projects for the current Energy Server platform, and investments made for customer personalized applications, such as microgrids, and new fuel solutions utilizing biogas.

Research and development expenses decreased by approximately $16.0 million, or 27.2%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Included as a component of research and development expenses, stock-based compensation expenses decreased by approximately $15.6 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Total research and development expenses, excluding stock-based compensation, decreased by approximately $0.3 million, or 1.0%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019.

Sales and Marketing

Sales and marketing expenses decreased by approximately $6.8 million, or 37.2%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Included as a component of sales and marketing expenses, stock-based compensation expenses decreased by approximately $6.7 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Total sales and marketing expenses, excluding stock-based compensation, decreased by approximately $0.1 million, or 0.7%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019.

Sales and marketing expenses decreased by approximately $13.2 million, or 34.2%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Included as a component of sales and marketing expenses, stock-based compensation expenses decreased by approximately $14.3 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Total sales and marketing expenses, excluding stock-based compensation, increased by approximately $1.1 million, or 6.2%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was primarily due to compensation expenses related to hiring new employees and expenses related to efforts to increase demand and raise market awareness of our Energy Server solutions, expanding outbound communications, as well as efforts to attract new customer financing partners.

General and Administrative

General and administrative expenses decreased by approximately $18.7 million, or 42.9%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Included as a component of general and administrative expenses, stock-based compensation expenses decreased by approximately $12.7 million for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Total general and administrative expenses, excluding stock-based compensation, decreased by approximately $6.0 million, or 25.0%, for the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was due to a $5.9 million one-time expense in the three months ended June 30, 2019 associated with the PPA II upgrade.

General and administrative expenses decreased by approximately $28.7 million, or 34.7%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Included as a component of general and administrative expenses, stock-based compensation expenses decreased by approximately $29.0 million for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Total general and administrative expenses, excluding stock-based compensation, increased by approximately $0.3 million, or 0.7%, for the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The increase in general and administrative expenses was mainly due to increased personnel costs and fees for restatement related expenses in 2020, offset by a $5.9 million one-time expense in the six months ended June 30, 2019 associated with the PPA II upgrade.

Stock-Based Compensation

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019 As Restated	Amount	%	2020	2019 As Restated	Amount	%
						(dollars in thousands)		
Cost of revenue	$ 4,736	$ 10,538	$ (5,802)	(55.1)%	$ 10,243	$ 28,850	$ (18,607)	(64.5)%
Research and development	4,714	12,218	(7,504)	(61.4)%	10,810	26,448	(15,638)	(59.1)%
Sales and marketing	2,234	8,935	(6,701)	(75.0)%	6,124	20,447	(14,323)	(70.0)%
General and administrative	6,947	19,673	(12,726)	(64.7)%	14,473	43,441	(28,968)	(66.7)%
Total stock-based compensation	$ 18,631	$ 51,364	$ (32,733)	(63.7)%	$ 41,650	$ 119,186	$ (77,536)	(65.1)%

Total stock-based compensation decreased $32.7 million, or 63.7%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. Of the $18.6 million in stock-based compensation for the three months ended June 30, 2020, approximately $4.8 million was related to one-time employee grants of RSUs that were issued at the time of our IPO and that have a two-year vesting period. These RSUs provided us an employee retention vehicle to bring our stock-based compensation in line with our peer group. In addition, the stock-based compensation included some previously granted RSUs that vested upon the completion of our IPO.

Total stock-based compensation decreased $77.5 million, or 65.1%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. Of the $41.7 million in stock-based compensation for the six months ended June 30, 2020, approximately $11.5 million was related to one-time employee grants of RSUs that were issued at the time of our IPO and that have a two-year vesting period. These RSUs provided us an employee retention vehicle to bring our stock-based compensation in line with our peer group. In addition, the stock-based compensation included some previously granted RSUs that vested upon the completion of our IPO.

Other Income and Expense

	Three Months Ended June 30,		Change	Six Months Ended June 30,		Change
	2020	2019 As Restated		2020	2019 As Restated	
			(in thousands)			
Interest income	$ 332	$ 1,700	$ (1,368)	$ 1,151	$ 3,585	$ (2,434)
Interest expense	(14,374)	(22,722)	8,348	(35,128)	(44,522)	9,394
Interest expense, related parties	(794)	(1,606)	812	(2,160)	(3,218)	1,058
Other income (expense), net	(3,913)	(222)	(3,691)	(3,921)	43	(3,964)
Loss on extinguishment of debt	—	—	—	(14,098)	—	(14,098)
Gain (loss) on revaluation of embedded derivatives	412	(540)	952	696	(1,080)	1,776
Total	$ (18,337)	$ (23,390)	$ 5,053	$ (53,460)	$ (45,192)	$ (8,268)

Total Other Expense

Total other expense decreased $5.1 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was primarily due to reduction in interest expenses.

Total other expense increased $8.3 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This increase was primarily due to the loss on extinguishment of debt of $14.1 million.

Interest Income

Interest income decreased $1.4 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was primarily due to the decrease in cash balances.

Interest income decreased $2.4 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This decrease was primarily due to the decrease in cash balances.

Interest Expense

Interest expense decreased $8.3 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This decrease was primarily due a one-time credit of $4.3 million due to premium amortization on the convertible notes, and a decrease in interest expense with the debt buy-out due to the PPA II and PPA IIIb upgrades.

Interest expense decreased $9.4 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This decrease was primarily due a one-time credit of $4.3 million due to premium amortization on the convertible notes, and a decrease in interest expense with the debt buy-out due to the PPA II and PPA IIIb upgrades.

Interest Expense, Related Parties

Interest expense, related parties decreased $0.8 million the three months ended June 30, 2020, as compared to the three months ended June 30, 2019 due to the normal interest amortization.

Interest expense, related parties decreased $1.1 million the six months ended June 30, 2020, as compared to the six months ended June 30, 2019 due to the normal interest amortization.

Other Income (Expense), net

Other income (expense), net worsened $3.7 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, due to an impairment in our investment in the Bloom Energy Japan joint venture.

Other income (expense), net worsened $4.0 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, due to an impairment in our investment in the Bloom Energy Japan joint venture.

Loss on Extinguishment of Debt

There was no debt extinguishment in the three months ended June 30, 2020. Loss on extinguishment of debt of $14.1 million was recorded in the six months ended June 30, 2020. There was no debt extinguishment in the three and six months ended June 30, 2019.

Gain (Loss) on Revaluation of Embedded Derivatives

Gain (loss) on revaluation of embedded derivatives improved $1.0 million in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. This improvement was primarily due to 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 improved $1.8 million in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. This improvement was primarily due to 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.

Provision for Income Taxes

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
	(dollars in thousands)							
Income tax provision	$ 141	$ 258	$ (117)	(45.3)%	$ 265	$ 466	$ (201)	(43.1)%

Income tax provision decreased in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019, and was primarily due to fluctuations in the effective tax rates on income earned by international entities.

Income tax provision decreased in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019, and was primarily due to fluctuations in the effective tax rates on income earned by international entities.

Net Loss Attributable to Noncontrolling Interests and Redeemable Noncontrolling Interests

	Three Months Ended June 30,		Change		Six Months Ended June 30,		Change	
	2020	2019	Amount	%	2020	2019	Amount	%
	(dollars in thousands)							
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	5,466	5,015	$ 451	9.0 %	$ 11,159	$ 8,847	$ 2,312	26.1 %

Total loss attributable to noncontrolling interests increased $0.5 million, or 9.0%, in the three months ended June 30, 2020, as compared to the three months ended June 30, 2019. The net loss increased due to increased losses in our PPA Entities which are allocated to our noncontrolling interests.

Total loss attributable to noncontrolling interests increased $2.3 million, or 26.1%, in the six months ended June 30, 2020, as compared to the six months ended June 30, 2019. The net loss increased due to increased losses in our PPA Entities which are allocated to our noncontrolling interests.

Liquidity and Capital Resources

As of June 30, 2020, we had an accumulated deficit of approximately $3.1 billion. We have financed our operations, including the costs of acquisition and installation of our Energy Servers, mainly through a variety of financing arrangements and PPA Entities, credit facilities from banks, sales of our common stock, debt financings and cash generated from our operations. As of June 30, 2020, we had $416.0 million of total outstanding recourse debt, $229.7 million of non-recourse debt and $27.3 million of other long-term liabilities. See Note 7, *Outstanding Loans and Security Agreements*, in Part I, Item 1, *Financial Statements* for a complete description of our outstanding debt. As of June 30, 2020 and December 31, 2019, we had cash and cash equivalents of $144.1 million and $202.8 million, respectively.

In March 2020, we successfully extended the maturity of our outstanding 10% Convertible Notes, our 10% Constellation Note and additionally entered into a note purchase agreement to issue $70.0 million of 10.25% Senior Secured Notes due 2027 in a private placement that was subsequently completed on May 1, 2020. The combination of our existing cash and cash equivalents, the extension of the 10% Convertible Notes to December 2021, the conversion of the 10% Constellation Note in May 2020, and the proceeds from the 10.25% Senior Secured Notes are expected to be sufficient to meet our operational and capital cash flow requirements and other cash flow needs and we do not expect that it will be necessary to access capital markets for cash to operate our business for the next 12 months. If the impact of COVID-19 to our business and financial position is more extensive than expected, we may access capital markets opportunistically to continue to improve our capital structure and to address outstanding debt principal repayments that are due in December 2021 if market conditions are favorable. As of June 30, 2020, the current portion of our total debt is $26.1 million.

For additional information refer to Note 7, *Outstanding Loans and Security Agreements*, in Item 1, *Financial Statements.*

Additionally, the impact of COVID-19 on our ability to execute our business strategy and on our financial position and results of operation is uncertain.Our future cash flow requirements may vary materially from those currently planned and 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, the expansion of sales and marketing activities, market acceptance of our products, the timing of receipt by us of distributions from our PPA Entities and overall economic conditions including the impact of COVID-19 on our future operations, as described in the *COVID-19 Pandemic* section above. We do not expect to receive significant cash distributions from our PPA Entities. For additional information refer to Note 13, *Power Purchase Agreement Programs,* in Part I, Item 1*, Financial Statements.*

Cash Flows

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

	Six Months Ended June 30,	
	2020	2019
		As Restated
Net cash provided by (used in):		
Operating activities	$ (40,235)	$ 103,616
Investing activities	(19,560)	79,911
Financing activities	6,536	(92,946)

Net cash provided by (used in) our variable interest entities (the PPA Entities) which are incorporated into the condensed consolidated statements of cash flows for the three months ended June 30, 2020 and 2019 is as follows (in thousands):

	Six Months Ended June 30,	
	2020	2019
PPA Entities [1]		
Net cash provided by PPA operating activities	$ 15,016	$ 139,364
Net cash used in PPA financing activities	(13,649)	(118,805)

[1] The PPA Entities' operating and financing cash flows are a subset of our consolidated cash flows and represents 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 consolidated cash flows of the PPA Entities in which we have only a minority interest.

Operating Activities

Net cash used in operating activities for the six months ended June 30, 2020 was $40.2 million and was primarily the result of net cash loss of $44.3 million partially offset the net decrease in working capital of $4.1 million. Net cash loss is primarily comprised of a net loss of $129.6 million, adjusted for non-cash benefit items including: (i) depreciation and amortization of $25.9 million; (ii) impairment of equity method investment of $4.2 million; (iii) a loss on revaluation of derivative contracts of $0.1 million; (iv) stock-based compensation of $41.7 million; and (v) net loss on extinguishment of debt of $14.1 million; net of (vi) recovery of debt issuance cost of $0.5 million. Net cash provided by changes in working capital consisted primarily of decreases in: (i) customer financing receivable and other of $2.5 million; (ii) prepaid expenses and other current assets of $7.3 million; plus increases in: (iii) accounts payable of $8.8 million; (iv) accrued expenses and other current liabilities of $13.7 million; and (v) deferred revenue and customer deposits of $2.9 million. These sources of cash from working capital were mostly offset by increases in: (i) accounts receivable of $11.8 million; (ii) inventories of $3.5 million; (iii) deferred cost of revenue of $10.0 million; and (iii) other long-term assets of $3.6 million; plus a decrease in: (iv) other long-term liabilities of $2.1 million.

Net cash provided by operating activities for the six months ended June 30, 2019 was $103.6 million and was the result of net cash earnings of $7.7 million plus net decrease in working capital of $95.9 million. Net cash earnings is primarily comprised of a net loss of $195.7 million, adjusted for non-cash benefit items including: (i) depreciation and amortization of approximately $37.0 million; (ii) write-off of property, plant and equipment, net of $2.7 million; (iii) Write-off of PPA II decommissioned assets of 25.6 million; (iv) debt make-whole payment reclassification of $5.9 million; (v) revaluation of derivatives contracts of $1.6 million; (vi) stock-based compensation of $119.2 million; and (vii) amortization of debt issuance cost of $11.3 million. Net cash provided by changes in working capital consisted primarily of decreases in: (i) accounts receivable of $49.7 million; (ii) inventory of $22.2 million; (iii) customer financing receivable and other of $2.7 million; and (iv) prepaid expenses and other current assets of $10.2 million; plus increases in: (v) accrued expenses and other current liabilities of $5.6 million; (vi) deferred revenue and customer deposits of $51.9 million; and (vi) other long term liabilities of $4.7 million. These sources of cash from working capital were partially offset by increases in: (i) deferred cost of revenue of $38.8 million; and (ii) other long-term assets of $0.3 million; plus decreases in: (iii) accounts payable of $5.5 million; and (iv) accrued warranty of $6.7 million.

Investing Activities

Net cash used in investing activities in the six months ended June 30, 2020 was $19.6 million entirely related to the purchase of long-lived assets.

Net cash provided by investing activities in the six months ended June 30, 2019 was $79.9 million, which was primarily the result of net proceeds from maturities of marketable securities of $104.5 million, partially offset by $24.6 million used for the purchase of long-lived assets.

Financing Activities

Net cash provided by financing activities in the six months ended June 30, 2020 was $6.5 million which included borrowings from issuance of debt of $70.0 million, borrowings from issuance of debt to related parties of $30.0 million and proceeds from issuance of common stock of $5.2 million. This was partially offset by repayment of debt of $84.4 million, debt issuance costs of $3.4 million, repayment of financing obligations of $5.1 million, and distributions paid to our PPA Equity Investors of $5.8 million.

Net cash used in financing activities in the six months ended June 30, 2019 was $92.9 million and resulted primarily from distributions paid to our PPA Equity Investors of $7.8 million, and repayments of long-term debt of $85.2 million, the debt make-whole payment reclassification of $5.9 million, payments to noncontrolling and redeemable noncontrolling interests of $18.7 million, and distributions to noncontrolling and redeemable noncontrolling interests of $7.8 million, partially offset by proceeds from the issuance of common stock of $8.3 million and the net proceeds from financing obligations of $16.3 million.

Outstanding Loans and Security Agreements

The following is a summary of our debt as of June 30, 2020 (in thousands):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity
		Current	Long-Term	Total	
LIBOR + 4% term loan due November 2020	$ 714	$ 697	$ —	$ 697	$ —
10% convertible promissory notes due December 2021	249,299	—	263,405	263,405	—
10% notes due July 2024	86,000	14,000	69,497	83,497	—
10.25% notes due March 2027	70,000		68,437	68,437	
Total recourse debt	406,013	14,697	401,339	416,036	—
7.5% term loan due September 2028	35,675	2,567	30,078	32,645	—
6.07% senior secured notes due March 2030	79,466	3,511	75,054	78,565	—
LIBOR + 2.5% term loan due December 2021	119,472	5,289	113,184	118,473	—
Letters of Credit due December 2021	—	—	—	—	968
Total non-recourse debt	234,613	11,367	218,316	229,683	968
Total debt	$ 640,626	$ 26,064	$ 619,655	$ 645,719	$ 968

Recourse debt refers to debt that Bloom Energy Corporation has an obligation to pay. Non-recourse debt refers to debt that is recourse to only specified assets or our subsidiaries. The differences between the unpaid principal balances and the net carrying values apply to debt discounts and deferred financing costs. We were in compliance with all financial covenants as of June 30, 2020 and December 31, 2019.

Recourse Debt Facilities

LIBOR + 4% Term Loan due November 2020 - The weighted average interest rate as of June 30, 2020 and December 31, 2019 was 4.5% and 6.3%, respectively. As of June 30, 2020 and December 31, 2019, the unpaid principal balance of debt outstanding was $0.7 million and $1.6 million, respectively, and we are in compliance with all covenants.

10% Constellation Convertible Promissory Note due 2021 - On March 31, 2020, we entered into an Amended and Restated Subordinated Secured Convertible Note Modification Agreement (the “Constellation Note Modification Agreement”) which amended the terms of the 5% Constellation Note to extend the maturity date to December 31, 2021 and increased the interest rate from 5% to 10% ("10% Constellation Note"). We further amended the 10% Constellation Note by reducing the strike price on the conversion feature from $38.64 per share to $8.00 per share.

When we evaluated the Constellation Note Modification Agreement in accordance with ASC 470-60, *Debt - Troubled Debt Restructurings by Debtors*, and 470-50, *Debt - Modifications and Extinguishments*, we concluded that the amendment did not constitute a troubled debt restructuring and, furthermore, the amendment qualified as a substantial modification as a result of the increase in the fair value of the conversion feature due to the reduced strike price. As a result, on March 31, 2020, the 10% Constellation Note, which consisted of $33.1 million in principal and $3.8 million in accrued and unpaid interest, was extinguished and the 10% Constellation Note was recorded at their fair market value which equaled $40.7 million. The difference between the fair market value of the 10% Constellation Note and the carrying value of the 5% Constellation Note of $3.8 million was recorded as a loss on extinguishment of debt in the condensed consolidated statement of operations.

On June 18, 2020, Constellation NewEnergy, Inc. exchanged their entire 10% Constellation Note at the conversion price of $8.00 per share into 4.7 million shares of Class A common stock. At the time of this exchange the unamortized premium of $3.4 million was recorded as an adjustment to additional paid-in capital.

10% Convertible Promissory Notes due December 2021 - On March 31, 2020, we entered into an Amendment Support Agreement (the “Amendment Support Agreement”) with the noteholders of our outstanding 6% Convertible Notes pursuant to which such Noteholders agreed to extend the maturity date of the outstanding 6% Convertible Notes to December 1, 2021 and increase the interest rate from 6% to 10%, ("10% Convertible Notes"). Additionally, the debt is convertible at the option of the Noteholders into common stock at any time through the maturity date and we further amended the 10% Convertible Notes by reducing the strike price on the conversion feature from $11.25 to $8.00 per share. In conjunction with entering into the

Amendment Support Agreement, on March 31, 2020, we also entered into a Convertible Note Purchase Agreement (the "10% Convertible Note Purchase Agreement") and issued an additional $30.0 million aggregate principal amount of 10% Convertible Notes to Foris Ventures, LLC, a new Noteholder and New Enterprise Associates 10, Limited Partnership, an existing Noteholder. The 10% Convertible Notes and the $30.0 million new 10% Convertible Notes were all reflected in the Amended and Restated Indenture between the Company and U.S. Bank National Association dated April 20, 2020. The Amendment Support Agreement required that we repay at least $70.0 million of the 10% Convertible Notes on or before September 1, 2020. In return, collateral was released to support the collateral required under the 10.25% Senior Secured Notes, and 50% of the proceeds from the consummation of certain transactions, including equity offerings or additional indebtedness, will be applied to redeem the 10% Convertible Notes at a redemption price equal to 100% of the principal amount of the 10% Convertible Notes, plus accrued and unpaid interest, plus a certain percentage, determined based on the time of redemption of the aggregate sum of all discounted remaining scheduled interest payments. The discount rate to determine the present value would decrease, creating a redemption penalty, if redemption were to occur after October 21, 2020. On May 1, 2020, we repaid $70.0 million of the 10% Convertible Notes and accrued and unpaid interest and recorded an adjustment to the unamortized debt premium of $4.3 million.

We evaluated the Amendment Support Agreement in accordance with ASC 470-60, *Debt - Troubled Debt Restructurings by Debtors*, and 470-50, *Debt - Modifications and Extinguishments*, and concluded that the amendment did not constitute a troubled debt restructuring and, furthermore, the amendment qualified as a substantial modification as a result of the increase in the fair value of the conversion feature due to the reduced strike price. As a result, on March 31, 2020, we recorded a $10.3 million loss on extinguishment of debt in the condensed consolidated statement of operations, which was calculated as the difference between the reacquisition price of the 6% Convertible Notes and the carrying value of the 6% Convertible Notes. The total carrying value of the 6% Convertible Notes equaled $279.0 million which consisted of $289.3 million in principal and $1.4 million in accrued and unpaid interest reduced by $10.7 million in unamortized discount and $1.0 million in unamortized debt issuance costs. The total reacquisition price of the 6% Convertible Notes equaled $289.3 million which consisted of the $340.7 million fair value of the 10% Convertible Notes, $1.4 million in accrued and unpaid interest, and $1.2 million of fees paid to Noteholders as part of the amendment, reduced by $24.0 million, the fair value at March 31, 2020 of the embedded derivative relating to the equity classified conversion feature that is reclassified from additional paid-in capital at the time of the extinguishment, $20.0 million cash received from the additional 10% Convertible Notes that were issued to New Enterprise Associates 10, Limited Partnership, and the $10.0 million issuance to Foris Ventures, LLC.

The new net carrying amount of the 10% Convertible Notes of $263.4 million, which consists of the $249.3 million principal of the 10% Convertible Notes, $14.1 million net of premium paid for the 10% Convertible Notes and debt issuance costs was classified as non-current as of June 30, 2020. Furthermore, the $14.1 million deemed premium net of debt issuance cost is being amortized over the term of the 10% Convertible Notes using the effective interest method.

10% Notes due July 2024 - The outstanding unpaid principal balance of the 10% Notes of $14.0 million and $14.0 million were classified as current as of June 30, 2020 and December 31, 2019, respectively, and the net carrying amount of the 10% Notes of $69.5 million and $76.0 million were classified as non-current as of June 30, 2020 and December 31, 2019, respectively. The accrued unpaid interest balance on the 10% Notes was $3.6 million and $3.9 million as on June 30, 2020 and December 31, 2019respectively.

10.25% Senior Secured Notes due March 2027 - On May 1, 2020, we issued $70.0 million of 10.25% Senior Secured Notes due 2027 (the "10.25% Senior Secured Notes") in a private placement (the "Senior Secured Notes Private Placement"). The 10.25% Senior Secured Notes are governed by an indenture (the "Senior Secured Notes Indenture") entered into among us, the guarantors 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 on May 1, 2020. The 10.25% Senior Secured Notes are supported by a $150.0 million indenture between us and US Bank National Association which contains an accordion feature for an additional $80.0 million of notes that can be issued within the next eighteen months.

Interest on the 10.25% Senior Secured Notes is payable on March 31, June 30, September 30 and December 31 of each year, 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 June 30, 2020.

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 help 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 June 30, 2020 and December 31, 2019, respectively, and 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 2025 - 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 notes are secured by all the assets of the PPA IV. The Note Purchase Agreement requires us to maintain a debt service reserve, the balance of which was $8.3 million as of June 30, 2020 and $8.0 million as of December 31, 2019, and 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 - The outstanding debt balance of the Term Loan of $5.3 million and $5.1 million were classified as current and $113.2 million and $115.3 million were classified as non-current as of June 30, 2020 and December 31, 2019, respectively.

In accordance with the credit agreement, PPA V was issued a 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 the LC loan, 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.

Letters of Credit due December 2021 - In June 2015, PPA V entered into a $131.2 million term loan due December 2021. The agreement also included commitments to a LC facility with the aggregate principal amount of $6.4 million, later adjusted down to $6.2 million. The amount reserved under the letter of credit as of June 30, 2020 and December 31, 2019 was $5.2 million and $5.0 million, respectively. The unused capacity as of June 30, 2020 and December 31, 2019 was $1.0 million and $1.2 million, respectively.

Contractual Obligations and Other Commitments

The following table summarizes our contractual obligations and the debt of our consolidated PPA entities that is non-recourse to Bloom as of June 30, 2020:

	Payments Due By Period				
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
	(in thousands)				
Contractual Obligations and Other Commitments:					
Recourse debt[1]	$ 406,013	$ 14,714	$ 299,753	$ 63,992	$ 27,554
Non-recourse debt[2]	234,614	13,878	130,293	21,912	68,531
Operating leases	57,062	9,167	14,271	12,836	20,788
Service arrangements	2,594	1,297	1,297	—	—
Financing obligations	294,076	38,288	79,324	77,523	98,941
Natural gas fixed price forward contracts	5,185	4,000	1,185	—	—
Grant for Delaware facility	10,469	—	10,469	—	—
Interest rate swap	17,881	2,098	5,288	4,657	5,838
Supplier purchase commitments	1,721	1,099	622	—	—
Renewable energy credit obligations	708	592	116	—	—
Asset retirement obligations	500	500	—	—	—
Total	$ 1,030,823	$ 85,633	$ 542,618	$ 180,920	$ 221,652

[1] Our 10% Convertible Notes and our credit agreements related to the building of our facility in Newark, Delaware each contain cross-default or cross-acceleration provisions. See "Recourse Debt Facilities" above for more details.

[2] Each of the debt facilities entered into by PPA IIIa, PPA IV and PPA V contain cross-default provisions. See "Non-recourse Debt Facilities" above for more details.

Off-Balance Sheet Arrangements

We include in our condensed consolidated financial statements all assets and liabilities and results of operations of our PPA Entities that we have entered into and over which we have substantial control. For additional information, see Note 13, *Power Purchase Agreement Programs,* in Item 1*, Financial Statements.*

We have not entered into any other transactions that have generated relationships with unconsolidated entities or financial partnerships or special purpose entities. Accordingly, as of June 30, 2020 and 2019, we had no off-balance sheet arrangements.

ITEM 3 - QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There were no significant changes to our quantitative and qualitative disclosures about market risk during the first six months of fiscal year ended December 31, 2020. 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, 2019 for a more complete discussion of the market risks we encounter.

ITEM 4 - CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

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

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of June 30, 2020. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of June 30, 2020, our disclosure controls and procedures were not effective because of the material weakness described below.

Material Weakness

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. We identified a material weakness, whereby we did not design and maintain an effective control environment with a sufficient complement of resources with an appropriate level of accounting knowledge, expertise and training to evaluate the accounting for and disclosure of complex or non-routine transactions commensurate with our financial reporting requirements. This material weakness resulted in errors in the accounting for certain transactions, which resulted in a restatement of our consolidated financial statements as of and for the year ended December 31, 2018, as of and for the three month period ended March 31, 2019, as of and for the three and six month periods ended June 30, 2019 and 2018 and as of and for the three and nine month periods ended September 30, 2019 and 2018, and revisions to our consolidated financial statements as of and for the year ended December 31, 2017 and as of and for the three month period ended March 31, 2018. This material weakness will also result in revisions to our consolidated financial statements as of and for the years ended December 31, 2019 and 2018, when those periods are next reported.

Additionally, this material weakness could result in a misstatement of substantially all account balances or disclosures that would result in a material misstatement to the annual or interim consolidated financial statements that would not be prevented or detected.

Remediation Activities

We are currently in the process of remediating the material weakness and have taken and continue to take steps that we believe will address the underlying causes of the material weakness, which resulted from an insufficient complement of resources with an appropriate level of accounting knowledge, expertise and training to evaluate the accounting for and disclosure of complex or non-routine transactions commensurate with our financial reporting requirements. Steps we are taking include increasing the use of qualified internal and third-party technical resources with accounting expertise on complex or non-routine transactions who are providing accounting interpretation guidance to assist us in identifying and addressing any issues that affect our consolidated financial statements.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended June 30, 2020 that 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 "Legal Matters" under Note 14 - *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 risks and uncertainties described below, 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. Many of these risks and uncertainties are beyond our control, and the occurrence of any of the events or developments described below, or of additional risks and uncertainties not presently known to us or that we currently deem immaterial, could materially and adversely affect our business, financial condition, operating results and prospects. In such an event, the market price of our Class A common stock could decline and you could lose all or part of your investment.

This Risk Factor section is divided by topic for ease of reference as follows: Risks Relating to Our Business, Industry and Sales; Risks Related to Our Products and Manufacturing; Risks Relating to Government Incentive Programs; Risks Related to Legal Matters and Regulations; Risks Relating to Our Intellectual Property; Risks Relating to Our Financial Condition and Operating Results; Risks Related to Our Liquidity; Risks Related to Our Operations; and Risks Related to Ownership of Our Common Stock.

Risks Relating to Our Business, Industry and Sales

The distributed generation industry is an emerging market and distributed generation may not receive widespread market acceptance.

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, they lack 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.

Our limited operating history and our nascent industry make evaluating our business and future prospects difficult.

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, given the characteristics of the electric power industry. As a result, we have a limited history operating our business at its current scale. Furthermore, our Energy Server is a new type of product in the nascent distributed energy industry. 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 which 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 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 (including customers who are unable to monetize the tax credits available to purchasers of our Energy Servers) and/or who prefer to lease the product or contract for our services on a pay-as-you-go model, we subsequently developed the Traditional Lease, Managed Services and PPA Programs. In addition to the Traditional Lease model, we also offer PPA Programs, including Third-Party PPAs, in which financing the cost of the Energy Server is provided by an Operating Company and funded by an Investment Company which is financed by us and/or in combination with Equity Investors. We refer to the Operating Company and its subsidiary Investment Company collectively as a PPA Entity. In recent periods, the substantial majority of our end customers have elected to finance their purchases, typically through Third Party PPAs.

We will need to grow committed financing capacity with existing partners or attract additional partners to support our growth. Generally, at any point in time, the deployment of a portion of 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 the 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 Managed Services and Traditional Lease options, 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.

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.

If we are unable to procure financing partners willing to finance such deployments or if the cost of such financing exceeds our estimates, our business would be negatively impacted.

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, which 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 such 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 twenty-four hours a day, seven days a week, 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 on in which we anticipate expanding into in the future could adversely affect the demand for our Energy Servers. For example, in California, changes are expected in the eligibility requirements for the net metering tariffs applicable to fuel cells that are currently in effect from investor-owned utilities. Although we are and will continue to remain an active participant in regulatory proceedings addressing such requirements, we cannot predict the outcome of the proceedings.

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 do we. 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 could come from a relatively small number of customers. As an example, in the year ended December 31, 2019, two customers, The Southern Company and SK E&C accounted for approximately 34% and 23% of our total revenue, respectively. 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 products for emerging markets and, as we move into those markets, we may need to identify new business partners in order to facilitate such development and expansion. Identifying new business and development partners is a lengthy process and is subject to significant risks and uncertainties. If we are unable to identify reliable partners in a new market or are unable to negotiate mutually-acceptable terms to form the basis of new partnership arrangements, our ability to expand our business could be limited and our financial conditions and results of operations could be harmed

Risks Relating to Our Products and Manufacturing

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

We have been and will continue monitoring and adjusting 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. For the safety of our employees and others, many of our employees are still working 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 Bloom facilities are required to wear face coverings and are directed not to enter if they have COVID-19-like symptoms. We follow all CDC guidelines when notified of possible exposures. Even with these precautions, it is possible an asymptomatic individual could enter our facilities and transmit the virus to others.

If we become aware of any cases of COVID-19 among any of our employees, we notify those with whom the person is known to have been in contact, send the exposed employees home for at least 14 days and require each employee to be tested negative before returning to work. We have had a couple of positive cases to date. 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. To date, we have been able to offset any issues with alternative suppliers, but in the future, it may not be possible to find replacement products or supplies, and ongoing delays could affect our business and growth. For example, particular suppliers on which we rely were shut down, and we were not able to obtain the needed parts. While we have identified and qualified alternative suppliers for these 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.

We also rely on third party financing for our customers' purchases of our Energy Servers. If third party financiers experience liquidity problems or elect to suspend or cancel investments in our projects, we may be unable to secure financing for our customer purchases, which in turn would impact our ability to deploy our Energy Servers and impact our cash flows and results of operations, including revenue. We believe the current environment may also increase the time to solidify new relationships which could impact the time required to achieve funding. Our ability to obtain financing for our Energy Servers also partly depends on the creditworthiness of our customers. Some of our current and prospective customers' credit ratings have recently fallen, which may make it difficult for us to obtain financing for their use of an Energy Server. For current customers whose Energy Servers are not yet installed, an inability to obtain financing may impact our cash flows and results of operations including revenue. For prospective customers, it may decrease demand for our Energy Servers if financing is not available in light of their credit. If our customers cannot obtain financing to purchase our Energy Servers, our cash flow and results of operations including revenue will be adversely affected. Although the impact of the COVID-19 pandemic on our ability to obtain financing for our customers' use of our Energy Servers has not yet had a significant impact on our business, delays in obtaining financing for our Energy Servers would lead to a decrease in our cash flows and results of operations, including revenue. Furthermore, in cases where the inability to obtain financing only becomes apparent after we have installed an Energy Server, there would be no offsetting decrease in our expenses.

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 delays 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. 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. These adverse impacts may increase in severity or continue indefinitely, including following the lifting of "shelter in place" orders.

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, while construction activities have to date been deemed "essential business" and allowed to proceed in many jurisdictions, 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. 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.

We cannot predict with certainty at this time the full extent to which COVID-19 will impact our business, cash flows and results of operations including revenue. It will depend on many factors. These include, among others, the extent of harm to public health, the willingness of our employees to travel and work in our manufacturing facilities and at our service and installation sites even if permitted to do so, the disruption to the global economy and to our supply base and potential customer base, and impacts on liquidity and the availability of capital. We are staying in close communication with our manufacturing facilities, employees, customers, suppliers and partners, and acting to mitigate the impact of this dynamic and evolving situation, but there is no guarantee that we will be able to do so.

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. Our ability to plan, construct, and equip additional manufacturing facilities is subject to significant risks and uncertainties, including the following:

- The expansion or construction of any manufacturing facilities will be subject to 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 such as delays in government approvals, burdensome permitting conditions, and delays in the delivery of manufacturing equipment and subsystems that we manufacture or obtain from suppliers.
- In order for us to expand internationally, we have entered into joint venture agreements that have allowed us to add manufacturing capability outside of the United States. 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, we may be unable to further scale our business. 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 which we may be unable to realize. While we have been successful in reducing our manufacturing and services costs to date, the cost of components and raw materials, for example, could increase in the future. 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. We may continue to make significant investments to drive growth in the future. 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. Also, as we grow our manufacturing volume, the chance of manufacturing defects could increase. In addition, 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. Although we believe we have designed new generations of Energy Servers to better withstand the variety of field conditions we have encountered, 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 service and performance warranties and guaranties, or is 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 operations and maintenance service agreements 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 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, and our estimates may prove to be incorrect. Failure to meet these performance warranties and 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 maintenance service 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 June 30, 2020, we had a total of 34 megawatts in total deployed early generation servers, including our first and second generation servers, out of our total acceptances, net, of 506 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 consolidated financial statements, including those acquired through our Managed Services and PPA programs, 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 South Korea), 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 fossil fuel-based technology, 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 an area prone to earthquakes. In the event of a significant disruption to our manufacturing process, 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 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. 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 and Taiwan), changes in the general macroeconomic outlook, global trade disputes, political instability, expropriation or nationalization of property, public health emergencies such as the recent 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.

Our ability to develop new products and enter into new markets could be negatively impacted if we are unable to identify suppliers to deliver new materials and components on a timely basis.

We continue to develop products for emerging markets and, as we move into those markets, must qualify new suppliers to manufacture and deliver the necessary components required to build and install those new products. Identifying new manufacturing partners is a lengthy process and is subject to significant risks and uncertainties. If we are unable to identify reliable manufacturing partners in a new market, our ability to expand our business could be limited and our financial conditions and results of operations could be harmed.

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 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 tariffs or other trade protection measures which 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, although we currently maintain alternative sources for raw materials, our business is subject to the risk of price fluctuations and periodic delays in the delivery of certain raw materials, which tariffs may exacerbate. 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. While it is too early to predict how the recently enacted tariffs on imported steel will impact our business, 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 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 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 Relating to Government Incentive Programs

Our business currently depends on the availability of rebates, tax credits and other financial 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 U.S. 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 eleven 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 significantly lower the effective price of the Energy Servers to our customers in the U. S. and the Asia Pacific region. Our financing partners and Equity Investors in Bloom Electrons 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 previous federal ITC, a federal tax incentive for fuel cell production, expired on December 31, 2016. Without the availability of the ITC benefit incentive, we lowered the price of our Energy Servers to ensure the economics to our customers would remain the same as it was prior to losing the ITC benefit, adversely affecting our gross profit. While the ITC was reinstated by the U.S Congress on February 9, 2018 and made retroactive to January 1, 2017, under current law it will phase out on December 31, 2022, as noted below:

- the 30% ITC credit was reinstated retroactive to January 1, 2017;
- installations that commenced construction before January 1, 2020 were eligible for a 30% credit;
- installations that commence construction in 2020 are eligible for a 26% credit;
- installations that commence construction in 2021 are eligible for a 22% credit; and
- installations have to be placed in service by January 1, 2024 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 Energy Servers purchased by PPA Entities, the PPA Entities bear 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. The FC NEM tariffs will not 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. Although we are working to ensure that that an acceptable substitute to FC NEM is put in place prior to December 31, 2021, it is not certain that our efforts will be successful. If our customers are unable to interconnect under the FC NEM tariffs the costs of interconnection may increase and such 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."

Changes in federal, state, or local programs or the RPS in the Republic of Korea could reduce demand for our Energy Servers, impair sales financing, and adversely impact our business results. The continuation of these programs 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 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 investment tax credits and accelerated tax depreciation and in the event these programs are terminated, our financial results could be harmed.

We expect that any Energy Server deployments through financed transactions (including our Bloom Electrons programs, our leasing programs and any Third-Party PPA Programs) 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, ensuring we are in 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 ensure that these are handled 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 which are typically replaced once every 18 to 24 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. However, EPA has asked us to show cause why it should not collect approximately $1.0 million in fines from us for the prior period. 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. 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.

Another example relates to the very small amounts of chromium in hexavalent form ("CR+6") which our Energy Servers emit at nanometer scale. This occurs any time a steel super alloy is exposed to high temperatures. CR+6 is found in small concentrations in the air generally. However, exposure to high or significant concentrations over prolonged periods of time can be carcinogenic. While the small amount of chromium emitted by our Energy Servers is initially in the hexavalent form, it converts to a non-toxic trivalent form, or CR+3, rapidly after it leaves the Energy Server. In tests we have conducted, air measurements taken 10 meters from an Energy Server show that the CR+6 is largely converted.

Our Energy Servers do not present any significant health hazard based on our modeling, testing methodology, and measurements. There are several supporting elements to this position including that the emissions from our Energy Servers are in very low concentrations, are emitted as nano-particles 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 hazardous 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 which are an order of magnitude over our operating range. Within California, the Bay Area Air Quality Management District ("BAAQMD") 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 required by Proposition 65 and which requires notification of 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.

There are generally no relevant environmental testing methodology guidelines for a technology such as ours. The standard test method for analyzing emissions cannot be readily applied to our Energy Servers because it would require inserting a probe into an emission stack. Our servers do not have emission stacks; therefore, we have to construct an artificial stack on top of our server in order to conduct a test. If we used the testing methodology similar to what the air districts have used in other large scale industrial products, it would show that we would need to reduce the emissions of CR+6 from our Energy Servers to meet the most stringent requirements. However, we employed a modified test method that is designed to capture the actual operating conditions of our Energy Servers and its distinctly different design from legacy power plants and industrial equipment. Based on our modeling, measured results and analysis, we believe we are in compliance with State of California air regulations. However, it is possible that the California Air Districts will require us to abate or shut down the operations of certain of our existing Energy Servers on a temporary basis or will seek the imposition of monetary penalties.

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 the new technology solution for their Energy Servers to comply with the stricter standards imposed by California even though they are not applicable and even though we are under no contractual obligation to do so. We 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 U.S. and in international locations in which we do not currently sell Energy Servers but may pursue in the future.

As a fossil fuel-based technology, 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 Energy Servers running on natural gas produce nearly 50% 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 Bloom 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, the Federal Energy Regulatory Commission ("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 our PPA Entities 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 our Company and our Energy Servers, which could harm our brand, our business prospects, and our operating results. While we maintain product liability insurance, our 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 14, *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 Relating 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.

Although we have taken many protective measures to protect our trade secrets including agreements, limited access, segregation of knowledge, password protections, and other measures, policing unauthorized use of proprietary technology can be difficult and expensive. For example, many of our engineers reside in California where it is not legally permissible to prevent them from working for a competitor if and when one should exist. 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 planned 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. Although we are not currently subject to any claims related to intellectual property, 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 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 Relating to Our Financial Condition and Operating Results

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

Since our inception in 2001, we have incurred significant net losses and have used significant cash in our business. As of June 30, 2020, 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, COVID-19 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 at acceptance;
- 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 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 traditional leases, Managed Services Agreements, sales to international channel partners and PPA transactions, all of which are accounted for differently in our 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.

We reached a determination to restate certain of our previously issued consolidated financial statements as a result of the identification of material misstatements in previously issued financial statements, which resulted in unanticipated costs and may affect investor confidence and raise reputational issues.

As discussed in Note 2, *Restatement of Previously Issued Financial Statements,* in Part I, Item 1*, Financial Statements*, we reached a determination to restate our consolidated financial statements for the periods disclosed in that note after misstatements in our accounting treatment of some of our complex or non-routine transactions were identified. The restatement also included corrections for previously identified immaterial uncorrected misstatements in the impacted periods. As a result, we have incurred unanticipated costs for accounting and legal fees in connection with or related to the restatement, and have become subject to a number of additional risks and uncertainties, which may affect investor confidence in the accuracy of our

financial disclosures and may raise reputational risks for our business, both of which could harm our business and financial results.

We recently identified a material weakness in our internal control over financial reporting related to the accounting for and disclosure of complex or non-routine transactions. If we do not effectively remediate the material weakness or if we otherwise fail to maintain effective internal control over financial reporting, our ability to report our financial results on a timely and an accurate basis may adversely affect the market price of our Class A common stock.

The Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act") requires, among other things, that public companies evaluate the effectiveness of their internal control over financial reporting and disclosure controls and procedures. As a recently public company and as an emerging growth company, we elected to delay adopting the requirements of the Sarbanes-Oxley Act as is our option under the Sarbanes-Oxley Act. While we have not yet adopted the requirements under Section 404B of the Sarbanes-Oxley Act, we did identify a material weakness in internal control over financial reporting at December 31, 2019, as we did not design and maintain an effective control environment with a sufficient complement of resources with an appropriate level of accounting knowledge, expertise and training to evaluate the accounting for and disclosure of complex or non-routine transactions commensurate with our financial reporting requirements. Please see Part I, Item 4, *Controls and Procedures,* in this Quarterly Report on Form 10-Q for additional information regarding the identified material weakness and our actions to date to remediate the material weakness. Subsequent testing by us or our independent registered public accounting firm, which has not yet performed an audit of our internal control over financial reporting, may reveal additional deficiencies in our internal control over financial reporting that are deemed to be material weaknesses.

To comply with Section 404B, we may incur substantial costs, expend significant management time on compliance-related issues, and hire additional accounting, financial, and internal audit staff with appropriate public company experience and technical accounting knowledge. Moreover, if we are not able to comply with the requirements of Section 404B in a timely manner or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, we could be subject to sanctions or investigations by the SEC or other regulatory authorities, which would require additional financial and management resources. 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. For further discussion on Section 404 compliance, see our Risk Factor: "*We will no longer be an emerging growth company beginning on December 31, 2020, after which we will not be able to take advantage of the reduced disclosure requirements applicable to emerging growth companies*."

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 that we can use in the future to offset taxable income for U.S. federal and state income tax purposes. Our net operating loss carryforwards ("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 Relating to Our Liquidity

We must maintain customer confidence in our liquidity, including in our ability to timely service our debt obligations, and long-term business prospects in order to grow our business.

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

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

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

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

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

As of June 30, 2020, we and our subsidiaries had approximately $645.7 million of total consolidated indebtedness, of which an aggregate of $416.0 million represented indebtedness that is recourse to us, of which $14.7 million is classified as current and $401.3 million is classified as non-current. Of this $401.3 million debt, $69.5 million represented debt under our 10% Notes, and $263.4 million represented debt under our 10% Convertible Notes. In addition, our PPA Entities' outstanding indebtedness of $229.7 million represented indebtedness that is non-recourse to us. 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 debt agreements and 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 and 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 events such as a change in control of our Company, significant asset sales or mergers or similar transactions, the liquidation or dissolution of our Company or the cessation of our stock exchange listing, holders of our 10% Convertible Notes have the right to cause us to repurchase for cash any or all of such outstanding notes at a repurchase price in cash equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon. We cannot provide assurance that we would have sufficient liquidity to repurchase such notes. Furthermore, our financing and debt agreements, such as our 10% Convertible Notes, 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. If we were unable to repay those amounts, lenders could proceed against the collateral granted to them to secure repayment of those amounts. We cannot assure you that the collateral will be sufficient to repay in full those amounts. We cannot provide assurance that the operating and financial restrictions and covenants in these agreements will not adversely affect our ability to finance our future operations or capital needs, or our ability to engage in other business activities that may be in our interest or our ability to react to adverse market developments.

As of June 30, 2020, we and our subsidiaries have approximately $645.7 million of total consolidated indebtedness, including $26.1 million in short-term debt and $619.7 million in long-term debt. In addition, our 10% Convertible Notes contain restrictions on our ability to issue additional debt and both the 10% Convertible Notes limit our ability to provide collateral for any additional debt. Given our current level of indebtedness, the restrictions on additional indebtedness contained in the 10% Convertible Notes and the fact that most of our assets serve as collateral to secure existing debt, 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.

In addition, our substantial level of indebtedness could limit our ability to obtain required additional financing on acceptable terms or at all for working capital, capital expenditures, and general corporate purposes. Any of these risks could impact our ability to fund our operations or limit our ability to expand our business, which could have a material adverse effect on our business, our financial condition, our liquidity, and our results of operations. 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, 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.

Certain of our outstanding convertible debt securities may be required to be settled in cash, which could have a material effect on our financial position.

Certain listing standards of The New York Stock Exchange limit the number of shares we may deliver upon conversion of our outstanding convertible notes that we amended in March of 2020 unless we first obtain the approval of our stockholders to issue shares in excess of that amount. We may never obtain such stockholder approval To comply with these listing standards, the number of shares that we may issue upon conversion of our outstanding convertible notes will be limited to an amount that does not exceed these limitations, until we have obtained stockholder approval to issue additional shares Any shares that would otherwise have been deliverable upon conversion in the absence of this limitation will instead be settled in cash based on the applicable daily conversion values during the relevant period. We may not have the funds available to settle such conversions in cash. Our inability to settle such conversions in cash by the required conversion date would be a default under the agreements that govern our convertible notes.

Under some circumstances, we may be required to or elect to make additional payments to our PPA Entities or the Power Purchase Agreement Program 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. Under PPA Company IV's note purchase agreement, PPA Company IV is obligated to offer to repay all outstanding debt in the event that at any time we fail to own (directly or indirectly) at least 50.1% of the equity interest of PPA Company IV not owned by the Equity Investor(s). Upon receipt of such offer, the lenders may waive that obligation or elect to require PPA Company IV to prepay all remaining amounts owed under PPA Company IV's project debt. The obligations under PPA Company IV have not been triggered as of June 30, 2020.

Risks Relating 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, the PPA Entity may have a right to payment from us under a warranty provided under the applicable operations and maintenance agreement, and we may be financially motivated to avoid or delay this liability by failing to promptly enforce this right on behalf of the PPA Entity. While we do not believe that we had any conflicts of interest with our PPA Entities as of June 30, 2020, conflicts of interest may arise in the future which 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.

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 Chairman and President and Chief Executive Officer, 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.

We will no longer be an emerging growth company beginning on December 31, 2020 after which we will not be able to take advantage of the reduced disclosure requirements applicable to emerging growth companies.

We have been an "emerging growth company," as defined in the JOBS Act, and we have taken advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a non-binding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We expect to cease to be an emerging growth company as of December 31, 2020.

As a result, we will need to comply with the independent auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act beginning with our annual report on Form 10-K for the year ending December 31, 2020, will be required to hold a say-on-pay vote and a say-on-frequency vote at our 2021 annual meeting of stockholders, and will no longer be entitled to provide the reduced executive compensation disclosures permitted by emerging growth companies in our annual report on the Form 10-K and proxy statement for the year ending December 31, 2020. We expect that our transition from "emerging growth company" will require additional attention from management and will result in increased costs to us, which could include higher legal fees, accounting fees and fees associated with investor relations activities, among others.

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, all of 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. Although we take protective measures and endeavor to modify them as circumstances warrant, 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. 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.

Expanding operations internationally could expose us to additional risks.

Although we currently primarily operate in the United States, we will seek to expand our business internationally. We currently have operations in Japan, China, India, and the Republic of Korea (collectively, our "Asia Pacific region"). 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;
- 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.

As a result of these risks, any potential future international expansion efforts that we may undertake may not be successful.

Risks Relating 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 our Company 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;
- the expiration of contractual lock-up or market standoff agreements; 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.

Sales of substantial amounts of our Class A common stock in the public markets, or the perception that they might occur, could cause the market price of our Class A common stock to decline.

The market price of our Class A common stock could decline as a result of sales of a large number of shares of our Class A common stock in the public market as and when our Class B common stock converts to Class A common stock. The perception that these sales might occur may also cause the market price of our common stock to decline. We had a total of 99,233,074 shares of our Class A common stock and 31,005,215 shares of our Class B common stock outstanding as of June 30, 2020. The lock up for our Class B shares expired on January 21, 2019 and these shares are now freely tradeable once converted into Class A shares, except for any shares purchased by our “affiliates” as defined in Rule 144 under the Securities Act of 1933, as amended ("Securities Act").

Further, as of June 30, 2020, we had an aggregate of $249.3 million in convertible debt, our 10% Convertible Notes, under which the outstanding principal may be converted, at the option of the holders, into an aggregate of 31,162,415 shares of Class B common stock. Upon conversion into Class A common stock, these shares are freely tradeable, except to the extent these shares are held by our "affiliates" as defined in Rule 144 under the Securities Act.

In addition, as of June 30, 2020, we had options and RSUs outstanding that, if fully exercised or settled, would result in the issuance of 9,664,887 shares of Class A common stock and 15,214,822 shares of Class B common stock. We have filed a registration statement on Form S-8 to register shares reserved for future issuance under our equity compensation plans. Subject to the satisfaction of applicable vesting requirements, the shares issued upon exercise of outstanding stock options or settlement of outstanding RSUs will be available for immediate resale in the United States in the open market.

Moreover, certain holders of our common stock have rights, subject to some conditions, to require us to file registration statements for the public resale of such shares or to include such shares in registration statements that we may file for us or other stockholders.

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 IPO 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 June 30, 2020, 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 substantial 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.

The conversion of the 10% Convertible Promissory Note could result in a significant stockholder with substantial voting control.

The holders of the 10% Convertible Promissory Notes have the option to convert the outstanding principal under the 10% Convertible Promissory Notes to Class B common stock at a conversion price of $8.00 per share at any time and prior to maturity of the 10% Convertible Promissory Notes in December 2021. As of June 30, 2020, an aggregate of 21,232,797 shares of Class B common stock is issuable to the Canada Pension Plan Investment Board ("CPPIB") upon the conversion of the outstanding principal under the 10% Convertible Promissory Notes. This, along with 312,575 shares of Class B common stock which CPPIB acquired from the exercise of a warrant at IPO, would result, as of June 30, 2020, in CPPIB having approximately 35% of the total voting power with respect to all shares of our Class A common stock (which has one vote per share) and Class B common stock (which has ten votes per share), voting as a single class, and would provide CPPIB significant influence over matters presented to the stockholders for approval and may result in voting decisions by CPPIB that are not in the best interests of our stockholders generally.

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 may cause 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.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, the market price of our Class A common stock and trading volume could decline.

The market price for our Class A common stock depends in part on the research and reports that securities or industry analysts publish about us or our business. If industry analysts cease coverage of us, the trading price for our Class A common stock would be negatively affected. In addition, if one or more of the analysts who cover us downgrade our Class A common stock or publish inaccurate or unfavorable research about our business, our Class A common stock price would likely decline. If one or more of these analysts cease coverage of us or fail to publish reports on us regularly, demand for our Class A common stock could decrease, which might cause our Class A common stock price and trading volume to decline. In addition, certain short sellers of our Class A common stock have published reports that we believe have negatively impacted the trading price 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 our Company 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 AND FINANCIAL STATEMENTS SCHEDULES

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**
3.1		Restated Certificate of Incorporation.	10-Q	001-38598	3.1	9/7/2018
3.2		Amended and Restated Bylaws, effective August 8, 2019	10-Q	001-38598	3.2	8/14/2019
4.1		Amended and Restated Indenture by and among the Registrant, certain guarantors party thereto and U.S. Bank National Association, as trustee, dated as of April 20, 2020	10-Q	001-38598	4.1	5/11/2020
4.2		Form of 10% Convertible Senior Secured Note due 2021	10-Q	001-38598	4.2	5/11/2020
4.3		Third Amendment to Security Agreement by and among the Registrant, certain guarantors party thereto and U.S. Bank National Association, as collateral agent, dated as of April 20, 2020	10-Q	001-38598	4.3	5/11/2020
4.4		Form of Indenture for Senior Secured Notes due 2027	10-Q	001-38598	4.4.	5/11/2020
4.5		Form of 10.25% Senior Secured Notes due 2027	10-Q	001-38598	4.5	5/11/2020
4.6		Form of Security Agreement for Senior Secured Notes due 2027	10-Q	001-38598	4.6	5/11/2020
4.7		Amended and Restated Subordinated Secured Convertible Note Modification Agreement by and between the Registrant and Constellation NewEnergy, Inc., dated as of March 31, 2020	10-Q	001-38598	4.7	5/11/2020
10.1		Lease Agreement, dated as of June 10, 2020, by and between the Registrant and DPIF2 CA 20 Christy Street, LLC				Filed herewith
10.2	x	Amended and Restated Purchase, Use and Maintenance Agreement between the Company and 2018 ESA Project Company, LLC dated June 30, 2020				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 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
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				Filed herewith
101.SCH		XBRL Taxonomy Extension Schema Document				Filed herewith
101.CAL		XBRL Taxonomy Extension Calculation Linkbase Document				Filed herewith
101.DEF		XBRL Taxonomy Extension Definition Linkbase Document				Filed herewith

101.LAB		XBRL Taxonomy Extension Label Linkbase Document				Filed herewith
101.PRE		XBRL Taxonomy Extension Presentation Linkbase Document				Filed herewith

^ 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 Quarterly Report on Form 10-Q and will not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liability of that section, nor shall it be deemed incorporated by reference into any filing under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended.

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

BLOOM ENERGY CORPORATION

Date: August 4, 2020

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

Date: August 4, 2020

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

[Net Lease]

LEASE

THIS LEASE (this "**Lease**") is made as of this _____ day of _____, 2020, (the "**Effective Date**") between DPIF2 CA 20 Christy Street, LLC, a Delaware limited liability company ("**Landlord**"), and the Tenant named below.

BASIC LEASE INFORMATION

Tenant: Bloom Energy Corporation, a Delaware corporation
Tenant's representative, 4353 No. First Street
address, and phone no.: San Jose, California 95134
Attention: General Counsel

Premises: The Building (as hereinafter defined) and the Exterior Premises (as hereinafter defined) located on the parcel legally described on Exhibit A-1 attached hereto and depicted on Exhibit A-2 attached hereto.

Building: The building commonly known as 44370 Christy Street, Fremont California and containing approximately 89,336 square feet.

Tenant's Proportionate Share of the Building: 100%

Lease Term: The initial term of this Lease (the "**Initial Term**") shall begin on the Commencement Date and end on the last day of the eighty-fourth (84th) full calendar month thereafter, subject to two (2) options to extend the Lease Term for the First Extension Term and Second Extension Term (as hereafter defined) pursuant to **Addendum 5 - Renewal Options** attached hereto and made a part hereof. References in this Lease to the "**Lease Term**" shall mean the Initial Term as the same may be extended by the First Extension Term and the Second Extension Term, as applicable.

Commencement Date: The latest to occur of (i) November 1, 2020; (ii) Landlord's delivery of the Premises to Tenant in the Required Condition (as defined in Paragraph 2(a) below; and (iii) and Substantial Completion of the Tenant Improvements, as defined in Paragraph 9(i) of **Addendum 3 – Work Letter** (the "**Work Letter**") (the "**Commencement Date**"), but not later than January 1, 2021 (the "**Outside Commencement Date**", as such date may delayed by Landlord Delays or Tenant Delays (as defined in the Work Letter) or Excused Delays, as defined in Paragraph 33 below).

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Annual Base Rent: $1,876,056.00 for the first twelve (12) months of the Term, subject to increases as provided in **Addendum 1 - Base Rent Adjustments**

Abatement of Base Rent: As provided in **Addendum 2 – Base Rent Abatement** (the "**Rent Abatement Period**")

Initial Monthly Base Rent: $156,338.00

Initial Estimated Monthly Total Operating Expenses
Operating Expense Payment: (which include Taxes and Insurance): $35,375.50
(estimates only and subject
to adjustment to actual costs Taxes: $19,356.13
and expenses according to the
provisions of this Lease) Insurance: $5,589.64

Total of Initial Monthly Base Rent and
Estimated Operating Expense Payment: $191,713.50

Letter of Credit: Total Letter of Credit Amount: $500,000.00 ("**Total L C Amount**")
Initial Letter of Credit Amount: $200,000.00 ("**Initial L C Amount**") to be increased to $500,000.00 ("**L C Amendment Amount**")

Broker: Jones Lang LaSalle, representing Landlord and Tenant in dual agency
4085 Campbell Ave., Suite 150
Menlo Park, CA

Exhibits: A-1- Legal Description
A-2 - Site Plan
B - Rules and Regulations
C - Notice of Lease Term Dates
D - -Form of Insurance Certificate
E - List of Permitted Hazardous Materials

Addenda: Addendum 1 - Base Rent Adjustments
Addendum 2 - Base Rent Abatement
Addendum 3 - Work Letter
Addendum 4 – Move Out Conditions
Addendum 5 - Renewal Options
Addendum 6 – Form of Letter of Credit

1. **Granting Clause**. 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 takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the terms, covenants and conditions of this Lease.

2. **Condition of Premises; Acceptance of Premises; Delay; Measurement of Premises; CASp**.

(a) **Condition of Premises**. On the Commencement Date, Landlord, at Landlord's sole cost and expense, shall deliver the Premises to Tenant (i) with all Building Systems (as defined in

Paragraph 10 below) and the Building Structure (as defined in Paragraph 10 below) in good working order and repair; (ii) with all existing improvements and trade fixtures that were in place in the Premises on the Effective Date, including, without limitation, all process piping and the air compressor, in place and in good working order and repair; and (iii) with a TPO, welded seam, white reflective 60 mil roof replacement with a 20-year warranty (all of the foregoing, the "**Landlord's Work**"). In addition, not later than the Commencement Date, the Premises shall be in the condition required by the closure plan filed by the previous tenant, with such condition certified as compliant by the governmental authority with jurisdiction over the closure plan (the "**Closure Condition**"). Provided that on or before the Commencement Date Landlord has delivered the Premises to Tenant with the Landlord's Work completed and the Closure Condition satisfied (the "**Required Condition**"), subject to the correction of any punch list items with respect to the Landlord's Work, Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord warrants that the Building Systems (as defined in Paragraph 11 below) will be in good working order and repair for six (6) months from the Commencement Date, and Landlord, at Landlord's sole cost and expense (without pass-through to Tenant), shall make any repairs to or replacements of the Building Systems during such six (6)- month period.

(b) **Delay in Delivery**. The Outside Commencement Date is January 1, 2021. If for any reason other than due to the act or omission of Tenant, or an Excused Delay, the Premises have not been delivered by Landlord to Tenant in the Required Condition, then the Commencement Date shall be the date on which the Premises have been delivered to Tenant in the Required Condition, and for each day after January 1, 2021 until the Premises have been delivered to Tenant in the Required Condition, Base Rent shall abate, which abatement shall be in addition to the abatement of Base Rent provided for in **Addendum 2 – Base Rent Abatement**.

(c) **Excused Delays**. For avoidance of doubt, the date of Landlord's delivery of the Premises to Tenant in the Required Condition, the date of Substantial Completion of the Tenant Improvements, the Commencement Date (and Tenant's obligation to pay Tenant's Proportionate Share of Operating Expenses), the Outside Commencement Date and the commencement of the Rent Abatement Period (and Tenant's obligation to pay Monthly Base Rent) each shall be extended one (1) day for each day of Excused Delay.

(d) **Notice of Lease Term Dates**. Within ten (10) business days following the Commencement Date, Landlord and Tenant shall execute a Notice of Lease Term Dates memorandum in the form attached hereto as Exhibit C setting forth the Commencement Date and expiration date of the Lease (the "**Notice of Lease Term Dates**"). Failure by either party to execute said notice within three (3) business days after receipt of written notice from the other party shall be deemed a default under the terms of this Lease. 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. Except as provided in Paragraph 10, Paragraph 15 and the Work Letter, in no event shall Landlord have any obligation for any defects in the Premises or for any limitation on its use. Subject to the provisions of Paragraph 2(a) above, Tenant's taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items that are Landlord's responsibility under Paragraph 10 and any punchlist items agreed to in writing by Landlord and Tenant.

(e) **Measurement of the Premises**. For purposes of this Lease, prior to the Commencement Date Landlord's architect shall measure the rentable square footage of the Premises and the Building pursuant to the Building Owners and Managers Association International Standard Method for Measuring Floor Area under ANSI/BOMA Z65.2-2012 Industrial Buildings Standard Methods of Measurement, Method B (the "BOMA Standard"). Tenant shall have the right to verify the rentable square footage of the Premises and Building at any time prior to Commencement Date. Tenant's Architect, (as defined in

Addendum 3- Work Letter) shall consult with Landlord's architect regarding such verification, and any discrepancy shall be resolved by Landlord's architect and Tenant's Architect, both acting reasonably, and their joint determination shall be conclusive and binding upon the parties.

(f) **CASp**. For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp). 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. If Tenant requests a CASp inspection, 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." Any CASp inspection shall be conducted in compliance with reasonable rules in effect at the Premises with regard to such inspections and shall be subject to Landlord's prior written consent.

3. **Use**.

(a) **Use of Premises**. The Premises shall be used for manufacturing, general warehouse, research & development, distribution, production, assembly, office and all other related legal uses (the "**Permitted Uses**"). Tenant shall not use the Premises (i) to store or distribute or sell marijuana or (ii) for the storage of tires. Tenant shall not conduct or give notice of any auction, liquidation, or going out of business sale on the Premises. Tenant shall have reasonable access to the Premises twenty-four (24) hours per day, seven (7) days per week. Tenant shall 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, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would unreasonably disturb, unreasonably interfere with, or endanger Landlord. Outside storage, including without limitation, storage of trucks and other vehicles, is prohibited, except in the rear of the Building, subject to Tenant obtaining any necessary permits or approvals required by the local authorities and that certain First Amended and Restated Declaration of Covenants and Grants of Easements For The Opus Technology Center dated June 7, 2000 and recorded as Instrument No. 2000-185750 of the Official Records of Alameda County, California ("Declaration"). Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans with Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants, restrictions, and matters of record and the Declaration (collectively, "**Legal Requirements**"). 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, within or without the Premises, that are required by Legal Requirements to the extent such alterations are required solely as a result of Tenant's particular and unique use or occupation of the Premises. Tenant shall 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 or increase the insurance risk. If any increase in the cost of any insurance on the Premises 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.

(b) **Compliance with Laws**. Notwithstanding anything to the contrary contained in this Lease, Tenant shall not be required to construct or pay the cost of complying with any conditions,

covenants and restriction, Legal Requirements or insurance underwriter's requirements requiring construction of improvements to the Premises, the Exterior Premises (defined below) or to any other portion of the Property unless such compliance is necessitated solely because of Tenant's particular and unique use of the Premises or the construction of the Tenant Improvements (as defined in the Work Letter) or any Tenant-Made Alterations to the Premises made and paid for by Tenant.

(c) **Exterior Premises**. The term "**Exterior Premises**" shall mean all areas and facilities outside the Building, including, but not limited to driveways, loading and unloading areas, bathrooms, alleys, landscaping and grounds surrounding the Building, which are for the exclusive use by Landlord and Tenant, and their respective employees, suppliers, shippers, contractors, agents, invitees and customers. Landlord grants to Tenant and the foregoing related parties the exclusive right to use, in common with Landlord, in accordance with the terms of this Lease, including, without limitation, all Exhibits and Addenda. Landlord shall have the right to make changes to the Exterior Premises and/or to close any or all of the Exterior Premises, provided Tenant still has reasonable access to and use of the Building and the Exterior Premises. Further, Landlord shall have the right to change the boundaries of the Exterior Premises; use the Exterior Premises during repairs, alterations to or expansion of the Building; and perform any other acts within the Exterior Premises that Landlord reasonably deems appropriate, so long as the exercise of the foregoing rights does not unreasonably interfere with Tenant's use of or access to the Premises and Exterior Premises. For the avoidance of doubt, nothing in this Paragraph 3(c) shall be deemed to limit Tenant's rights to install in the Exterior Premises the Generator and Tenant's Bloom Boxes pursuant to Paragraph 12 below. In addition, Tenant shall have the right, at Tenant's cost, to install perimeter fencing around the Premises, and to install lift gates, guard shacks and cameras on the Exterior Premises so long as such installations are in compliance with applicable Legal Requirements, subject to Landlord's approval, which shall not be unreasonably withheld, conditioned or delayed.

4. **Base Rent**. Tenant shall pay an annual Base Rent in the amount set forth above in the Basic Lease Information. The Initial Monthly Base Rent for the third (3rd) month of the Term shall be due and payable within five (5) business days after Tenant's execution of this Lease, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off (except as expressly permitted under this Lease), monthly installments of Base Rent on or before the first day of each calendar month commencing with the third calendar month succeeding the Commencement Date (as that date may be extended as provided in Paragraph 2(c)). Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by electronic funds transfer or bank wire transfer of immediately available federal funds at such place, within the continental United States, as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Except as expressly set forth in this Lease, Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder. If Tenant is delinquent in any monthly installment of Base Rent or of estimated Operating Expenses (as defined below) for more than five (5) days, Tenant shall pay to Landlord on demand a late charge equal to six percent (6%) of such delinquent sum; provided, however, that, not more than once during any twelve (12)- month period during the Term (as extended), Tenant shall be entitled to written notice of non-receipt of Base Rent or estimated Operating Expenses from Landlord, and Tenant shall not be liable for any late charge with respect thereto if such installment of Base Rent or estimate Operating Expenses is received by Landlord within five (5) days after Tenant's receipt of such notice. The provision for such late charge 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.

5. **Letter of Credit.** Tenant shall provide Landlord with (i) an initial Letter of Credit (the "**Initial L C**") in the Initial L C amount, which Initial L C shall be delivered with seven (7) business days after Tenant's execution of this Lease; and (ii) an amendment to the Initial L C (the "**L C Amendment**")

in the L C Amendment Amount, which L C Amendment shall be delivered not later than the Commencement Date (as such date may be extended by Excused Delays). The L C shall be an unconditional, irrevocable letter of credit in the initial amount provided on page 2 of this Lease and the form of **Addendum 6 - Form of Letter of Credit** attached hereto, and in accordance with the following provisions:

i. Delivery of Letter of Credit; L C Draw Event. Tenant shall deliver to Landlord the Initial L C and the L C Amendment (together with the Initial L C, the "**L C**"), which L C shall be issued by a money-center, solvent and nationally recognized bank (a bank which accepts deposits, maintains accounts, and whose deposits are insured by the FDIC) reasonably acceptable to Landlord (such approved, issuing bank being referred to herein as the "**Bank**"), which Bank must have a short term Fitch Rating which is not less than "F1", and a long term Fitch Rating which is not less than "A" (or in the event such Fitch Ratings are no longer available, a comparable rating from Standard and Poor's Professional Rating Service or Moody's Professional Rating Service) (collectively, the "**Bank's Credit Rating Threshold**"), and which L C shall be in the form of **Addendum 6** or such other form reasonably approved by Landlord. Tenant shall submit to Landlord a copy of the final draft of L C that Bank is prepared to execute prior to the Effective Date to provide Landlord an opportunity to confirm that such final draft is in the same form as **Addendum 6**. Notwithstanding the foregoing, Landlord hereby approves Wells Fargo Bank as the "**Bank**." Tenant shall pay all expenses, points and/or fees incurred by Tenant in obtaining each L C. The L C shall (i) be payable at sight, irrevocable and unconditional, (ii) be maintained in effect for the period commencing on the date of delivery of the L C to Landlord and continuing until one hundred twenty (120) days after the expiration of Lease Term (the "**L C Expiration Date**") and Tenant shall deliver a new L C or certificate of renewal or extension to Landlord at least thirty (30) days prior to the expiration of the L C then held by Landlord, without any action whatsoever on the part of Landlord, (iii) subject to applicable Laws, be fully assignable by Landlord, its successors and assigns at Landlord's cost to an assignee of Landlord's interest in this Lease, (iv) permit partial draws and multiple presentations and drawings, and (v) be otherwise subject to the International Standby Practices-ISP 98, International Chamber of Commerce Publication #590. The L C shall contain an "evergreen" provision providing for automatic extensions. Landlord, or its then managing agent, shall have the right to draw down an amount up to the face amount of the L C if any of the following shall have occurred or be applicable: (A) Tenant has filed a voluntary petition under the U.S. Bankruptcy Code or any state bankruptcy code (collectively, "**Bankruptcy Code**"), or (B) an involuntary petition has been filed against Tenant under the Bankruptcy Code, or (C) the Lease has been rejected, or is deemed rejected, under Section 365 of the U.S. Bankruptcy Code, following the filing of a voluntary petition by Tenant under the Bankruptcy Code, or the filing of an involuntary petition against Tenant under the Bankruptcy Code, or (D) the Bank has notified Landlord that the L C will not be renewed or extended through the L C Expiration Date and Tenant has not delivered a replacement L C at least thirty (30) days prior to the then expiration date of the existing L C, or (E) Tenant is placed into receivership or conservatorship, or becomes subject to similar proceedings under Federal or State law, or (F) Tenant executes an assignment for the benefit of creditors, or (G) if any of the Bank's Fitch Ratings (or other comparable ratings to the extent the Fitch Ratings are no longer available) have been reduced below the Bank's Credit Rating Threshold, and Tenant has failed to provide Landlord with a replacement L C, conforming in all respects to the requirements of this Paragraph 5 (including, but not limited to, the requirements placed on the issuing Bank more particularly set forth in this Paragraph 5(i) above), in the amount of the applicable L C Amount, within thirty (30) days following receipt of Landlord's written demand therefor (with no other notice or cure or grace period being applicable thereto, notwithstanding anything in this Lease to the contrary), or (H) Tenant fails to maintain the L C in the amount and in accordance with the terms set forth in this Paragraph 5 (each of the foregoing being an "**L C Draw Event**"). In addition, Landlord may draw down against the L C such amounts as are necessary to compensate Landlord for any and all damages sustained by Landlord as a result of an Event of Default (beyond applicable notice and cure periods) under the terms and conditions of the Lease ("**Limited L C Draw Event**"). The L C shall be honored by the Bank regardless of whether Tenant disputes Landlord's right to

draw upon the L C. In addition, in the event the Bank is placed into receivership or conservatorship by the Federal Deposit Insurance Corporation or any successor or similar entity, then, effective as of the date such receivership or conservatorship occurs, said L C shall be deemed to fail to meet the requirements of this Paragraph 5, and, within thirty (30) days following Landlord's notice to Tenant of such receivership or conservatorship (the "**L C FDIC Replacement Notice**"), Tenant shall replace such L C with a substitute letter of credit from a different issuer (which issuer shall meet or exceed the Bank's Credit Rating Threshold and shall otherwise be acceptable to Landlord in its reasonable discretion) and that complies in all respects with the requirements of this Paragraph 5. If Tenant fails to replace such L Cs with cash or such conforming substitute letter of credit pursuant to the terms and conditions of this Paragraph 5, then, notwithstanding anything in this Lease to the contrary, Landlord shall have the right to declare Tenant in default of this Lease for which there shall be no notice of grace or cure periods being applicable thereto (other than the aforesaid thirty (30)- day period). In the event of an assignment by Tenant of its interest in the Lease (and irrespective of whether Landlord's consent is required for such assignment), the acceptance of any replacement or substitute letter of credit by Landlord from the assignee shall be subject to Landlord's prior written approval, such approval not to be unreasonably withheld, conditioned, or delayed, so long as such replacement letter of credit meets the requirements of this Paragraph 5. Tenant shall pay to Landlord within thirty (30) days of receipt of billing, the reasonable attorneys' fees incurred by Landlord in connection with its review of any replacement or substitute letter of credit.

ii. Application of L C. Tenant hereby acknowledges and agrees that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the L C upon the occurrence of any L C Draw Event. In the event of any L C Draw Event or Limited L C Draw Event, Landlord may, but without obligation to do so, and without notice to Tenant (except in connection with an L C Draw Event under Paragraph 5(i)(H) above or in connection with a Limited L C Draw Event), draw upon the L C so much of the LC as is necessary to cure any Event of Default and/or to otherwise compensate Landlord for any and all damages of any kind or nature sustained (or that Landlord reasonably estimates will be sustained) by Landlord resulting from such Event of Default or to exercise other rights or remedies with respect to such Event of Default or to compensate Landlord for any and all physical damages to the Premises arising out of, or incurred in connection with, the termination of this Lease following an Event of Default of Tenant. The use, application or retention of the L C, or any portion thereof, by Landlord shall not prevent Landlord from exercising any other right or remedy provided by this Lease or by any applicable law, it being intended that Landlord shall not first be required to proceed against the L C, and such L C shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Tenant agrees not to interfere in any way with payment to Landlord of the proceeds of the L C, either prior to or following a "draw" by Landlord of any portion of the L C regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw upon the L C. No condition or term of this Lease shall be deemed to render the L C conditional to justify the issuer of the L C in failing to honor a drawing upon such L C in a timely manner. Tenant agrees and acknowledges that (i) the L C constitutes a separate and independent contract between Landlord and the Bank, (ii) Tenant is not a third party beneficiary of such contract, and (iii) Tenant has no property interest whatsoever in the L C or the proceeds thereof, and (iv) in the event Tenant becomes a debtor under any chapter of the Bankruptcy Code, Tenant is placed into receivership or conservatorship, and/or there is an event of a receivership, conservatorship or a bankruptcy filing by, or on behalf of, Tenant, neither Tenant, any trustee, nor Tenant's bankruptcy estate shall have any right to restrict or limit Landlord's claim and/or rights to the L C and/or the proceeds thereof by application of Section 502(b)(6) of the U.S. Bankruptcy Code or otherwise.

iii. L C Amount; Maintenance of L C by Tenant.

1. L C Amount. The initial L C Amount shall be equal to the amount set forth on page 2 of this Lease as the Security Deposit or Letter of Credit amount. Provided no Event of Default (beyond the expiration of all applicable notice and cure periods) has occurred and is continuing, the L C Amount shall decrease on the fourth anniversary of the Commencement Date by $250,000.00.

The amount of $250,000.00 shall remain as the L C Amount under this Lease, subject to the terms and conditions set forth herein.

2. In General. If, as a result of any drawing by Landlord of all or any portion of the L C the amount of the L C shall be less than the applicable L C Amount, Tenant shall, within five (5) business days after receipt of written demand by Landlord, provide Landlord with additional letter(s) of credit in an amount equal to the deficiency, and any such additional letter(s) of credit shall comply with all of the provisions of this Paragraph 5, and if Tenant fails to comply with the foregoing, the same shall be deemed an Event of Default under this Lease without benefit of any additional notice and cure period and entitling Landlord to exercise any and all rights and remedies available to Landlord under this Lease, at law, and/or in equity. Tenant further covenants and warrants that it will neither assign nor encumber the L C or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance. Without limiting the generality of the foregoing, if the L C expires earlier than the L C Expiration Date, Landlord will accept a renewal thereof (such renewal letter of credit to be in effect and delivered to Landlord, as applicable, not later than thirty (30) days prior to the expiration of the L C), which shall be irrevocable and renewable as above provided through the L C Expiration Date upon the same terms as the expiring L C or such other terms as may be acceptable to Landlord in its reasonable discretion. So long as no L C Draw Event or Limited L C Draw Event has occurred and is continuing, Landlord agrees to pay to Tenant within thirty (30) days after the L C Expiration Date the amount of any proceeds of the L C received by Landlord and not properly applied as the result of an L C Draw Event.

iv. Transfer and Encumbrance. The L C shall also provide that Landlord may, at Landlord's sole cost and expense, and at any time and without notice to Tenant and without first obtaining Tenant's consent thereto, transfer (one or more times) its interest in and to the L C to another party, person or entity, provided that such transfer is from or as a part of the assignment by Landlord of its rights and interests in and to this Lease. In the event of a transfer of Landlord's interest in this Lease, Landlord shall transfer the L C to the transferee and, so long as such transferee agrees, in writing, to be bound as "Landlord" to the terms of this Lease, thereupon Landlord shall, without any further agreement between the parties, be released by Tenant from all liability for the L C, and it is agreed that the provisions hereof shall apply to every transfer or assignment of the whole of said L C to a new landlord. In connection with any such transfer of the L C by Landlord, Tenant shall, upon Landlord's notice of such transfer, execute and submit to the Bank such applications, documents and instruments as may be necessary to effectuate such transfer and, Landlord shall be responsible for paying the Bank's transfer and processing fees in connection therewith.

v. L C Not a Security Deposit. Landlord and Tenant (1) acknowledge and agree that in no event or circumstance shall the L C or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context (the "**Security Deposit Laws**"), (2) acknowledge and agree that the L C (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (3) waive any and all rights, duties and obligations that any such party may now, or in the future will, have relating to or arising from the Security Deposit Laws but only to the extent such waiver is allowed under applicable Laws; provided, however, that the application by Landlord of any L C Proceeds shall be governed by the terms and provisions of this Lease. Tenant hereby irrevocably waives and relinquishes the provisions of law, now or hereafter in effect, which provide that a landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by a tenant or to clean the premises, it being agreed that Landlord may, in addition, claim those sums specified in this Paragraph 5 and/or those sums reasonably necessary to (a) compensate Landlord for any loss or damage caused by Tenant's breach of this Lease, including without limitation any damages Landlord suffers following termination of this Lease, and/or (b) compensate Landlord for any and all damages arising out of, or incurred in connection with, the termination of this Lease.

vi. Non-Interference By Tenant. Tenant agrees not to interfere in any way with any payment to Landlord of the proceeds of the L C, either prior to or following a "draw" by Landlord of all or any portion of the L C, regardless of whether any dispute exists between Tenant and Landlord as to Landlord's right to draw down all or any portion of the L C. No condition or term of this Lease shall be deemed to render the L C conditional and thereby afford the Bank a justification for failing to honor a drawing upon such L C in a timely manner. Tenant shall not request or instruct the Bank of any L C to refrain from paying sight draft(s) drawn under such L C.

vii. Waiver of Certain Relief. Tenant unconditionally and irrevocably waives (and as an independent covenant hereunder, covenants not to assert) any right to claim or obtain any of the following relief in connection with the L C:

1. A temporary restraining order, temporary injunction, permanent injunction, or other order that would prevent, restrain or restrict the presentment of sight drafts drawn under any L C or the Bank's honoring or payment of sight draft(s); or

2. Any attachment, garnishment, or levy in any manner upon either the proceeds of any L C or the obligations of the Bank (either before or after the presentment to the Bank of sight drafts drawn under such L C) based on any theory whatever.

viii. Remedy for Improper Drafts. Tenant's sole remedy in connection with the presentment or payment of sight drafts drawn under any L C which are in violation of this Paragraph 5 shall be the right to obtain from Landlord a refund of the amount of any sight draft(s) that were improperly presented or the proceeds of which were misapplied and reasonable actual out-of-pocket attorneys' fees and bank charges. Tenant acknowledges that the presentment of sight drafts drawn under any L C, or the Bank's payment of sight drafts drawn under such L C, could not under any circumstances cause Tenant injury that could not be remedied by an award of money damages, and that the recovery of money damages would be an adequate remedy therefor.

6. **Operating Expense Payments**. During each month of the Lease Term, on the same date that Base Rent is due, Tenant shall pay Landlord an amount equal to 1/12 of the annual cost, as reasonably estimated by Landlord from time to time, of Tenant's Proportionate Share (hereinafter defined) of Operating Expenses (hereinafter defined) for the Exterior Premises and for the Building. Payments thereof for any fractional calendar month shall be prorated. The term "**Operating Expenses**" means all costs and expenses incurred by Landlord with respect to the ownership, maintenance, and operation of the Premises, but not limited to costs of: (i) Taxes (hereinafter defined) and fees payable to tax consultants and attorneys for consultation and contesting taxes; (ii) insurance; (iii) utilities; (iv) maintenance, repair and replacement of all portions of the Premises, including without limitation, paving and parking areas, roads, roofs (including without limitation the roof membrane), alleys, and driveways, mowing, landscaping, snow removal, exterior painting, utility lines, heating, ventilation and air conditioning systems, lighting, electrical systems and other mechanical and Building Systems; (v) amounts paid to contractors and subcontractors for work or services performed in connection with any of the foregoing; (vi) charges or assessments of any association or document of record to which the Premises is subject; (vii) property management fees payable to a property manager, including but not limited to any affiliate of Landlord at an amount equal to three percent (3%) of monthly Base Rent; (viii) security services, if any; (ix) trash collection, sweeping and removal; and (x) the cost of additions or alterations made by Landlord to the Premises in order to comply with Legal Requirements (other than those expressly required herein to be made by Tenant), and the cost of capital additions or alterations required by Legal Requirements and capital repairs to or replacements of the Building Systems, provided that such capital

costs shall be amortized on a straight line basis over a period equal to the useful life thereof in accordance with generally accepted real estate accounting principles, consistently applied, together with interest thereon if Landlord borrowed such funds (not to exceed eight percent (8%), and Tenant shall pay such amortized cost on a monthly basis until the earlier of the expiration or earlier termination of this Lease or the useful life thereof.

Operating Expenses do not include, and Tenant shall have no obligation to pay for, any of the following: (i) costs, expenses, depreciation or amortization for capital repairs and capital replacements of the Building Structure which are the sole obligation of Landlord under Paragraph 10 of this Lease; (ii) the costs of repair, replacement, or restoration work occasioned by any casualty pursuant to Paragraph 15 below or condemnation pursuant to Paragraph 16 below; (iii) finance and debt service fees, principal and/or interest on debt or amortization payments on any mortgages executed by Landlord covering Landlord's property, any other indebtedness of Landlord, and rental under any ground lease or leases for the Building and/or the Property; (iv) any depreciation allowance or expense, amortization (except as expressly permitted in the preceding paragraph), expense reserve and other non-cash items; (v) 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 and/or the Property 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; (vi) 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; (vii) compensation paid to any employee of Landlord above the grade of Property Manager/Building Superintendent, including officers and executives of Landlord; (viii) the costs and expenses incurred in resolving disputes with other occupants, or prospective occupants of the Building; (ix) insurance costs for coverage not customarily paid by tenants of similar projects in the vicinity of the Building, increases in insurance costs caused by the activities of another occupant of the Building, and co-insurance payments; (x) insurance deductibles (including, without limitation, deductibles for earthquake and flood insurance carried by Landlord) in excess of $25,000.00 per casualty unless such excess is amortized over the useful life of the improvements to be repaired or replaced (as determined in accordance with generally accepted real estate accounting principles, consistently applied), together with interest thereon at the rate charged to Landlord if Landlord borrowed such funds (not to exceed eight percent (8%) per annum, payable by Tenant on a monthly basis as an Operating Expense until the earlier of the expiration or earlier termination of this Lease or the expiration of the useful life of the improvements); (xi) costs incurred in connection with the presence of any Hazardous Materials, except to the extent stored, used, released or disposed of by Tenant, its agents, employees, contractors, invitees, sublessees and assignees; (xii) 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; (xiii) intentionally deleted; (xiv) 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 made at no cost to Landlord; (xv) the costs of repairs, alterations, and general maintenance necessitated by the negligence or willful misconduct of Landlord or its agents, employees or contractors; (xvi) interest or penalties due to the late payment of taxes, utility bills (to the extent made the obligation of Landlord hereunder) or other such costs payable by Landlord; (xvii) any amount payable by Landlord by way of indemnity or for damages or which constitute a fine or penalty; (xviii) any cost for overtime or other expenses to Landlord in curing defaults; (xix) the costs, including fines, penalties, and legal fees incurred, due to violations by Landlord, its employees, agents, contractors or assigns of building codes or any governmental rule or requirement; (xx) any of the following Taxes or assessment expenses: (a) estate, inheritance, transfer, gift or franchise taxes of Landlord or any federal, state or local income, sales 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, (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 (xxi) any other cost or expense which, under

generally accepted accounting principles, consistently applied, would not be a normal maintenance or operating expense of the Building, including bad debt expenses and charitable contributions and donations. Landlord agrees that (y) Landlord will not collect or be entitled to collect more than one hundred percent (100%) of the Operating Expenses actually paid by Landlord in connection with the operation of the Building in any calendar year; and (z) Landlord shall make no profit from Landlord's collection of Operating Expenses.

Within one hundred twenty (120) days after the end of each calendar year, Landlord shall furnish to Tenant a statement showing in reasonable detail the amount of Operating Expenses for the preceding calendar year. 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, then Tenant shall pay the difference to Landlord within thirty (30) days after receipt of such annual statement, and if more, then Landlord shall pay the difference to Tenant together with delivery of such annual statement. 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 or earlier termination of this Lease. Notwithstanding the foregoing to the contrary, if Landlord fails to provide a statement to Tenant within twelve (12) months after the end of the calendar year at issue, Tenant shall not be obligated to pay Tenant's Proportionate Share of Operating Expenses in excess of the estimated amounts actually paid by Tenant for such calendar year.

Tenant's "**Proportionate Share**" is 100% of the Building. The Initial Estimated Monthly Operating Expense Payment for the Premises set forth on the second page of this Lease is only an estimate, and Landlord makes no guaranty or warranty that such estimate is or will be accurate.

Landlord shall retain all books and records related to Operating Expenses for a period of at least two (2) years. Not more frequently than once in every 12-month period and within twelve (12) months after receiving the applicable Landlord's statement of Operating Expenses, Tenant may, after at least twenty (20) days' prior written notice to Landlord ("**Review Notice**"), notify Landlord that Tenant intends to review Landlord's records of the Operating Expenses for the calendar year to which the statement applies as to whether the items on the statement were billed correctly in accordance with the Lease. Within a reasonable time after receipt of the Review Notice (not to exceed forty-five (45) days), Landlord shall make all pertinent records available for inspection at the Premises that are reasonably necessary for Tenant to conduct its review. If Tenant retains an agent to review Landlord's records (which may include employees of Tenant), the agent must be licensed to do business in the state or commonwealth where the Premises is located and must not be paid any sum based in whole or in part on the reduction of the sums paid or to be paid by Tenant. Tenant together with any representative of Tenant shall be permitted to review and audit the books and records supporting the Operating Expenses. If Tenant exercises its audit rights as provided above, Tenant shall conduct any inspection at a reasonable time and in a manner so as not to materially adversely disrupt the conduct of Landlord's business. Any such inspection by Tenant shall be for the sole purpose of verifying the Operating Expenses. Tenant shall hold any information obtained during any such inspection in confidence, except that Tenant shall be permitted to disclose such information to its attorneys and advisors, provided Tenant informs such parties of the confidential nature of such information and uses good faith and diligent efforts to cause such parties to maintain such information as confidential. Within sixty (60) days after Tenant has reviewed such books and records, Tenant shall have the right to give Landlord written notice (an "**Objection Notice**") stating in reasonable detail any objection to Landlord's statement of Operating Expenses for that year. If Tenant fails to give Landlord an Objection Notice within the 60-day period or fails to provide Landlord with a Review Notice within the 12-month period described above, Tenant shall be deemed to have approved Landlord's statement of Operating Expenses for such year. If Tenant provides Landlord with a timely Objection Notice, Landlord and Tenant shall work together in good faith to resolve any issues raised in Tenant's Objection Notice. If the parties are unable to reach a resolution with within

thirty (30) days of Landlord's receipt of an Objection Notice, Landlord and Tenant shall designate a Certified Public Accountant (the "**Arbiter**") whose determination made in accordance with this Paragraph 6 shall be binding upon the parties. If the determination of Arbiter shall substantially confirm the determination of Landlord, then Tenant shall pay the cost of the Arbiter. If the Arbiter shall substantially confirm the determination of Tenant, then Landlord shall pay the cost of the Arbiter. In all other events, the cost of the Arbiter shall be borne equally by Landlord and Tenant. In the event that Landlord and Tenant shall be unable to agree upon the designation of the Arbiter within thirty (30) days after receipt of notice from the other party requesting agreement as to the designation of the Arbiter, which notice shall contain the names and addresses of two or more certified public accountants who are acceptable to the party sending such notice (any one of whom, if acceptable to the party receiving such notice as shall be evidenced by notice given by the receiving party to the other party within such 30-day period, shall be the agreed upon Arbiter), then either party shall have the right to request the AAA (or any organization which is the successor thereto) to designate as the Arbiter a certified public accountant whose determination made in accordance with this Paragraph 6 shall be conclusive and binding upon the parties, and the cost charged by the AAA (or any organization which is the successor thereto), for designating such Arbiter, shall be shared equally by Landlord and Tenant. Any shortfall or excess revealed and verified by Tenant's audit shall be paid to the applicable party within thirty (30) days after that party is notified in writing of the shortfall or excess to the extent such overage or shortfall has not previously been adjusted pursuant to this Lease. All costs and expenses of the inspection shall be paid by Tenant unless the final determination in the audit is that Landlord overstated Operating Expenses by more than five percent (5%) for the year to which the audit relates, in which case Landlord shall pay all costs and expenses of the audit, not to exceed Five Thousand and 00/100 Dollars ($5,000.00).

7. **Utilities**. Tenant shall 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 such 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.

8. Taxes. Landlord shall pay all taxes, assessments and governmental charges (paid by Landlord at the discount rate, if so offered by the taxing authority) (collectively referred to as "**Taxes**") that accrue against the Premises during the Lease Term, and such Taxes shall be included as part of the Operating Expenses charged to Tenant. Taxes shall also include the following by way of illustration but not limitation:

i. any tax on Landlord's "**right**" to rent or "**rights**" to other income from the Premises or as against Landlord's business of leasing the Premises;

ii. any assessment, tax, fee, levy or charge in substitution, partially or totally, of any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June, 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "**real property taxes**" for the purposes of this Lease;

iii. any assessment, tax, fee, levy or charge allocable to or measured by the area of the Premises or other premises in the Building or the rent payable by Tenant hereunder or other tenants of the Building, including, without limitation, any gross receipts tax or excise tax levied by state, city or federal government, or any political subdivision thereof, with respect to the receipt of such rent, or upon or with

respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises, or any portion thereof but not on Landlord's other operations;

iv. any assessment, tax, fee, levy or charge upon this transaction; and/or

v. any assessment, tax, fee, levy or charge by any governmental agency related to any transportation plan, fund or system (including assessment districts) instituted within the geographic area of which the Building is a part.

At Tenant's request, Landlord shall contest, at Tenant's sole cost and expense, by appropriate legal proceedings the amount, validity, or application of any Taxes or liens thereof. All capital levies or other taxes assessed or imposed on Landlord upon the rents payable to Landlord under this Lease and any franchise tax, any excise, transaction, sales or privilege tax, assessment, levy or charge measured by or based, in whole or in part, upon such rents from the Premises 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 subsection 6(xx) above. If any Tax payable by Tenant hereunder 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.

9. **Insurance**. Landlord shall maintain special form causes of loss property insurance covering the full replacement cost of the Building and Exterior Premises. Landlord also shall carry Commercial General Liability insurance with limits of not less than $2,000,000.00 for each occurrence. Landlord may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. All such insurance shall be included as part of the Operating Expenses charged to Tenant. The Premises may be included in a blanket policy (in which case the cost of such insurance allocable to the Premises will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall obtain and maintain during the Lease Term insurance of the types and amounts as follows and issued by insurance companies that are reasonably acceptable to Landlord: (i) special form commercial property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense, and such insurance shall (a) at a minimum, cover the perils insured under the ISO special causes of loss form (CP 10 30) and (b) eliminate any coinsurance requirement in the policy through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form; and (ii) worker's compensation insurance with no less than the minimum limits required by law; and (iii) employer's liability insurance with limits not less than the greater of (A) $1,000,000 each accident for bodily injury by accident and $1,000,000 each employee for bodily injury by disease or (B) such limits as required by law, and Tenant hereby waives all rights against Landlord and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella liability insurance obtained by Tenant to this Lease, and Tenant shall obtain an endorsement equivalent to WC 00 03 13 to affect this waiver; and (iv) commercial general liability ("**CGL**") insurance, and, if necessary, commercial umbrella insurance, with limits of not less than $2,000,000 each occurrence and not less than $4,000,000 in the aggregate for property damage, personal injuries, or deaths of persons occurring in or about the Premises; and (v) automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than $1,000,000 each accident, and such insurance shall (I) cover liability arising

out of any auto (including owned, hired, and non-owned autos), (II) be written on ISO form CA 00 01, CA 00 05, CA 00 25, or a substitute form providing equivalent liability coverage, (III) include Landlord as an insured using ISO endorsement CA 20 01 or an equivalent form, and (IV) provide pollution liability coverage at least as broad as that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) and the Motor Carrier Act endorsement (MCS 90) shall be attached (if applicable), and Tenant waives all rights against Landlord and its agents, officers, directors and employees for recovery of damages to the extent any damages covered by this clause (v) are covered by the automobile liability or commercial umbrella liability insurance obtained by Tenant pursuant to this Agreement. Landlord may from time to time require reasonable increases in any such limits. Tenant shall purchase business income, business interruption, extra expense or similar coverage as part of its special form commercial property insurance, and in no event shall Landlord be liable for any business interruption or other consequential loss sustained by Tenant, whether or not it is insured, even if such loss is caused by the negligence of Landlord, its employees, officers, directors, or agents. Coverage provided by Tenant's insurance shall not be limited to the liability assumed by Tenant under the indemnifications provisions of this Lease.

Tenant's CGL insurance shall be written on ISO occurrence form CG 00 01 04 13 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. Landlord, and at Landlord's request, any lender holding a mortgage lien against the Premises shall be included as an additional insured under Tenant's CGL insurance, using ISO additional insured endorsement, CG 20 11 or a substitute providing equivalent coverage, and under Tenant's commercial umbrella insurance, if any. Tenant's CGL insurance shall also insure on an occurrence and not a claims-made basis, and contain hostile fire coverage and contractual liability coverage. Tenant's CGL insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to or maintained by Landlord. There shall be no endorsement or modification of Tenant's CGL insurance to make it excess over other available insurance; alternatively, if Tenant's CGL insurance states that it is excess or pro rata, such policy shall be endorsed to be primary with respect to the additional insured or insureds, as the case may be. Tenant waives all rights against Landlord and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by Tenant's CGL insurance, and under Tenant's commercial umbrella insurance, if any, maintained pursuant to this Paragraph 9.

Prior to taking occupancy of the Premises, upon each renewal of said insurance, and upon the addition of any new additional insureds, Tenant shall furnish Landlord with a certificate, or certificates as the case may be, of the insurance required by this Paragraph (which shall be in the form of the standard ACORD certificate of insurance) as shown on Exhibit D attached hereto), executed by a duly authorized representative of each insurer and showing compliance with the insurance requirements set forth herein. Certificates shall include copies of specific policy form or endorsement excerpts confirming additional insured and waiver of subrogation, as may be required by this Lease. Tenant shall be responsible to provide written notice of cancellation or non-renewal to the Landlord promptly upon receipt, but in no event later than sixty (60) days prior to cancellation or non-renewal with an exception of ten (10) days for cancellation due to non-payment of premium. Failure of Landlord to demand such certificate or certificates, or failure of Landlord to identify a deficiency from evidence that is provided, shall not be construed as a waiver of Tenant's obligation to maintain such insurance.

Landlord and Tenant hereby waive any recovery of damages against each other (including their employees, officers, directors, agents, or representatives) for loss or damage to the Building, Tenant improvements and betterments, fixtures, equipment, and other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance. Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by commercial property insurance, and each party waives

any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all claims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises from any cause, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors, but explicitly excluding damage caused in whole or in part by the gross negligence of Landlord, its agents, employees or contractors. By requiring insurance herein, Landlord does not represent that coverage and limits will necessarily be adequate to protect Tenant, and such coverage and limits shall not be deemed as a limitation on Tenant's liability under the indemnities granted to Landlord pursuant to terms of this Lease.

10. **Landlord's Repairs**.

(a) Landlord's Obligations. Landlord, at Landlord's sole cost and expense (which cost shall not be reimbursed as part of Operating Expenses nor made the obligation of Tenant hereunder), shall maintain, repair, and replace the exterior walls, roof structure, foundation, structural columns and structural beams of the Building (the "**Building Structure**") in good condition and repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. Landlord shall also, at Tenant's sole cost and expense (which cost shall be reimbursed as part of Operating Expenses), maintain, repair, and replace the Exterior Premises and fire sprinklers and fire protection systems. In addition, Landlord shall make capital repairs and replacements to the Building Systems, such costs to be amortized and charged to Tenant as provided in Paragraph 6. 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. 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. Tenant expressly waives the benefit of any current or futures statute in effect which relate to Landlord repair obligations to the extent it is inconsistent with the terms of this Lease. There shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises or in or to fixtures, appurtenances and equipment therein. Without limiting the foregoing, except as set forth in Paragraph 10(b) below, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect (including the provisions of California Civil Code Section 1942 and any successive sections or statutes of a similar nature).

(b) Tenant's Self-Help Remedy. If Landlord is in material default of any of its obligations to maintain, repair or replace the Building Structure or the Exterior Premises, or of its obligation to make capital repairs or replacements of the Building Systems (other than as a result of a casualty, which shall be governed solely by the provisions of Paragraph 15 of this Lease) (collectively referred to in this Paragraph 10(b) as "repairs"), and such default poses a material and imminent risk to the health or safety of persons or material interruption of Tenant's business operations, then, notwithstanding anything to the contrary contained in this Lease, Tenant may perform such repairs subject to the following terms and conditions:

(i) Tenant shall deliver thirty (30) days' written notice to Landlord and any ground lessor or lender whose name and address has previously been furnished to Tenant in writing for such purpose notice (the "**Self-Help Notice**") of Tenant's intention to perform such repairs, which Self-Help Notice shall indicate Tenant's intention to exercise its self-help rights and to perform such repairs that are otherwise Landlord's responsibility hereunder. If neither Landlord nor any ground lessor or lender commences to cure Landlord's failure to perform such repairs within twenty (20) days after receipt of the Self-Help Notice, then following an additional ten (10) business days' notice stating in bold-faced

all capital letters: "FAILURE TO PERFORM SUCH WORK IN TEN (10) BUSINESS DAYS SHALL RESULT IN TENANT'S EXERCISE OF SELF-HELP" and the failure of such maintenance or repairs to be commenced in such time, Tenant may take such action as is reasonably necessary to perform such repairs;

(ii) All repairs performed by Tenant or its agents pursuant to this Paragraph 10(b) must be performed in a good and workmanlike and lien-free manner in compliance with applicable Legal Requirements and covenants, conditions and restrictions, if any, recorded against the Property, or applicable part thereof, at a reasonable and competitive cost and rate, and shall not void any warranties or guarantees on the Premises or the Property of which Tenant has notice;

(iii) In the event Landlord's failure relates to repairs that are bona fide emergency repairs (i.e., necessary to prevent or remediate a material and imminent threat to the health or safety of persons or material interruption of Tenant's business operations), then, notwithstanding the provisions of Paragraph 10(b)(i) above, the Self-Help Notice shall be in the form and shall be given in such amount of time as is reasonable in the circumstances, and if Landlord, ground lessor or lender fails to respond within a time as is reasonable in the circumstances, Tenant may cause such emergency repairs to be made pursuant to the requirements set forth herein (and for the avoidance of doubt, specifically excluding the additional ten (10) business- day notice period above so long as the initial notice provides in bold-faced, all capital letters that: "FAILURE TO ACT SHALL RESULT IN TENANT EXERCISING SELF-HELP"); and

(iv) Except as otherwise provided in this Paragraph 10(b)(iv) below, Landlord shall reimburse Tenant for the reasonable out of pocket third-party costs of the performance of the repairs that are incurred in strict accordance with the terms of this Paragraph 10.(b) (the "**Reimbursement Amount**") within thirty (30) days after Tenant's submission to Landlord of Tenant's bill therefor, which bill shall be accompanied by receipted, itemized invoices (with reasonable supporting documentation) and conditional lien releases from all contractors, subcontractors, materialmen and suppliers that performed the work or provided the material or services reflected in the bill), provided, however, in no event shall the costs billed to Landlord for emergency repairs be unreasonable and in no event shall such emergency repairs exceed what is required to end the pending emergency (it being understood and agreed by Landlord that in the case of an emergency, depending upon the circumstances, overtime and/or premium time labor charges may be reasonable). Tenant shall provide unconditional lien waivers to Landlord in connection with all such bills paid within ten (10) days of Landlord's payment of Tenant's bill, or as soon thereafter as reasonably practicable. 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 therefore, together with the invoices therefor, supporting documentation and the conditional lien releases required by this Paragraph 10(b)(iv), 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", 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 of 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 Reimbursement Amount, then Tenant shall not be entitled to offset the disputed portion of the Reimbursement Amount. In the event of a dispute between Landlord and Tenant regarding the Reimbursement Amount, 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 (the "**Arbitration Rules**"). 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 (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**. Subject to Landlord's obligations in Paragraph 2(a) and Paragraph 10, and subject to Paragraphs 9 and 15, Tenant, at its expense, shall repair, replace and maintain in good condition all portions of the Premises and all areas, improvements and systems exclusively serving the Premises including, without limitation, concrete floors, dock and loading areas together with all dock-related equipment including but not limited to dock bumpers, dock plates and/or levelers, and seals, truck doors, plumbing, water and sewer lines up to points of common connection, entries, doors, ceilings, windows, interior walls and the interior side of demising walls. Except to the extent made the obligation of Landlord pursuant to Paragraph 10(a) above, Tenant shall also repair, replace and maintain in good condition the mechanical, electrical, fire-life safety, plumbing, and HVAC systems installed or furnished by Landlord serving the Premises (collectively, the "**Building Systems**"). Heating, ventilation and air conditioning systems and other Building Systems exclusively serving the Premises shall be maintained at Tenant's expense pursuant to maintenance service contracts entered into by Tenant. The scope of services and contractors under such maintenance contracts shall be subject to Landlord's prior reasonable approval. Tenant shall also deliver to Landlord quarterly reports from such contractors with respect to Tenant's maintenance obligations under this Lease. Upon Landlord's request, Tenant shall deliver to Landlord a copy of any or all of the foregoing maintenance service contracts.] If Tenant fails to perform any repair or replacement for which it is responsible, Landlord may perform such work and be reimbursed by Tenant within ten (10) days after receipt of written demand therefor. Subject to Paragraphs 9 and 15, Tenant shall bear the full cost of any repair or replacement to any part of the Building or Exterior Premises 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**. Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises following the Commencement Date ("**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. All TenantMade 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 prior, written approval, which shall not be unreasonably withheld, conditioned or delayed, excluding those cosmetic improvements or alterations which are non-mechanical, non-structural and costs less than $100,000.00, provided however, Tenant shall send written notice to Landlord of such non-mechanical, non-structural cosmetic improvements or alterations. Landlord may monitor construction of the Tenant-Made Alterations. 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. 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 nonresponsibility pursuant to applicable law. Tenant shall provide certificates of insurance for worker's compensation and other coverage in amounts and from an insurance company reasonably satisfactory to Landlord protecting Landlord against liability for personal injury and 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. Upon surrender of the Premises in accordance with Paragraph 21, all Tenant-Made Alterations and any leasehold improvements constructed by Landlord or Tenant shall remain on the Premises as Landlord's property, except to the extent that Landlord notifies Tenant in writing, at the time that Tenant requests Landlord's consent to a Tenant-Made Alteration, that the Tenant-Made Alteration must be removed upon the expiration or earlier termination of this Lease. Tenant shall repair any damage caused by such removal. In no event shall Tenant be obligated to remove the Tenant Improvements upon the expiration or earlier termination of this Lease.

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. Upon its surrender or vacation of the Premises Tenant shall have removed its Trade Fixtures and shall have repaired any damage caused by such removal.

Tenant acknowledges that the supply systems owned by Praxair, Inc.("**Praxair**") are inside the Building. Tenant represents that Tenant and Praxair shall enter into a separate agreement with regard to such supply systems prior to Tenant's Early Occupancy. Landlord shall have no responsibility with regard to such supply systems owned by Praxair.

Tenant shall have the right to install a generator in an area in the Exterior Premises reasonably acceptable to Landlord and Tenant (the "**Generator**"). The installation of the Generator shall be a component of the Tenant Improvements or a Tenant-Made Alteration, expressly subject to all terms and conditions set forth herein or in the Work Letter, as applicable, including but not limited to Landlord's approval of the plans therefor. Tenant shall also have the right to install its proprietary "Bloom Boxes" in areas in the Exterior Premises reasonably acceptable to Landlord and Tenant, subject to Landlord's reasonable approval thereof and complying with all Legal Requirements and any documents of record. Such Bloom Boxes shall be a component of the Tenant Improvements or a Tenant-Made Alteration, expressly subject to all terms and conditions set forth herein or in the Work Letter, as applicable, including but not limited to Landlord's approval of the plans therefor.

13. **Signs**. 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. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repaired, painted, and/or replaced the building facia surface to which its signs are attached in accordance with Paragraph 21. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, 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 and conform in all respects to Landlord's requirements.

Tenant shall have the right to install, at Tenant's sole cost and expense, Tenant's sign on the exterior side of the Building facing Highway 880, using Tenant's corporate logo and colors, provided the same complies with all Legal Requirements and is approved by all governmental agencies having jurisdiction over the same ("**Exterior Building Signage**"). Tenant shall not be charged Rent in connection with the Exterior Building Signage.

Tenant shall have the right to install, at Tenant's sole cost and expense, Tenant's sign on any existing monument or existing pylon, provided (a) the same complies with all Legal Requirements and (b) is approved by all governmental agencies having jurisdiction over the same and (c) such signage, including the type, size, lettering and location of the signage, is approved in writing in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed ("**Monument Signage**"). Tenant shall not be charged Rent in connection with the Monument Signage.

14. **Parking**. Tenant shall be entitled to the non-exclusive use of the 279 parking spaces in the Exterior Premises. Landlord shall not be responsible for enforcing Tenant's parking rights against any

third parties. Tenant may install EV Stations in locations reasonably acceptable to Landlord and Tenant, subject to all Legal Requirements.

15. **Restoration**. 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 twelve (12) months, either Landlord or Tenant may elect to terminate this Lease as of the date of the casualty upon notice to the other party given no later than thirty (30) days after Landlord's notice. In no event shall Landlord have the right to terminate this Lease for insufficient insurance proceeds if Landlord failed to carry the insurance required by this Lease. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take twelve (12) months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises, excluding the Tenant Improvements and any Tenant-Made Alterations installed by Tenant or by Landlord and paid for by Tenant, subject to delays arising from the collection of insurance proceeds or for up to ninety (90) days of Force Majeure Events (as defined in Paragraph 33 below). Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from up to ninety (90) days of Force Majeure Events, 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. Notwithstanding the foregoing, either party may terminate this Lease by written notice to the other as of the date of the casualty if the Premises are damaged during the last twelve (12) months of the Lease Term and Landlord reasonably estimates that it will take more than six (6) months to repair such damage. If, however, Landlord elects to terminate this Lease pursuant to the preceding sentence, Tenant shall have the right to exercise its option to extend the Lease Term for the First Renewal Term or the Second Renewal Term, as applicable, in which case Landlord’s notice shall be of no force or effect and Landlord and Tenant shall complete the required restoration pursuant to the provisions of this Paragraph 15. Rent (as defined in Paragraph 37(a) below) 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. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss. This Lease sets forth the terms and conditions upon which this Lease may terminate in the event of any damage or destruction. Accordingly, the parties hereby waive the provisions of California Civil Code Section 1932, Subsection 2, and Section 1933, Subsection 4 (and any successor statutes thereof permitting the parties to terminate this Lease as a result of any damage or destruction).

16. **Condemnation**. If the entirety of the Building or Exterior Premises are taken for any public or quasi-public use, this Lease shall terminate as of the date of the Taking (defined below). If less than the entirety of the Building or Exterior Premises should be taken for any public or quasipublic 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 the Taking would prevent or materially interfere with Tenant's use of the Premises in Tenant’s sole judgment, or in Landlord's reasonable judgment the Taking would materially interfere with or impair its ownership or operation of the Premises, then upon written notice by Tenant or Landlord this Lease shall terminate and Rent shall be apportioned as of the date of such Taking. If part 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. 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. 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 moving , relocation costs and damage to Tenant's Trade Fixtures and Tenant Improvements if a separate award for such items is made to Tenant. This Lease sets forth the terms and conditions upon

which this Lease may terminate in the event of a taking. Accordingly, the parties waive the provisions of the California Code of Civil Procedure Section 1265.130 and any successor or similar statutes permitting the parties to terminate this Lease as a result of a taking.

17. **Assignment and Subletting**.

a. **In General**. Without Landlord's prior written consent, which 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 and any attempt to do any of the foregoing shall be void and of no effect. It shall be reasonable for the Landlord to withhold, delay or condition its consent, where required, to any assignment or sublease in any of the following instances: (i) the assignee or sublessee is not a party of reasonable financial worth and financial stability, or either, in light of the responsibilities to be undertaken in connection with the assignment or sublease on the date the consent is requested; or (ii) occupancy of the Premises by the assignee or sublessee would, in Landlord's reasonable opinion, violate any agreement binding upon Landlord or the Building with regard to the identity of tenants, usage in the Building, or similar matters; or (iii) the identity or business reputation of the assignee or sublessee shall, in the good faith judgment of Landlord, damage the goodwill or reputation of the Building; or (iv) intentionally omitted; or (v) the assignee or sublessee is a governmental agency or instrumentality thereof; or (vi) in the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease (except for the obligation to pay Rent); or (vii) the proposed use of the assignee or sublessee entails the presence of Hazardous Materials (as defined below) on the Premises, in which case it shall be reasonable for Landlord to condition its consent additional insurance requirements to be determined by Landlord in its reasonable discretion, including without limitation the provision of pollution legal liability insurance; or (viii) intentionally omitted; or (ix) in Landlord's reasonable judgment, the use of the Premises by the proposed assignee or sublessee would entail alterations that would lessen the value of the tenant improvements in the Premises or would increase the burden on Building systems or equipment over the burden thereon prior to the proposed assignment. The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may reasonably request, including without limitation copies of the most recent annual and quarterly financial statements of such assignee or sublessee prepared by such assignee or sublessee or its accountants. Landlord For purposes of this paragraph, but subject to the provisions of Paragraph 17(b) below, a transfer of the ownership interests controlling Tenant shall be deemed an assignment of this Lease unless such ownership interests are publicly traded. Tenant shall reimburse Landlord for all of Landlord's reasonable expenses in connection with any assignment or sublease not to exceed One Thousand Five Hundred and No/100 Dollars ($1,500.00). In no event shall Landlord have the right to recapture the Premises in the event of an assignment of this Lease or a sublease of all or any portion of the Premises. Consent by Landlord to any transfer shall not constitute a waiver of the requirement for such consent to any subsequent transfer.

Notwithstanding any assignment or subletting, 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 assignments or sublettings). 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) exceeds the rent payable under this Lease, then Tenant shall be bound and obligated to pay Landlord as additional rent hereunder all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant, less (i) Tenant's costs for brokerage commissions which shall be standard in the market of the Building,(ii) actual attorneys' fees paid by Tenant, not to exceed Seven Thousand Five

Hundred and 00/100 ($7,500.00), and (iii) actual tenant allowances paid by Tenant, not to exceed Five and 00/100 Dollars per square foot of the assigned or sublet Premises. Written support of the costs set forth in (i), (ii) and (iii) set forth above must be provided to Landlord.

Landlord shall consent to an assignment or sublease, or withhold consent (with reasonable detail as to why consent is being withheld) within ten (10) business days after receipt of the documentation required by the first grammatical paragraph of this Paragraph 17.

If this Lease be assigned or if the Premises be 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, beyond applicable notice and cure periods, by Tenant hereunder 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 paragraph, 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.

b. **Permitted Transfers**. Notwithstanding anything to the contrary contained in this Lease, Tenant, without Landlord's prior written consent, may sublet the Premises or assign this Lease to: (i) a subsidiary, affiliate, franchisee, division, corporation or other entity controlling, controlled by 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”). 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 receive excess rentals shall not apply to a Permitted Transfer.

18. **Indemnification**. Except to the extent arising out of the gross negligence or willful misconduct of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify and defend Landlord, and Landlord's agents, employees and contractors, with respect to any and all losses, liabilities, damages, costs and expenses (including without limitation attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Premises and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations under this Paragraph 18.

19. **Inspection and Access**. Upon reasonable prior notice and subject to Tenant’s security procedures, Landlord and its lenders, agents, representatives, and contractors may enter the Premises at any reasonable time 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. Also upon reasonable prior notice and subject to Tenants security procedures, Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last nine (9) months of the Lease Term, to prospective tenants. Landlord may erect a reasonable sign on the

Premises stating the Building is available to let or 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 or access to the Premises, increase Tenant's obligations under this Lease or diminish Tenant's rights under this Lease. Within ten (10) business days after receipt of Landlord's written 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, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

21. **Surrender**. 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 with respect to which Landlord has not required removal pursuant to Paragraph 11 above and casualty loss and condemnation covered by Paragraphs 15 and 16 excepted, but otherwise in accordance with **Addendum** 4 – **Move-Out Conditions**. Any Trade Fixtures, 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 or earlier termination of Tenant's right of possession shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Base Rent and Operating Expenses and obligations concerning the condition and repair of the Premises.

22. **Holding Over**. If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed with Landlord in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord, as Base Rent for the holdover period, an amount equal to one hundred twenty-five percent (125%) of the Base Rent in effect on the termination date, computed on a per diem basis for the first month of such holding over, and one hundred fifty percent (150%) of such Base Rent for each month (computed on a per diem basis) or portion thereof thereafter. All other payments shall continue under the terms of this Lease. In addition, after the first thirty (30) days of any holding over by Tenant, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. 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 three (3) days after written notice from Landlord that such sum is past due.

(b) Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) 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"); (C) become the subject of any proceeding for relief which is not dismissed within sixty (60) days of its filing or entry; or (D) 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 cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

(d) In the event Tenant vacates the Premises and Tenant fails to provide written notice to Landlord within twenty-four (24) hours of such vacation.

(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 any lien placed upon the Premises in violation of this Lease within fourteen (14) days after any such lien or encumbrance is filed against the Premises.

(g) 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 that Tenant shall not be in default hereunder if Tenant commences the cure within the thirty (30) day period and thereafter diligently prosecutes the cure to completion.

24. **Landlord's Remedies**. In the event of any such Event of Default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall have the immediate option to terminate this Lease and all rights of Tenant hereunder. In the event that Landlord shall elect to so terminate this Lease, then Landlord may recover from Tenant:

(a) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus

(b) 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

(c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Landlord for all 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, but not limited to: unamortized Tenant Improvement costs; attorneys' fees; brokers' commissions; the costs of refurbishment, alterations, renovation and repair of the Premises; and removal (including the repair of any damage caused by such removal) and storage (or disposal) of Tenant's personal property, equipment, fixtures and any other items which Tenant is required under this Lease to remove but does not remove.

As used in Paragraphs 24(a) and 24(b) above, the "worth at the time of award" is computed by allowing interest at the Interest Rate set forth in Section 1.14 of the Summary. As used in Paragraph 24(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

In the event of any such default by Tenant, in addition to any other remedies available to Landlord under this Lease, at law or in equity, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises; such property may be removed, stored and/or disposed of pursuant to this Lease or any other procedures permitted by applicable law. No re-entry or taking possession of the Premises by Landlord pursuant to this Paragraph 24, and no acceptance of surrender of the Premises or other action on Landlord's part, shall be construed as an election to terminate this Lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due. Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than Monthly Base Rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations, except in case of emergencies, in which such case, such shorter period of time as is reasonable under the circumstances) after Tenant's receipt of written notice thereof from Landlord, Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as additional rent.

If Landlord terminates Tenant's right of possession (but not this Lease), Landlord may, but shall be under no obligation to, relet the Premises for the account of Tenant for such rent and upon such terms as shall be satisfactory to Landlord without thereby releasing Tenant from any liability hereunder and without demand or notice of any kind to Tenant. For the purpose of such reletting Landlord is authorized to make any repairs, changes, alterations, or additions in or to the Premises as Landlord deems reasonably necessary or desirable. If the Premises are not relet, then Tenant shall pay to Landlord as damages a sum equal to the amount of the rental reserved in this Lease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Base Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Landlord to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting [after first deducting therefrom, for retention by Landlord, the unpaid Base Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including without limitation attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Lease to be paid, then Tenant shall immediately satisfy and pay any such deficiency. Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this

Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be effected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

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), or such shorter period as is reasonable in the event of an emergency. All obligations of Landlord hereunder shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. Nothing herein shall be deemed to restrict Tenant’s rights to self-help set forth in Paragraph 10(b) above or Tenant’s set-off rights set forth in the Work Letter. 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 under this Lease shall be limited solely to its interest in the Building and the Property, and the rents, incomes and profits (including net sales proceeds) therefrom, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord. In no event shall Tenant ever seek, nor shall Landlord be liable for any consequential, exemplary, special or punitive damages in connection with or as a result of any default by Landlord hereunder.

26. **Waiver of Jury Trial**. TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

27. **Subordination**. This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any first mortgage, now existing or hereafter created on

or against 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 except as set forth herein. Tenant agrees, at the election of the holder of any such mortgage, to attorn to any such holder. Tenant agrees within ten (10) business days after receipt of written demand 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. 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. Within ten (10) business days after receipt of written request of Landlord and opportunity for Tenant to review and request reasonable modifications, Tenant agrees to execute any lease amendment not materially altering the terms of this Lease, or increasing Tenant's obligations or diminishing Tenant's rights hereunder, if required by a mortgagee or beneficiary of a deed of trust encumbering real property of which the Premises constitute a part incident to the financing of the real property or Landlord's leasehold interest in the real property of which the Premises constitute a part. Notwithstanding anything to the contrary contained in this Lease, as a condition to the effectiveness of this Lease and Tenant's obligations hereunder, not later than the date of full execution of this Lease by Landlord and Tenant, Landlord shall provide Tenant with a commercially reasonable subordination, non-disturbance and attornment agreement from the holder of any current mortgage providing for the recognition of Tenant's rights, interests and options under this Lease (including Tenant's self-help and set-off rights provided in this Lease) in the event of a foreclosure, deed given in lieu of foreclosure or sale under the mortgage, so long as Tenant is not in default under this Lease beyond applicable notice and cure periods ("**SNDA**"). Tenant's obligation to subordinate this Lease to any future mortgage shall be conditioned upon receiving an SNDA from the holder of such future mortgage.

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 without limitation those who may furnish materials or perform labor for any construction or repairs. 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 indemnify and defend Landlord 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 fourteen (14) 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 reasonably satisfactory to Landlord within such fourteen (14)- day period.

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 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. No cure or grace period provided in this

Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate if Tenant fails to provide the estoppel certificate within three (3) business days after receipt of Landlord's second notice. 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 three (3) days after receipt of Landlord's second written request thereof.

30. **Environmental Requirements**. Except for Hazardous Materials (hereinafter defined) contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, and except for those types and quantities of Hazardous Materials used by Tenant in connection with the Permitted Uses, as more particularly described on Exhibit E attached hereto and incorporated by reference herein (collectively, the "**Permitted Hazardous Materials**"), which Permitted Hazardous Materials shall be stored, used and disposed of by Tenant in compliance with all Environmental Requirements (hereinafter defined), Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Upon the Commencement Date or prior thereto, Tenant shall contact Landlord to initiate the permit process for the storage of Permitted Hazardous Materials and to complete a Hazardous Materials Business Plan (HMBPs). Landlord may request from time to time, and Tenant shall then promptly provide, a certification of, and all MSDS sheets with respect to, all Hazardous Substances transported, stored, used, generated, or manufactured in or about the Premises. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner reasonably satisfactory to Landlord any Hazardous Materials released on or from the Building by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall notify Landlord immediately of any such release of Hazardous Material and also of all orders to comply, notices of violation, and similar documentation, including without limitation written correspondence by, to or from any governmental authority pertaining to environmental matters. Tenant shall complete and certify disclosure statements as reasonably requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The term "**Environmental Requirements**" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including but not limited to crude oil or any fraction thereof, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, by-products, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify and defend Landlord with respect to any and all losses (including, without limitation, diminution in value of the Premises and loss of rental income from the Premises), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements of this Paragraph 30, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or

any other breach of the requirements under this Paragraph 30 by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant under this Paragraph 30 shall survive any termination or expiration of this Lease.

Landlord and Landlord's lender shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations under this Paragraph 30, or the environmental condition of the Premises. Access shall be granted to Landlord and Landlord's Lender upon Landlord's reasonable prior notice to Tenant, and subject to Tenant's security requirements, and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

To the best knowledge of Landlord based solely on the Phase I Report prepared by AECOM dated August 2, 2019 (the "Phase I Report"), (i) no Hazardous Materials are present in, on or under the Premises, the Building or the Property, or the soil, surface water or groundwater thereof, in violation of any applicable Environmental Requirements; (ii) no underground storage tanks are present on the Property; and (iii) no action, proceeding or claim is pending or threatened regarding the Building or the Property concerning any Hazardous Materials or pursuant to any Environmental Requirements.

Notwithstanding the foregoing or anything to the contrary contained in this Lease, 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 Hazardous Materials present at any time on, in, under or about the Premises, the Building or the Property, or the soils, surface water or groundwater thereof, including, without limitation, any Hazardous Materials identified in the Phase I Report, or the violation of any Environmental Requirements, except to the extent that any of the foregoing actually results from the storage, use, release or disposal of Hazardous Materials by Tenant or its agents, employees, contractors, invitees, subtenants or assignees in violation of applicable Environmental Requirements.

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. The current rules and regulations are attached hereto as Exhibit B. 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.

32. **Security Service**. Tenant acknowledges and agrees that, while Landlord may patrol the Exterior Premises, 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.

Tenant shall have the right (a) to install and maintain its own security systems for the Premises, including but not limited to, card readers and cameras ("**Security Systems"**) and (b) to secure the Premises, including perimeter fencing, lighting, liftgates, guard shacks and cameras ("**Exterior Security**"). The Security Systems and Exterior Security shall be considered either a component of the Tenant Improvements or a Tenant-Made Alteration and shall comply with the terms and conditions of the Work Letter or of Paragraph 12 of this Lease, as applicable.

33. **Force Majeure and Excused Delay**. Neither Landlord nor Tenant shall be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inclement weather conditions which delay or preclude construction, inability to obtain labor or materials or reasonable substitutes therefor, actions or inactions of governmental or quasi-governmental authorities affecting the design, permitting, construction and Substantial Completion of the Landlord's Work, the Closure Requirements or the Tenant Improvements beyond the reasonable control of Landlord or Tenant, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits of Landlord or Tenant, enemy or hostile governmental action, acts of terrorism, civil commotion, fire or other casualty, "unforeseen conditions" within the meaning of Landlord's contract with its general contractor, and other causes beyond the reasonable control of Landlord and Tenant (collectively, "**Force Majeure Delays**"); provided, however, that Force Majeure Delays shall not excuse Landlord or Tenant for failure to pay any monetary sum due under this Lease except as expressly provided in this Lease. In addition, neither Landlord nor Tenant shall be held responsible for delays in the performance of its obligations hereunder due to Excused Delays, as hereinafter defined, and each day of Excused Delay shall delay Landlord's or Tenant's obligation to perform such obligation for one (1) day. An "**Excused Delay**" means a delay caused by an act of God, declared state of emergency or public health emergency, epidemic or pandemic (specifically including but not limited to COVID-19), governmental inaction, restriction, regulation, action and/or control (including without limitation a government mandated quarantine, shelter-in-place requirement or travel ban), war, civil commotion, act of terrorism, and/or order of government or civil or military authorities. An Excused Delay shall not defer the obligation of Landlord or Tenant to pay any monetary sum due under this Lease except as expressly provided in this Lease.

34. **Entire Agreement**. This Lease constitutes the complete 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**. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction except for the Broker identified in the Basic Lease Information ("**Broker**"), and that no broker, agent or other person brought about this transaction, other than the Broker. Tenant agrees to indemnify and defend Landlord with respect to any claims by any broker, agent or person other than Broker claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. Landlord represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction except for the Broker, and that no broker, agent or other person brought about this transaction, other than the Broker. Landlord agrees to indemnify and defend Tenant with respect to any claims by any broker, agent or person other than Broker claiming a commission or other form of compensation by virtue of having dealt with Landlord with regard to this leasing transaction. Landlord shall be responsible for payment of the brokerage commission due in connection with this Lease pursuant to a separate written agreement.

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 a reputable national overnight courier service, postage prepaid, or by hand delivery addressed to the parties at their addresses below. 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.

If to Landlord:

c/o Dermody Properties
5500 Equity Avenue
Reno, Nevada 89502

with a copy to:

Equis Law Group, LLC.
2901 Butterfield Road
Oak Brook, IL 60523
Attn: Robert M. Silverman, Esq.

If to Tenant:

4353 No. First Street
San Jose, California 95134
Attention: General Counsel

(d) Intentionally omitted.

(e) At Landlord's request from time to time but not more than once each calendar year unless an Event of Default has occurred or Landlord is selling or refinancing the Property, 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. Landlord shall keep all such information confidential in accordance with Paragraph 45 below.

(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) 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 Premises is located, excluding any principles of conflicts of laws.

(l) Time is of the essence as to the performance of each obligations under this Lease with respect to which time is a factor.

(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 and the terms of this Lease, such exhibits or addenda shall control.

(n) Landlord and Tenant may execute this Lease in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Any counterpart to this Lease may be executed by facsimile or electronic (e.g. PDF) copy and shall be binding on the parties.

(o) In the computation of any period of time provided for in this Lease or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday.

38. **Attorney's Fees.** If either Landlord or Tenant brings an action or proceeding involving the Premises based on tort, contract or equity, then reasonable attorneys' fees may be recovered by the party that prevails in such action or proceeding.

39. **Landlord's Lien/Security Interest**. Intentionally omitted.

40. **Limitation of Liability of Trustees, Shareholders, and Officers of DPIF2 CA 20 Christy Street, LLC**. Any obligation or liability whatsoever of DPIF2 CA 20 Christy Street, LLC, a Delaware limited liability company, which may arise at any time under this Lease or any obligation or liability which may be incurred by it 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, its partners, trustees, directors, shareholders, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise.

41. **Early Occupancy**. Subject to Legal Requirements and to the provisions of the Work Letter regarding construction of the Tenant Improvements, upon (i) execution of this Lease by Landlord and Tenant, (ii) payment by Tenant to Landlord of all amounts due in connection with Tenant's execution of this Lease, and (iii) delivery by Tenant to Landlord of all certificates of insurance required pursuant to Paragraph 9 of this Lease (the date upon which all of the following have the commencement of "Early Occupancy"), Tenant may enter the Premises for the purpose of constructing the Tenant Improvements and installing Tenant's fixtures, furniture and equipment within the Premises. Tenant's right to Early Occupancy shall terminate on the day immediately prior to the Commencement Date. During Tenant's Early Occupancy, (a) Landlord and Tenant shall have mutual access to the Premises, (b) Tenant shall not interfere with Landlord's construction of the Initial Improvements (as defined in Addendum 3 – Landlord Work Letter) or cause any labor dispute as a result of Tenant's occupancy of the Premises, (a) Tenant shall not be required to pay Base Rent or Operating Expenses, (b) Tenant shall be required to pay for removal of Tenant's trash from the Premises and the utilities used by Tenant at the Premises, (c) except for the obligation to pay Base Rent and Operating Expenses, the terms of this Lease shall apply to Tenant's Early Occupancy, and (d) Tenant shall indemnify and defend Landlord with respect to any loss or damage to the Premises, or any of them, and all liability, loss, or damage arising from any injury to the Building or Exterior Premises or the property of Landlord, its contractors, subcontractors, or materialmen, and any death or personal injury to any person or persons arising out of such installations, unless any such loss, damage, liability, death, or personal injury was caused by Landlord's negligence or willful misconduct, or that of its agents, employees or contractors. Any such occupancy or performance in the Premises shall be in accordance with the provisions of the Work Letter.

42. **Renewal Options**. Tenant shall have the option to extend the Lease Term in accordance with the provisions of **Addendum 5 – Renewal Options** attached hereto and made a part hereof.

43. **Roof Rights**. As a component of the Tenant Improvements or as a Tenant-Made Alteration Tenant shall have the right to access the roof of the Building for purposes of installing, maintaining, repairing, replacing or removing its satellite or wire communications equipment ("**Roof Equipment**"). Landlord and Tenant shall agree upon the location of the Roof Equipment and any additions or alterations needed to the roof to accommodate the placement of the Roof Equipment, each party acting reasonably. Tenant shall notify Landlord prior to Tenant's access to the roof and Tenant's access to the roof shall not void any roof warranty obtained by Landlord in connection with the Landlord's Work. Tenant shall use Landlord's roofing contractor in order not to void the roof warranty. Tenant shall be liable to repair any damage to the roof as a result of the installation of the Roof Equipment.

44. **Consequential Damages**. Notwithstanding anything to the contrary contained in this Lease, except with respect to Tenant's obligations set forth in Paragraph 22, "Holding Over", and Paragraph 30, "Environmental Requirements", in no event shall Tenant be liable to Landlord for any indirect, consequential, special, exemplary, incidental or punitive damages arising from or relating to this Lease.

45. **Confidentiality**. Landlord and Tenant acknowledge that the terms and conditions of this Lease are to remain confidential for the benefit of both parties, and may not be disclosed by either party to anyone, by any manner or means, directly or indirectly (except to Landlord's and Tenant's attorneys, advisors and accountants which have been informed of the confidentiality provisions of this Lease and to any proposed assignee or transferee) without the prior written consent of the other, unless disclosure is required by applicable law or court order. The consent by Landlord or Tenant to any disclosures shall not be deemed to be a waiver on the part of Landlord or Tenant, as applicable, of any prohibition against any future disclosure.

(Signatures on following page.)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

TENANT:

BLOOM ENERGY CORPORATION, a Delaware corporation

By: _
Name: _
Title: _

LANDLORD:

DPIF2 CA 20 CHRISTY STREET, LLC
a Delaware limited liability company

By: Dermody Properties Industrial Fund II Agg I LP,
a Delaware limited partnership, its sole member

By: Dermody GP II, LLC,
a Delaware limited liability company
By: _____
Name: _____ Title: _____

EXHIBIT A-1

Legal Description

The Land referred to herein below is situated in the City of Fremont, County of Alameda, State of California, and is described as follows:

PARCEL 1:
BEING A PORTION OF PARCEL 3 OF PARCEL MAP 7359, FILED FOR RECORD ON JUNE 20, 2000, IN BOOK 252 OF MAPS, AT PAGE 19, ALAMEDA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 3; SAID POINT ALSO BEING ON THE EASTERLY LINE OF CHRISTY STREET; THENCE ALONG THE WESTERN LINE OF SAID PARCEL 3 THE FOLLOWING COURSES: 1. NORTH 43°44' 15" EAST, 14.00 FEET;
2. NORTH 39° 27' 05" EAST, 40.13 FEET; 3. NORTH 43° 44' 15" EAST, 313.86 FEET;
4. NORTH 46° 15' 45" WEST, 26.16 FEET; 5. NORTH 43° 44' 15" EAST, 276.78 FEET; 6. NORTH 39° 59' 43" WEST, 203.68 FEET; THENCE LEAVING SAID BOUNDARY LINE OF PARCEL 3, NORTH 43° 35' 41" EAST, 26.15 FEET; THENCE NORTH 46° 15' 00" WEST, 149.01 FEET TO A POINT ON A NORTHERN LINE OF SAID PARCEL 3; THENCE ALONG SAID NORTHERN LINE NORTH 43° 46' 39" EAST, 84.57 FEET TO THE NORTHEASTERN LINE OF SAID PARCEL 3; THENCE ALONG THE BOUNDARY LINES OF SAID PARCEL 3 THE FOLLOWING COURSES: 1. SOUTH 39° 36' 01" EAST, 35.34 FEET;
2. SOUTH 40° 01' 44" EAST, 553.30 FEET; 3. SOUTH 07° 35' 42" EAST, 192.10 FEET; 4. SOUTH 46° 14' 42" EAST, 3.96 FEET; 5. SOUTH 43° 46' 39" WEST, 599.45 FEET; 6. NORTH 46° 15' 45" WEST, 0.07 FEET; THENCE ALONG A NON -TANGENT CURVE TO THE LEFT HAVING A RADIAL BEARING OF NORTH 48° 41' 09" WEST AND HAVING A RADIUS OF 75.00 FEET THROUGH A CENTRAL ANGLE OF 147° 59' 51" FOR AN ARC LENGTH OF 193.73 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 55.00 FEET THROUGH A CENTRAL ANGLE OF 60° 25' 15" FOR AN ARC LENGTH OF 58.00 FEET; THENCE NORTH 46° 15' 45" WEST, 169.96 FEET TO THE POINT OF BEGINNING.

EXHIBIT A-2

Site Plan

(see attached)

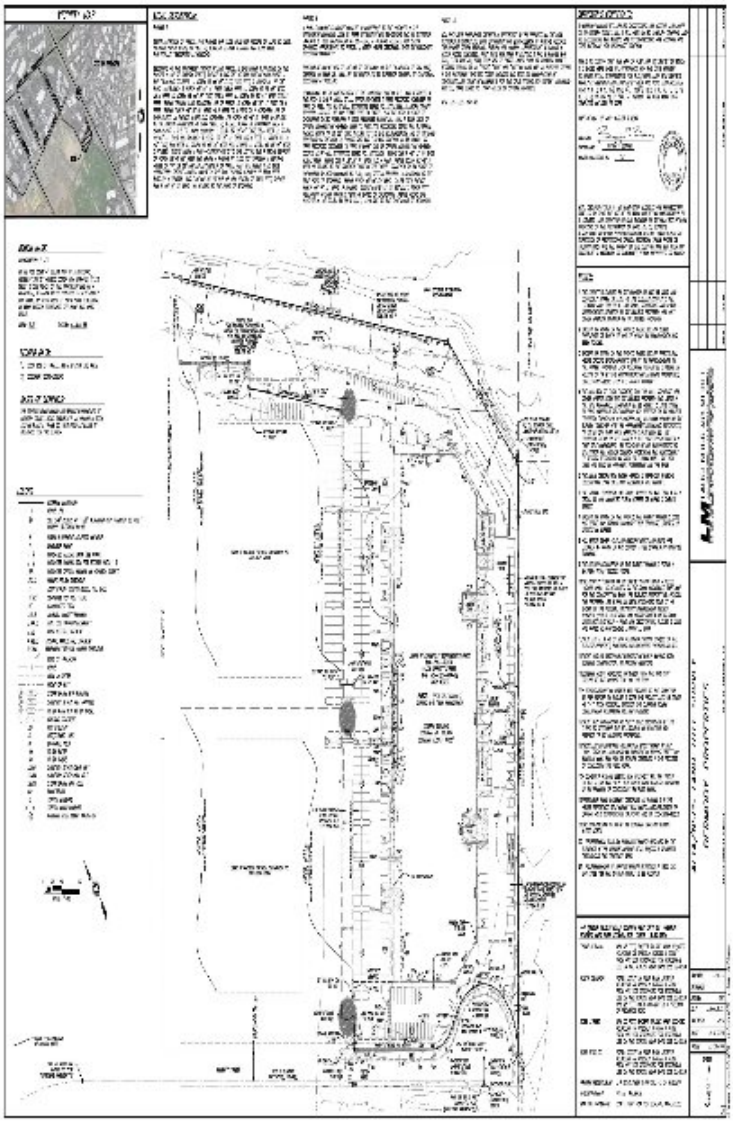


EXHIBIT B

Rules and Regulations

1. The sidewalk, entries, and driveways of the Building 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 to the extent expressly permitted as set forth in the Lease, Tenant shall not place any objects, including without limitation antennas, outdoor furniture, etc., in the parking areas, landscaped areas or other areas outside of its Premises, or on the roof of the Building.

3. Except for service animals, no animals shall be allowed in the offices, halls, or corridors in the Building.

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

5. If Tenant desires telegraphic, telephonic or other electric connections in the Premises, Landlord or its agent will 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 Building or Exterior Premises.

7. Parking any type of recreational vehicles is specifically prohibited on or about the Building or Exterior Premises. Except for the overnight parking of operative vehicles, 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. 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 maintain the Building free from rodents, insects and other pests.

9. Intentionally omitted.

10. 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.

11. 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 or the Exterior Premises.

12. 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.

13. 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.

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

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

16. 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.

17. Intentionally omitted.

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

19. 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.

EXHIBIT C

NOTICE OF LEASE TERM DATES

This NOTICE OF LEASE TERM DATES is made as of the ____ day of _____, 2020, by and between DPIF2 CA 20 Christy Street, LLC, a Delaware limited liability company ("**Landlord**"), and Bloom Energy Corporation, a Delaware corporation ("**Tenant**").

RECITALS:

A. Landlord and Tenant have entered into that certain Lease (the "**Lease**") dated as of _____, 20____, whereby Landlord leased to Tenant, and Tenant leased from Landlord, certain real property located in Fremont, California, which real property is commonly known as 44370 Christy Street, Fremont, California.

B. In accordance with Paragraph 2 of the Lease, Landlord and Tenant desire to set forth herein the dates that the initial term of the Lease Term shall commence (the "**Commencement Date**") and the date that the initial term of the Lease Term shall expire (the "**Expiration Date**"), subject to extension pursuant to Addendum 5 - Renewal Options to the Lease,

NOW THEREFORE, Landlord and Tenant certify and agree as follows:

1. The Commencement Date is hereby established as _____, 202_.

2. The initial term of the Lease Term shall be eighty-four (84) months ending upon _____.

(signatures on following page)

IN WITNESS WHEREOF, Landlord and Tenant have caused this Notice of Lease Term Dates to be executed as of the day and year first above written.

TENANT:

BLOOM ENERGY CORPORATION, a Delaware corporation

By: _
Name: _
Title: _

LANDLORD:

DPIF2 CA 20 CHRISTY STREET, LLC
a Delaware limited liability company

By: Dermody Properties Industrial Fund II Agg I LP,
a Delaware limited partnership, its sole member

By: Dermody GP II, LLC,
a Delaware limited liability company
By: _____
Name: _____ Title: _____

EXHIBIT D

Form of Insurance Certificate

(see attached)

EXHIBIT E

Permitted Hazardous Materials

Bloom Energy Christy Site- HazMat Inventory 13May20

California Fire Code (CFC) Maximum Allowed Storage Quantities (MAQ)

Location	CFC Classification	Estimated Maximum Christy Totals in CFC Units	CFC Units	CFC MAQ per Control Area	CFC Reference & Qualifications	Comments
Exterior	Combustible II Liquids	660.00	Gallons	1,100.00	5704.4.2.4	Diesel fuel for possible emergency generator
Exterior	Combustible Solids	599.00	Pounds	Not Limited	Table 5003.1.1(3)	Solid waste
Exterior	Cryogenic Flammable	5,315.40	Pounds	300.00	Table 5003.1.1(3)	Existing cryogenic hydrogen tank
Exterior	Cryogenic Inert	1,102,468.85	Cubic Feet	Not Limited	Table 5003.1.1(3)	Existing cryogenic nitrogen tank and new carbon dioxide tank
Exterior	Flammable Gases	6,732.00	Cubic Feet	3,000.00	Table 5003.1.1(3)	Hydrogen, methane, and other potential flammable gas mixtures for fuel cell development
Exterior	Other Health Hazard	1,200.00	Pounds	Not Limited	Table 5003.1.1(3)	Copper catalyst waste
Interior	Flammable Liquids, Class IB & IC	50.00	Gallons	480.00	Table 5003.1.1(1) - Sprinkler & Approved Cabinets	Flammable organic solvents and other liquids
Interior	Liquified Petroleum Gases (LPG)	266.67	Pounds	300.00	6109.1	Maximum eight 8-gallon propane tanks for forklifts
Interior	Oxidizing Gases	210.00	Cubic Feet	6,000.00	Table 5003.1.1(1) - Sprinkler & Approved Cabinets	One high pressure cylinder

ADDENDUM 1

BASE RENT ADJUSTMENTS

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE _____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET, LLC
and

BLOOM ENERGY CORPORATION

Annual Base Rent and Monthly Base Rent for the Lease Term shall equal the following amounts for the respective periods set forth below:

Period	Annual Base Rent	Monthly Base Rent
Months 1 - 2		$0.00*
Months 3 - 12	$1,563,380.00	$156,338.00
Months 13 - 24	$1,932,337.68	$161,028.14
Months 25 - 36	$1,990,307.76	$165,858.98
Months 37 - 48	$2,050,017.00	$170,834.75
Months 49 - 60	$2,111,517.60	$175,959.80
Months 61 - 72	$2,174,863.08	$181,238.59
Months 73 - 84	$2,240,109.00	$186,675.75

If the Commencement Date is other than the first day of a calendar month, then the first period for the payment of Base Rent set forth above shall run from the first day of the calendar month following the Commencement Date and the rent payable in the first partial month following the Commencement Date shall be proportionally prorated.

EXTENSION TERM: SEE ADDENDUM 5
***SEE ADDENDUM 2 – Base Rent Abatement**

ADDENDUM 2

BASE RENT ABATEMENT

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE _____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET, LLC
and
BLOOM ENERGY CORPORATION

Tenant shall not be obligated to pay Base Rent for the initial two (2) full month periods of the Lease Term, commencing on the Commencement Date, as that date may be extended by Excused Delays (the "**Abatement Period**"); provided however, Tenant shall be responsible for the payment of Operating Expenses and utilities and all other items of additional rent, if any, during such period. Landlord and Tenant hereby acknowledge and agree that the Rent Abatement is a rent concession and, if during the Lease Term, an Event of Default exists, beyond any applicable notice and/or cure period, under the terms of this Lease, and Landlord terminates the Lease as a result of such Event of Default, the unamortized portion of the Rent Abatement shall become immediately due and payable, without prejudice to any other remedies of Landlord under this Lease.

ADDENDUM 3

WORK LETTER

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE ____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET
and
BLOOM ENERGY CORPORATION

In connection with the execution of the Lease, Landlord and Tenant have further agreed as follows (all terms herein without definition shall have the meaning ascribed to such terms in the Lease):

1. Landlord's Work. As a condition precedent to the Commencement Date, Landlord agrees, at its sole cost and expense, except with respect to any increase in costs and expenses directly resulting from an act (or failure to act) of Tenant, which increase shall be paid by Tenant within thirty (30) days after receipt of written demand from Landlord, to have completed or have caused the following to occur: (i) all Building Systems and the Building Structure shall be in good working order and repair; (ii) all existing improvements and trade fixtures that were in place in the Premises on the Effective Date including, without limitation, all process piping and the air compressor, shall be in place and in good working order and repair; (iii) installation of a TPO, welded seam, white reflective 60 mil roof replacement (the "**Roof Replacement**"), which have been approved by Landlord and Tenant; and (iv) the HVAC work as listed in that certain proposal prepared by Oscar Rojas of O.R. HVAC attached hereto as **Exhibit A (**the "**HVAC Work**"**),** which has been approved by Landlord and Tenant (all of the foregoing, the "**Landlord's Work**"). With respect to the Roof Replacement, Landlord shall provide to Tenant for Tenant's review the final specifications for the Roof Replacement, and Tenant shall have the right to discuss with Landlord any comments or questions regarding the specifications. In addition, prior to the installation of the Roof Replacement, Landlord and Tenant shall meet to review installation details. Landlord agrees to commence the installation of the Roof Replacement in the June 2020/July 2020 timeframe and the HVAC Work prior to July/August 2020 timeframe, so as to avoid any interruption in Tenant's construction of the Tenant Improvements. If, despite Landlord's good faith efforts, the Roof Installation is not completed by July 31, 2020, and the HVAC Work by August 31, 2020, as that date may be extended by prior written agreement of the parties, Landlord and Tenant shall each cause their respective contractors and subcontractors to cooperate with each other: (i) in facilitating the mutual access to the Premises; and (ii) in coordinating the timing of the stages of Roof Installation, HVAC Work and the Tenant Improvements so as to facilitate the completion on a timely basis. In the event that the Landlord's failure to complete the Roof Replacement during the June 2020/July 2020 timeframe and the HVAC Work during the July/August 2020 timeframe, for any reason other than due to Force Majeure, Excused Delays or the act or omission of Tenant delays Tenant's Substantial Completion of the Tenant Improvements by January 1, 2021, for each day of delay caused thereby Tenant shall be entitled to day-for-day abatement of Base Rent pursuant to Paragraph 2(b) of the Lease. The Landlord's Work shall be performed in compliance with all applicable laws, building codes, regulations and ordinances in effect on the Commencement Date of the Lease, in a good and workmanlike manner, free of defects and using new materials and equipment of good quality.

2. Space Plan; Working Drawings.

(a) Space Plan. Tenant's architect CAS Architects, Inc. ("**Tenant's Architect**"), at Tenant's sole cost and expense, has prepared a space plan of the Premises dated May 26, 2020, attached

hereto as **Exhibit B** ("**Space Plan**") depicting the initial tenant improvements to be installed in the Premises by Tenant (the "**Tenant Improvements**"). The Space Plan has been approved by Landlord and Tenant.

(b) Working Drawings. Tenant shall cause Tenant's Architect to prepare the final architectural, mechanical (including heating, ventilating and air-conditioning), electrical, plumbing, and structural plans and specifications ("**Working Drawings**") necessary to complete the Tenant Improvements, which Working Drawings shall be a natural extension of the Space Plan.

Tenant also shall cause Tenant's Architect to submit the finished Working Drawings to Landlord, and Landlord shall review the Working Drawings and grant its written approval or denial thereof within eight (8) business days after receipt thereof, which approval shall not be unreasonably withheld, conditioned, or delayed (provided in all events Landlord may withhold its consent to the Working Drawings to the extent the same adversely and materially affects the structural integrity of the Building or adversely and materially affects any Building system). Landlord's failure to respond within such eight (8) business- day period shall be deemed to mean that Landlord has approved the Working Drawings as submitted by Tenant. To the extent Landlord does not provide its consent to the Working Drawings as aforesaid, Landlord shall state, with specificity, Landlord's reasons for such disapproval. The foregoing process shall then be repeated until the Working Drawings are approved, or deemed approved, by Landlord; provided, however, Landlord's comments shall be limited to any changes reasonably required by Landlord based on its initial review of the Working Drawings and not made by Tenant, as well as any changes required as a result of the changes made by Tenant which could not have been reasonably anticipated by Landlord at the time of making Landlord's initial comments.

Subsequent to Landlord's approval of the Working Drawings, any changes to the Working Drawings requested by Tenant shall be subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed.

Upon approval of the Working Drawings by Landlord, Tenant, at its sole cost and expense (subject to application of the Allowance (as defined below), shall file the same with the governmental agencies having jurisdiction over the Tenant Improvements. Tenant shall furnish Landlord with copies of all documents submitted to said governmental agencies and copies of the authorizations to commence work and the permits for the Tenant Improvements issued by said governmental agencies. Tenant shall be permitted to commence the Tenant Improvements without all required permits to the extent that governmental authorities with jurisdiction over the Tenant Improvements permit such work, provided that Tenant shall be obligated to obtain all required governmental authorizations for the Tenant Improvements and deliver copies thereof to Landlord.

3. Tenant Improvements. Tenant hereby agrees that the Tenant Improvements shall be completed by a general contractor ("**General Contractor**") approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant hereby agrees to indemnify and hold Landlord harmless from and against any loss, cost, damage, liability or expense (including without limitation reasonable attorneys' fees and court costs) incurred by Landlord with respect to all of Tenant's obligations set forth in this Section 3. Tenant hereby guarantees to Landlord that the Tenant Improvements shall be completed in a lien-free manner and in strict accordance with the Working Drawings and all applicable laws, permits and governmental approvals and with all required inspections during the course of construction, (it being acknowledged by Landlord and Tenant that the provisions of the Lease regarding the filing mechanics' liens against the Building by or through Tenant shall control with respect to mechanics' liens filed against the Project or Premises as a result of the Tenant Improvements). Landlord shall be entitled to a fee, not to exceed Five Thousand and No/100 Dollars ($5,000.00), to reimburse Landlord for its reasonable, third party out-of-pocket costs incurred in connection with Landlord's review of the Working Drawings. Such fee shall be paid to Landlord by

Tenant within thirty (30) days following Tenant's receipt of each of Landlord's invoices therefor, or, at Tenant's election, deducted from the Allowance (as defined below).

4. Access to Premises for Performance of the Tenant Improvements. Landlord shall provide Tenant with access to the Premises for the purposes of commencing the Tenant Improvements pursuant to the provisions of Section 41 of the Lease, "Early Occupancy".

5. Construction Allowance; Additional Allowance.

(a) Construction Allowance. Landlord shall provide to Tenant a construction allowance, which shall be disbursed to Tenant as set forth in Section 6 below, in the amount of Twenty-Five and No/100 Dollars ($25.00) per rentable square foot of the Premises, or Two Million Two Hundred Thirty Three Thousand Four Hundred and No/100 Dollars ($2,233,400.00) (the "**Allowance**"), to apply to the cost of the Tenant Improvements and related construction costs, including without limitation the costs for permits, architect's fees, and space planning fees (to the extent not made the obligation of Landlord hereunder). Such Allowance shall only be available for Tenant's use for a period of twelve (12) months, as that period may be extended by Excusable Delays, following the Early Entry Date and Tenant hereby waives any and all rights to any unused portion of the Allowance remaining as of such date. For purposes of this Work Letter, if Tenant has submitted the required documentation for reimbursement from any unused portion of the Allowance by such date, any such remaining portion of the Allowance shall not be deemed unused.

(b) Additional Allowance. In addition, Landlord shall provide Tenant with an additional allowance in the amount of Ten and No/100 Dollars ($10.00) per rentable square foot of the Premises, of up to Eight Hundred Ninety-Three Thousand Three Hundred Sixty and 00/100 Dollars ($893,360.00) (the "**Additional Allowance**"), also to be applied to the cost of the Tenant Improvements and related construction costs. Tenant shall have the right, from and after the Early Entry Date until the date upon which the Additional Allowance is exhausted, to request in writing all or any portion of the Additional Allowance, which Landlord shall deposit into Tenant's designated bank account within five (5) business days after receipt of Tenant's written request. Landlord shall amortize the Additional Allowance paid to Tenant, together with interest at the rate of nine percent (9%) per annum, over the then remaining balance of Term of the Lease, and commencing on the later of the Commencement Date (as that date may be extended by Excusable Delays) and the first day of the calendar month following the calendar month in which the Additional Allowance was released to Tenant, Tenant shall reimburse to Landlord such amortized amount in equal monthly installments.

6. Disbursement of Allowance.

(a) Disbursement. Landlord shall disburse the Allowance on a monthly draw basis, within twenty (20) days after Tenant submits a request for a specified amount ("**Disbursement Amount**"), along with a description of the specific portion of the Tenant Improvements that has been completed, together with affidavits and/or partial and/or full waivers of lien and certificates of all subcontractors and materialmen covering all work and materials furnished in connection with such portion of the Tenant Improvements that has been completed and 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 (each, a "**Payment Request**"). Provided Landlord receives and reasonably approves the foregoing described documentation, Landlord shall make a disbursement of the Allowance to Tenant in the Disbursement Amount within twenty (20) days of receipt of a Payment Request. Upon the completion of the Tenant Improvements, Tenant shall deliver (i) a sworn statement to Landlord that the Tenant Improvements has been completed, (ii) an affidavit from

Tenant or General Contractor listing all contractors and suppliers whom Tenant and Tenant's contractors have contracted with in connection with the Tenant Improvements, and (iii) valid, unconditional final waivers of lien and certificates of all subcontractors and materialmen covering all work and materials furnished in connection with the Tenant Improvements and 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.

(b) Failure to Disburse. If Landlord wrongfully fails to disburse any amount of the Allowance owing to Tenant pursuant to this Work Letter, then Tenant shall have the right to pay Tenant's General Contractor, Tenant's Architect and other agents for the Tenant Improvements, as the case may be, directly, in which event Landlord shall reimburse Tenant for the amount so paid within thirty (30) days after Tenant's submission to Landlord of receipted invoices therefor (accompanied by reasonable supporting documentation). If Landlord fails to reimburse Tenant within such twenty (30) day period, then Tenant may withhold from future Base Rent due under the Lease the sum owed Tenant, until Tenant is reimbursed in full for the sum, plus interest thereon at the prime rate of Bank of America, plus two percent (2%). Notwithstanding the foregoing, Tenant shall deliver notice to Landlord (and ground lessor, mortgagee or beneficiary of a deed of trust on the Property, of whom Tenant has been given written notice) a written notice of Tenant's intent to pay Tenant's Contractor, Tenant's Architect or other agents, as the case may be, directly as provided above at least ten (10) business days prior to making any such payment (which notice shall describe the basis on which Tenant asserts that Landlord has wrongfully failed to disburse such amount), and Landlord may deliver to Tenant a good faith written objection before the expiration of such ten (10) business day notice period, (a) setting forth with reasonable particularity Landlord's reasons for its claim that Landlord is not required to make the disbursement of the Allowance, and (b) submitting the dispute to binding arbitration in accordance with the remainder of this Section. If Landlord properly objects and submits the dispute to arbitration in accordance with the preceding sentence, then Tenant shall not exercise such rights unless and until the arbitrator (as defined below) determines that Tenant has the right to exercise such rights. All disputes to be arbitrated pursuant to this Section 5.C.a 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 (the "Arbitration Rules"). Unless the parties otherwise agree, the arbitrator must be a retired judge of the Superior Court of the State of California.

7. Utility Costs. Tenant shall be responsible, from time to time, within thirty (30) days of receipt of written notice by Landlord, to pay to Landlord the costs of all utility services provided to the Premises during the construction of the Tenant Improvements.

8. Insurance.

(i) Tenant shall cause General Contractor to obtain, pay for and maintain insurance for the coverage and amounts of coverage not less than those set forth below in the Schedule of Insurance coverages (as hereinafter defined) and shall cause General Contractor to provide to Landlord certificates issued by insurance companies satisfactory to Landlord to evidence such coverages before any Tenant Improvements commences at the Premises. To the extent available, such certificates shall provide that there shall be no termination, non-renewal, modification or expiration of such coverage without thirty (30) days prior written notice to Landlord. In the event of any failure by Tenant to cause General Contractor to comply with the provisions of this Paragraph 8, Landlord may, at is option, upon notice to Tenant, suspend the Tenant Improvements until such time as there is full compliance with this Paragraph 8.

(ii) Schedule of Insurance Coverages. The following shall constitute the "**Schedule of Insurance Coverage**" :

(a) Workers' Compensation Insurance. Coverage complying with the law of the State of California and Employer's Liability insurance with a limit of $1,000,000.00 each accident, including without limitation occupational disease coverage with a limit of $1,000,000.00 per person subject to aggregate limit of $1,000,000.00 per annum.

(b) Comprehensive Automobile Liability Insurance. $1,000,000.00 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including without limitation allowed, hired and non-owned vehicles.

(c) Commercial General Liability Insurance. A minimum limit of $2,000,000 per occurrence and $4,000,000 in the aggregate for property damage, personal injuries, or deaths of persons occurring in or about the Premises including without limitation the following coverages:

(1) Premises and Operations;

(2) Completed Operations for three (3) years after completion of the Tenant Improvements;

(3) Broad Form Comprehensive General Liability Endorsement, Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage Coverage;

(4) Independent Contractors; and

(5) Delete Exclusions relative to Collapse, Explosion and Underground Property Damage Hazards;

(d) Builder's Risk Insurance. Tenant shall procure, pay for, and maintain all-risk builder's risk insurance (or comparable form) for the full insurable value of all labor and materials incorporated into the construction of the Tenant Improvements, while at the construction site and/or staging area awaiting erection and during erection, until completion and acceptance. Insurance is to cover real and personal property after it is received at the construction site and/or staging area but not while otherwise stored off-site or in transit. The policy so purchased shall insure Landlord, Tenant, General Contractor, and all subcontractors, as their interest may appear, and shall be so written as to provide for reimbursement, in the event of claim for loss or damage, for the entire cost of repairing or replacing, reconditioning, or re-erecting the property lost or damaged with materials of similar kind and quality, including, but not by way of limitation, the cost of materials, labor, supervision, engineering and transportation.

(e) Miscellaneous.

(1) Any insured loss or claim of loss pursuant to this Paragraph 8 shall be adjusted by Landlord, and any settlement payments shall be made payable to Landlord as trustee for the insureds, as their

interest may appear, subject to the requirements of any applicable mortgages clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Landlord who shall make distribution in accordance with an agreement to be reached in such event between Landlord and Tenant. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but the Tenant Improvements shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute.

(2) Landlord shall not insure or be responsible for any loss or damage to any property owned, rented or leased by General Contractor, all subcontractors, or their employees, servants or agents.

(f) Certificate of Insurance. All certificates of insurance required to be delivered to Landlord as set forth herein from General Contractor or any subcontractor shall name Landlord as an additional insured as its interest may appear.

9. Substantial Completion; Commencement Date.

(i) Determination of Substantial Completion. Tenant shall diligently proceed with the construction of the Tenant Improvements and shall achieve Substantial Completion with respect to the Tenant Improvements on or before January 1, 2021, as such date may be extended by Landlord Delays or Excused Delays. "**Substantial Completion**" shall be deemed to have occurred on the date upon which both of the following have occurred: (i) the Tenant Improvements are complete as certified by Tenant's Architect, as the architect of record, in accordance (in all material respects) with the Working Drawings and governmental approvals and permits; and (ii) a temporary certificate of occupancy (or its local equivalent or other like governmental approval) permitting Tenant to legally occupy the Premises (the "**TCO**") has been authorized for issuance. Tenant shall take all necessary measures to obtain and deliver to Landlord a final certificate of occupancy within ninety (90) days after Substantial Completion.

(ii) Commencement Date. As soon as Substantial Completion has been achieved, Tenant shall notify Landlord in writing (i) of the date of receipt of the TCO, (ii) that the Tenant Improvements are Substantially Complete as certified by Tenant's Architect, in accordance (in all material respects) with the Working Drawings and permits. Provided that Landlord has delivered the Premises to Tenant in the Required Condition, the "**Commencement Date**," shall be the earlier of January 1, 2021, as such date may be extended by Landlord Delay or Excused Delays, or the date of Substantial Completion. If Substantial Completion has occurred on or before January 1, 2020 but Landlord has not delivered the Premises to Tenant in the Required Condition, the Commencement Date shall be the date upon which Landlord has delivered the Premises to Tenant in the Required Condition. The failure of Tenant to occupy the Premises as of the Commencement Date, as finally determined after the cessation of any Excused Delays and Landlord's delivery of the Premises to Tenant in the Required Condition, shall not serve to relieve Tenant of obligations arising on the Commencement Date or to delay the payment by Tenant of Base Rent and other amounts due under this Lease.

(iii) Acceptance. Tenant shall, within ten (10) business days after receipt of Landlord's written demand, execute and deliver to Landlord a letter of acceptance of delivery of the

Premises and confirmation of the Commencement Date, as finally determined after the cessation of any Excused Delays and Landlord's delivery of the Premises to Tenant in the Required Condition.

(iv) Acknowledgement of Rent Commencement. Tenant acknowledges that, as of the Commencement Date, as finally determined after the cessation of any Excused Delays and Landlord's Delivery of the Premises in the Required Condition, Base Rent shall be paid pursuant to Paragraph 4 of the Lease.

(v) Landlord Delays. For purposes of this Work Letter, "**Landlord Delay**" shall mean an actual delay resulting from (i) Landlord's failure to diligently commence and complete the Landlord's Work; (ii) Landlord's failure to approve or reasonably disapprove (pursuant to the terms of this Work Letter) any item requiring Landlord's approval or disapproval within the time period provided for such approval or disapproval in this Work Letter; and (iii) any material disruption to or unreasonable interference with the construction of the Tenant Improvements caused by Landlord's employees, agents or contractors.

10. Project Representatives. Landlord shall designate a party to serve as Landlord's representative, and Tenant shall designate a party to serve as Tenant's representative during the design and construction of the Landlord Work. All communications between Landlord and Tenant relating to the design and construction of the Tenant Improvements shall be forwarded to or made by such party's representative.

11. Warranties.

(a) Limited Warranty of Building Systems. Commencing with the date of Landlord's delivery of possession of the Premises to Tenant in the Required Condition, and continuing for the first six (6) months of the Term of the Lease, Landlord warrants that the Building Systems and the Building Structure shall be in good working order and repair. If, during the first six (6) months of the Term, any Building System or component of the Building Structure is not in the condition required by the foregoing sentence, Tenant shall notify Landlord of the need for repair, and the repair shall be completed at no cost to Tenant. Notwithstanding the foregoing, in no event shall Landlord be responsible for any repair or replacement of the Building Systems to the extent that the same is a result of the negligence or willful misconduct of Tenant or Tenant's employees, agents or contractors.

(b) Warranty of the Landlord's Work. Within thirty (30) days after the Commencement Date, as finally determined after the passage of any Excused Delays and Landlord's delivery of the Premises to Tenant in the required Condition, Tenant shall have the right to submit a written "punch list" to Landlord, setting forth any defective item of construction in the Landlord's Work, and Landlord shall promptly cause such items to be corrected. Notwithstanding anything to the contrary contained herein or in the Lease, Tenant's acceptance of the Premises or the submission of a "punch list" with respect to the Landlord's Work shall not be deemed a waiver of Tenant's right to have defects in the Landlord's Work or the Premises which are discovered by Tenant within twelve months after the Commencement Date, repaired at no cost to Tenant. Tenant shall give notice to Landlord whenever any such defect becomes reasonably apparent during the six (6) month period, and Landlord shall repair such defect as soon as practicable.

(c) Roof Warranty. Notwithstanding the provisions of Section 11(b) above to the contrary with respect to the Landlord's Work, Landlord, at no cost to Tenant, shall obtain from Landlord's roofing contractor a twenty (20) year warranty on the new roof and membrane.

EXHIBIT A TO ADDENDUM 3

O. R. H VA C

2036 Foxworthy Ave.
San Jose Ca. 95124
Lic. 1038149 May 13, 2020

Inspection report for: 44370 Christy Fremont Ca

AC 9 Carrier M: 48HJD012-671
S/N:3001G34330
Notes:
need to replace blower motor contractor, 4)20x20x2 air filters to replace, evaporator coil to be wash, condenser coil to get wash, access panels for blower motors and compressors have several extra screw hole which creates possible water leaks into building
Belt: A-53 ok and it has a spare inside.
TOTAL COST: $910.00

AC 35 A Carrier M:48HJD017-691AA (15 ton)
S/N: 4301F19056
Notes: Compressor No. 1 out of order (10 ton compressor, unit running on 1/3 of capacity), economizer filters are corroded and need to get replaced, blower motor contactor to replace(3 pole, 30 amp, 24V coil) need to add wood blocks for condensation drain line that are missing Air filters: 4)20x20x2 4)16x20x2 Belt: 1) BX48
Possible unit replacement.
TOTAL COST FOR UNIT REPLACEMENT: $42,000.00

AC 38 Trane M:YCD171C4 LBBB
S/N:631101638D
Notes: combustion blower motor not working, condenser fan motor No. 1 out of order with broken fan blade, need to wash condenser and evaporator coils. Unit under fair conditions.
Air Filters: 4)20x25x2, 2)20x20x2
Belt: BX-68
TOTAL COST: $2,150.00

AC-37 Carrier M:48HJD006-641
S/N: 4001G25044
Notes: disabled economizer and broken air filter.
Filters: 2)16x25x2
Belt: A-40
TOTAL COST: $1,660.00
AC 35 B Carrier
M:48HJD017-691AA
S/N:4201F17491
Notes: Circuit No. 1 without any refrigerant charge will need to find leak and repair and recharge with 20 lbs. of R-22.

Also suspect a restriction on circuit No. 2, possible defective TXV.
Need to wash evaporator and condenser coils.
Need economizer air filters (3) 20x20x1
Filters:416x20x1 4)20x20x1
Belt: B-48
TOTAL COST: $4,300.00

AC10 Carrier
M:48HJD006-641
S/N:2901G25228
Notes: need to wash condenser coil, belt to replace.
Filters: 2)16x25x2
Belt: A-38
TOTAL COST: $560.00

AC11 Carrier
M:48HJD007-641
S/N:3001G22491
Notes: Need to wash condenser coil.
Filters:2)16x25x2
Belt: A-38
TOTAL COST: $351.00

AC 33 Carrier
M:48HJD012-671AA
S/N:4101G34164
Notes: Bad condenser fan motor No.2, condensation drain outlet rounded out and broken P trap, filter access door broken without hinges, compressor access panel in very bad conditions with too many hole that doesn't secure evenly on unit. Unit in bad shape.
Filters: 4)20x20x2
Belt:A-53
TOTAL COST: $1,875.00

AC 34 Carrier
M38HJD012-671Aa
S/N: 4101G34165
Notes: Compressor No.2 Shorted to ground and need replacement.
Need to wash condenser coil, filter access door broken hinges, economizer filter broken off.
Filters: 4)20x20x2
Belt: A-53
TOTAL COST: $4,750.00

AC 36 Carrier
M:48HJD017-691AA
Notes: Stage number 2 locked out need to troubleshoot, blower motor shave to replace, need to wash condenser coil,
air filters for economizer needed (3), wood blocks for condensation drain (2)
Filters: 4) 20x20x2 4)16x20x2

Belt: B-48
TOTAL COST: $1,460.00
AC 7 Carrier
M: 42GX024040301
S/N: 0901G14543
Notes: induced draft blower motor not operating.
Filters: 2)12 x20x1
TOTAL COST: $1,190.00

A/C 5 Carrier
M:48HJD008-631
S/N: 0300G30346
Notes: need to wash condenser coil.
Air filters: 4)16x20x2
Belt: A-48
TOTAL COST: $560.00

AC 4 Carrier
M:48HJD007-631
S/N:3700G20240
Notes: economizer filter to get replaced.
Air filters: 2)16x25x2
Belt: A-38
TOTAL COST: $710.00

AC 8 Carrier
M:47GX-024040301
S/N: 3299G11135
Notes: need to wash condenser coil, economizer filter is broken, cooling cycle locked out by economizers actuator, air filters access door is broken by hinges.
Air filters: 2)12x20x2
TOTAL COST: $2,620.00

AC 36 B Carrier
M:48HJD017-691AA
S/N :4301F19054
Notes: circuit No. 1 (10 ton compressor) without refrigerant charge, need to search for leak, repair and recharge with 20 lbs of R-22. Unit is running on 1/3 of capacity. Need to wash condenser coil.
Air filters: 2)20x20x2 4)16x20x2
Belt: B-48
TOTAL COST: $2,100.00

AC 30 Carrier
M:48HJD005-641
S/N 3401G22413
Notes: induced draft motor and capacitor to replace, condenser coil to wash.
Air filters: 2)17x25x2

Belt: A-36
TOTAL COST: $1,120.00

AC 23 A Carrier
M:48HJD025
S/N:3001F98995
Notes: condenser coil in bad shape (aluminum fins falling off) need replacement.
Air filters: 4)20x20x2 4)16x20x2
Belt: B-50
TOTAL COST: $8,760.00

AC 6 Carrier
M:48HJD008-631
S/N 1600G30223
Notes: condenser coil to wash, heater down due to bad induced draft motor and capacitor.
Air filters: 4)16x20x2
Belt: A-48
TOTAL COST: $1,320.00

AC 3 Careier
M:48HJD005-631
S/N:0601G24617
Notes: wash condenser coil.
Air filters: 2)16x15x2
Belt:A-36
TOTAL COST: $540.00

AC Server Room Carrier
M: 50 HC-D17C7A6A6B0GO
S/N:2713P17164
Notes: CC1 & CC2 to get replaced (2 pole, 24 V, 30 amp), need to wash condenser coils. UNIT IN GOOD SHAPE.
Air filters: 6)20x25x2
Belt:1)BX-48
TOTAL COST: $985.00

AC 2 Carrier
M:48HJD005-631
S/N:0601G24622
Notes: condenser coil to wash, low refrigerant charge, on cooling cycle temperature differential too small.
Air filters:2)16x25x2
Belt:A-36
TOTAL COST: $825.00

AC 1 Carrier
M:50GS036-301
S/N: 6501G10801 Cooling only

Notes: Need compressor contactor (2 pole)
Unit in poor conditions.
Air filters: 2)14x20x1
TOTAL COST: $395.00
AC 31 Carrier
M: 48HJD009-631
S/N:1301G34334
Notes: induced draft motor to replace
Condenser fan motor in very poor conditions, aluminum fins falling off, need replacement.
Belt: need spare A-48
Filters:4)16x20x2
TOTAL COST: $4,415.00

AC (not numbered) Carrier
M:48HJD025
S/N:3001F98996
Notes: condenser coil in bad conditions and lose on one end, screws missing
Need blower motor sheave and belt.
Filters: 4)20x20x2 4)16x20x2
Belt: BX-48
TOTAL COST: $8,682.00

AC12 Carrier
M:48HJD009-631
S/N:1801G33156
Notes: compressor No. 2 not running due the defective high and low pressure switches.
Need to wash condenser coil.
Economizer disabled and missing air filter, need to replace.
Need belt 1)A-48
Filters: 4)16x20x2
TOTAL COST: $2,695.00

MAU-6 heater/ swamp cooler combination Captive Air Systems
M:A1-D500-G10
Job#154012
Notes: Not operating, unit looks like it has been abandoned and could not find controls for it.
Washable air filters.
Belt: BX-44
NEED FURTHER INVESTIGATION.

AC28-B Carrier
M:48HJD017
S/N: 4101F15859
Notes: disabled heater, circuit board has a disconnected harness need to troubleshoot. It looks that this unit has been assigned for cooling only.
Condenser coil to wash.
Air filters: 4)20x20x2 4)16x20x2
Belt: B-48

NTE COST: $1,480.00

Trane Split system
M:2TTA0060A4000AA
S/N:402585P3F
Air Handler Climate Changer
M:X1D397A
Air filter: bag filter type 24x24x12”
Notes: condenser has different type of controlling devices and temperature sensors. Need to add an independent thermostat to cycle system under normal conditions.
System also has heating strips inside ductwork.
Belt: 1)B-47
TOTAL COST: $1,760.00

Heater -1 Modine Manufacturing Co.
M:HFG100AMRLN40F2
S/N:1014801-0214
Notes: heater has an attached condensing unit (4 ton) both pieces of equipment operate normally. Both units are old and rusted especially heater has a very large amount of rust on the top panels.
Possible water leaks. Units to get replaced.
Belt: A-38
Air filters: 4)16x25x2
TOTAL COST: $18,880.00

AC 13 Carrier
M:48HJD008-641
S/N:3101G33089
Notes: compressor number 2 not running due to a lock out from high and low pressure switches.
Need to replace compressor contactor number one (2 pole)
Inducer motor out of order on heater.
Need to wash condenser coil.
Air filters: 4)16x20x2
Belt: A-48
TOTAL COST:2,240.00

AC 14 Carrier
M:48HJD006-641
S/N:2901G25233
Notes: need to replace blower motor sheave.
Need to wash condenser coil.
Air filters: 2)16x25x2
Belt: A-38
TOTAL COST: $1,250.00

AC18-A Carrier
M: 38HJD017-691AA
S/N:4301F18998
Notes: bad inducer blower motor.

Compressors 1 & 2 locked out due to high and low pressure switches, both circuits are charged and pressurized.
Need to replace blower motor sheave.
Filters: 4)20x20x2 4)16x20x2
Belt: BX-48
TOTAL COST: $1,820.00
AC 29 Carrier
M:48HJD006-841
S/N:3401G22420
Notes: Inducer motor for heater out of order.
Condenser coil needs to get washed.
Air filters: 2)16x25x1
Belt:A-38
TOTAL COST: $1,345.00

AC without number abandoned Carrier
M:48HJE009-S-631
S/N:1401G30242
Notes: it looks like they have been taking parts out of unit.
Curb cover next to unit. Remove unit off roof and disposal and cover curb.
TOTAL COST: $2,340.00

AC 24 Carrier
M:48HJD009-631
S/N:1201G30251
Notes: main circuit bard failed to start up burners for heater.
Poor subcooling over all due to the condenser coil that’s in very bad shape and aluminum fins falling off, recommend replacing coil.
Air filters: 4)16x20x2
Belt: A-48
TOTAL COST: $6,160.00

AC 22 Carrier
M:48HJD0005-641
S/N:3401G22419
Notes: need to wash condenser coil.
Economizer missing components and air filter. Need a new one.
Air filters: 2)16x25x2
Belt:A-36
TOTAL COST: $2,780.00

AC 15 Carrier
M:48HJD007-641
S/N: 3001G22488
Notes need to wash condenser coil, replace belt.
Air filters: 2)16x25x2
Belt: A-40
TOTAL COST: $560.00

AC 16 Carrier
M:48HJD007-641
S/N:3001G22489
Notes: unit in fair conditions, need to replace belt.
Air filters: 2)16x25x2
Belt: A-38
TOTAL COST: $410.00

AC 17 Carrier
M: 48HJD006-641
S/N:2901G25226
Notes: unit runs too noisy due to blower wheel out of balance, need to get replaced.
Air filters: 2)16x25x2
Belt: A-40
TOTAL COST: $1,630.00

AC 23 Carrier
M:48HJD007–641
S/N:3201G24499
Notes: Blower motor has open windings.
No refrigerant charge, no visible leak found.
Control wires disconnected.
Disabled economizer.
Recommend replacing unit.
Air filters: 2)16x25x2
Belt: A-36 not correct belt size inside.
TOTAL COST: $18,542.00
AC 20 Carrier
M:48HJD006-641
S/N:4001G25035
Notes: need to wash condenser coil.
Air filters:2)16x25x2
Belt: A-40
TOTAL COST: $560.00

AC 21 York
M:ZXG12D4B1AA1A111A1
S/N: N1E4714315
Notes: circuit number one tripped on high head pressure, recommend replacing switch and wash condenser coil.
Unit used for cooling only, there’s no gas connection to it.
Air filters: 4)20x20x2
Belt: A-50
TOTAL COST: $1,410.00

AC 18 Carrier

M:48HJD007-641
S/N: 3001G22487
Notes: unit running ok under fair conditions.
Air filters:2)16x25x2
Belt: A-38
TOTAL COST: $385.00

AC 19 Carrier
M:48HJD006-641
S/N:2901G2522
Notes: induced fan motor out of order, heater out.
Condenser coils aluminum fins falling off by control panel.
Economizer disabled. Need to replace unit.
Air filters:2)16x25x2
Belt: A-40
TOTAL COST: $18,542.00
Sanyo Mini-split No. 1
M:C3632
Notes: System low in refrigerant charge, need to find leak and recharge.
Total cost: $1,320.00

Sanyo Mini-split No.2
M:C3632
Notes: cooling only running ok.
Serial numbers not legible.
Indoor units

This is only to repair air conditioning equipment. **Spe**cifically Excluded: Permits and Associated Fees, Mechanical Engineering, Design Drawings, Structural Engineering and Fire Safety Wiring
One year warranty on parts and labor. Five years on compressor only.
NOTE: Overall inspection on exhaust systems, building is currently running on a very large amount of negative static pressure due to 7 big exhaust fans vs. 3 big swamp coolers as of make up air into the whole building.
Make up air is needed to compensate conditions of air balance, not to mention the rest of smaller exhaust fans running all at once or when needed.
Mechanical calculations are needed to prevent future problems.

Oscar Rojas.

EXHIBIT B to ADDENDUM 3

(see attached)

ADDENDUM 4

MOVE-OUT CONDITIONS

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE _____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET, LLC
and

BLOOM ENERGY CORPORATION

Per Paragraph 21 of the Lease, Tenant is obligated to check and address prior to move-out of the Premises the following items. Landlord expects to receive, and Tenant must deliver, the Premises broom clean and in the same condition as received by Tenant, subject to the exceptions listed in Paragraph 21 of the Lease. The following list is designed to assist Tenant in the move-out procedures but is not intended to be all inclusive.

1. All lighting must be placed into good working order. This includes replacement of bulbs, ballasts, and lenses as needed.

2. All truck doors and dock levelers must be serviced and placed in good operating order. This includes without limitation the necessary replacement of any dented truck door panels and adjustment of door tension to insure proper operation. All door panels which are replaced must be painted to match the Building standard.

3. All structural steel columns in the warehouse and office will be inspected by Landlord for damage. If Landlord reasonably determines that there has been damage caused by Tenant, its agents, employees or contractors, Landlord shall hire a structural engineer to inspect such columns. If the structural engineer determines that repairs are required and that the repairs arise out of the negligence or willful misconduct of Tenant, Tenant shall make such repairs with a contractor reasonably approved by Landlord prior to commencement to the repair work.

4. Heating/air-conditioning systems must be placed in good working order, including without limitation the necessary replacement of any parts to return the unit to a well-maintained condition. This includes without limitation warehouse heaters and exhaust fans. Upon move-out, Landlord will have an exit inspection performed by a certified mechanical contractor to determine the condition.

5. All holes in the sheet rock walls must be repaired prior to move-out.

6. The carpets and vinyl tiles must be in a clean condition and shall not have any holes or chips in them. Landlord will accept normal wear on these items provided they appear to be in a maintained condition.

7. Facilities shall be returned in a clean condition which shall include without limitation cleaning of the coffee bar, restroom areas, windows, and other portions of the space.

8. The warehouse must be in broom clean condition with all inventory and racking removed. There shall be no protrusion of anchors from the warehouse floor and all holes must be appropriately patched. If machinery/equipment is removed, the electrical lines must be properly terminated at the nearest junction box.

9. All exterior windows with cracks or breakage must be replaced, unless cracks or breakage was caused by Landlord.

10. The Tenant shall provide keys for all locks on the Premises, including front doors, rear doors, and interior doors.

11. Items that have been added by the Tenant and affixed to the Building shall remain the property of Landlord, unless agreed otherwise. This shall include but is not limited to mini-blinds, air conditioners, electrical, water heaters, cabinets, flooring, etc. Please note that if modifications have been made to the space, such as the addition of office areas, Landlord retains the right to have the Tenant remove these at Tenant's expense, subject to the provisions of Paragraph 12 of the Lease.

12. All electrical systems must be left in a safe condition that conforms to code. Bare wires and dangerous installations must be corrected prior to move-out.

13. All plumbing fixtures must be in good working order, including without limitation the water heater. Faucets and toilets must not leak.

14. All dock bumpers must be left in place and well secured.

15. The concrete slab must be free of embedded items (such as rails, metal plates, etc.) and repaired: such embedded items shall be removed and the resulting depression/hole filled with an appropriate epoxy resin; provided however, that anchor bolts shall be either (i) completely removed or (ii) cut down to a minimum of ¼" below the top of the slab, with the resulting depression/hole caused by the actions identified in clauses (i) and (ii) filled with an appropriate epoxy resin.

ADDENDUM 5

RENEWAL OPTIONS

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE _____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET, LLC
and
BLOOM ENERGY CORPORATION

(a) Provided that as of the time of the giving of the Extension Notice and the Commencement Date of the Extension Term (as such terms are defined below), (x) Tenant is the Tenant originally named herein, or is a Permitted Transferee, (y) Tenant or a Permitted Transferee actually occupies all of the Premises initially demised under this Lease and any space added to the Premises, and (z) no Event of Default exists, or would exist but for the passage of time or the giving of notice, or both; then Tenant shall have the right to extend the Lease Term for an additional term of five (5) years (such additional term is hereinafter called the "**First Extension Term**") commencing on the day following the expiration of the Lease Term (hereinafter referred to as the "C**ommencement Date of the First Extension Term**"). Tenant must give Landlord written notice (hereinafter called the "**First Extension Notice**") of its election to extend the term of the Lease Term at least nine (9) months, but not more than twelve (12) months, prior to the scheduled expiration date of the Lease Term.

(b) Provided that as of the time of the giving of the Second Extension Notice and the Commencement Date of the Second Extension Term(as such terms are defined below), (x) Tenant is the Tenant originally named herein, or is a Permitted Transfer, (y) Tenant or a Permitted Transferee actually occupies all of the Premises initially demised under this Lease and any space added to the Premises, and (z) no Event of Default exists or would exist but for the passage of time or the giving of notice, or both and provided Tenant has exercised its option for the First Extension Term; then Tenant shall have the right to extend the Lease Term for an additional term of five (5) years (such additional term is hereinafter called the "**Second Extension Term**") commencing on the day following the expiration of the First Extension Term (hereinafter referred to as the "**Commencement Date of the Second Extension Term**"). Tenant shall give Landlord written notice (hereinafter called the "**Second Extension Notice**") of its election to extend the term of the Lease Term at least nine (9) months, but not more than twelve (12) months, prior to the scheduled expiration date of the First Extension Term.

(c) The Base Rent payable by Tenant to Landlord during the First Extension Term shall be the Fair Market Rent, as defined and determined pursuant to Paragraph (e) below.

(d) The Base Rent payable by Tenant to Landlord during the Second Extension Term shall be the
the Fair Market Rent, as defined and determined pursuant to Paragraph (e) below.

(e) The term "**Fair Market Rent"** shall mean the Base Rent, expressed as an annual rent per square foot of floor area, which Landlord would have received from leasing the Premises (based on recent comparable transaction in the market where the Building is located) for the Extension Term to an unaffiliated person which is not then a tenant in the Building, assuming that such space were to be delivered in "as-is" condition, and taking into account the rental which such other tenant would most likely have paid for such premises, including market escalations. Fair Market Rent shall not be reduced by reason of any costs or expenses saved by Landlord by reason of Landlord's not having to find a new tenant for the Premises (including without limitation brokerage commissions, cost of improvements

necessary to prepare the space for such tenant's occupancy, rent concession, or lost rental income during any vacancy period). Fair Market Rent means only the rent component defined as Base Rent in the Lease and does not include reimbursements and payments by Tenant to Landlord with respect to operating expenses and other items payable or reimbursable by Tenant under the Lease. In addition to its obligation to pay Base Rent (as determined herein), Tenant shall continue to pay and reimburse Landlord as set forth in the Lease with respect to such operating expenses and other items with respect to the Premises during the Extension Term. The arbitration process described below shall be limited to the determination of the Base Rent and shall not affect or otherwise reduce or modify the Tenant's obligation to pay or reimburse Landlord for such operating expenses and other reimbursable items.

(f) Within thirty (30) days of receipt of Tenant’s First Extension Notice or Tenant’s Second Extension Notice, Landlord shall notify Tenant of its good faith determination, taking into consideration the factors listed in the previous paragraph, of the Fair Market Rent, without reference to the Base Rent payable by Tenant during the last year of the initial Lease Term or the last year of the First Extension Term, as applicable. Tenant shall advise Landlord of any objection within ten (10) business days of receipt of Landlord's notice. Failure to respond within the ten (10) day period shall constitute Tenant's rejection of such Fair Market Rent. If Tenant objects or is deemed to have objected, Landlord and Tenant shall commence negotiations to attempt to agree upon the Fair Market Rent within thirty (30) days following Landlord's receipt of Tenant's notice. If the parties cannot agree, each acting in good faith, then the arbitration procedure provided below shall determine the Fair Market Rent.

(g) Arbitration to determine the Fair Market Rent shall be in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association. Unless otherwise required by state law, arbitration shall be conducted in the metropolitan area where the Building is located by a single arbitrator unaffiliated with either party. Either party may elect to arbitrate by sending written notice to the other party and the Regional Office of the American Arbitration Association within five (5) days after the thirty (30) day negotiating period provided in Paragraph (d), invoking the binding arbitration provisions of this paragraph. Within ten (10) business days of receipt of the identity of the arbitrator, Landlord and Tenant shall each submit to the arbitrator their respective proposal of Fair Market Rent. The arbitrator must choose between the Landlord's proposal and the Tenant's proposal and may not compromise between the two or select some other amount. The cost of the arbitration shall be paid by Landlord if the Fair Market Rent is that proposed by Tenant and by Tenant if the Fair Market Rent is that proposed by Landlord; and shall be borne equally otherwise. If the arbitrator has not determined the Fair Market Rent as of the end of the Lease Term, Tenant shall pay one hundred five percent (105%) of the Base Rent in effect under the Lease as of the end of the Lease Term until the Fair Market Rent is determined as provided herein. Upon such determination, Landlord and Tenant shall make the appropriate adjustments to the payments between them.

(h) The parties consent to the jurisdiction of any appropriate court to enforce the arbitration provisions of this Addendum and to enter judgment upon the decision of the arbitrator.

(i) Except for the Base Rent as determined above, Tenant's occupancy of the Premises during the First Extension Term and Second Extension Terms shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial Lease Term or the First Extension Term; provided, however, Tenant shall have no further right to extend the Lease Term pursuant to this addendum or to any allowances, credits or abatements or options to expand, contract, renew or extend the Lease.

(j) If Tenant does not send the First Extension Notice within the period set forth in Paragraph (a), Tenant's right to extend the Lease Term for the First Extension Term and Second Extension Term shall automatically terminate. If Tenant does not give the Second Extension Notice

within the period set forth in paragraph (b) above, Tenant's right to extend the Lease Term for the Second Extension Term shall automatically terminate. Time is of the essence as to the giving of the First Extension Notice and Second Extension Notice and the notice of Tenant's objection under Paragraph (d).

(k) Landlord shall have no obligation to refurbish or otherwise improve the Premises for the First Extension Term and the Second Extension Term. The Premises shall be tendered on the Commencement Date of the First Extension Term and the Commencement Date of the Second Extension Term in "as-is" condition.

(l) If the Lease is extended for the First Extension Term and the Second Extension Term, then Landlord shall prepare and Tenant shall execute an amendment to the Lease confirming the extension of the Lease Term and the other provisions applicable thereto.

(m) If Tenant exercises its right to extend the term of the Lease for the First Extension Term or Second Extension Term pursuant to this Addendum, the term "Lease Term" as used in the Lease, shall be construed to include, when practicable, such Extension Term except as provided in Paragraph (j) above.

(n) The determination of Base Rent does not reduce the Tenant's obligation to pay or reimburse Landlord for Operating Expenses and other reimbursable items as set forth in the Lease, and Tenant shall reimburse and pay Landlord as set forth in the Lease with respect to such Operating Expenses and other items with respect to the Premises during such Extension Term.

ADDENDUM 6

FORM OF LETTER OF CREDIT

ATTACHED TO AND A PART OF THE LEASE
DATED JUNE _____, 2020 BETWEEN

DPIF2 CA 20 CHRISTY STREET, LLC
and
BLOOM ENERGY CORPORATION

(see attached)

REDACTED EXHIBIT: This Exhibit contains certain identified information that has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed. Redacted information is identified by [***].

Execution Version

AMENDED AND RESTATED PURCHASE, USE AND MAINTENANCE AGREEMENT

between

BLOOM ENERGY CORPORATION
as Seller

and

2018 ESA PROJECT COMPANY, LLC
as Buyer

dated as of June 30, 2020

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AMENDED AND RESTATED PURCHASE, USE AND MAINTENANCE AGREEMENT

This AMENDED AND RESTATED PURCHASE, USE AND MAINTENANCE AGREEMENT (this "Agreement"), dated as of June 30, 2020 (the "Agreement Date"), is entered into by and between BLOOM ENERGY CORPORATION, a Delaware corporation ("Seller"), and 2018 ESA Project Company, LLC, a Delaware limited liability company ("Buyer"). Seller and Buyer are referred to in this Agreement individually, as a "Party" and, collectively, as the "Parties".

RECITALS

WHEREAS, Seller is in the business of designing, engineering, constructing, commissioning, selling, operating, and maintaining on-site solid oxide fuel cell power generating Facilities comprised of Bloom Systems, BOF and, where applicable, Ancillary Equipment;

WHEREAS, Buyer is a company formed for the purpose of purchasing and owning Facilities for use in generation of electricity and provision of related services to ESA Customers pursuant to ESAs;

WHEREAS, Buyer desires to purchase, and Seller desires to sell, Facilities to be developed, designed, engineered, procured, constructed, and commissioned in connection with such ESAs, all on a turnkey basis pursuant to the terms and conditions of this Agreement; and

WHEREAS, Buyer desires to engage Seller to provide certain operations and maintenance services to the Facilities, and Seller desires to provide such operations and maintenance services, all in accordance with the terms and conditions of this Agreement;

WHEREAS, in connection with the foregoing, Buyer and Seller entered into the Purchase, Use and Maintenance Agreement, dated as of June 28, 2019, as amended by the First Amendment to Purchase, Use and Maintenance Agreement, dated as of November 22, 2019, as amended by the Second Amendment to Purchase, Use and Maintenance Agreement, dated as of December 30, 2019, as amended by the Third Amendment to Purchase, Use and Maintenance Agreement, dated as of March 23, 2020, and as supplemented by the Consent and Waiver Under Purchase, Use and Maintenance Agreement, dated as of April 30, 2020, and by the Consent Under Purchase, Use, and Maintenance Agreement, dated as of June 12, 2020 (the "Second PUMA Consent") (as so amended and supplemented, the "Original PUMA");

WHEREAS, Buyer and Seller desire to amend and restate the Original PUMA as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

AGREEMENT

ARTICLE I.

DEFINITIONS

ion i.Definitions

. As used in this Agreement, capitalized terms not otherwise defined shall have the meanings set forth below:

1. "2020 Facilities Assignment" is defined in Section 2.11(3).

2. "Actual kWh" means (a) with respect to any Facility, the actual electricity output in kWh produced by such Facility and measured by the Facility Meter, and (b) subject to adjustment for meter defects pursuant to an ESA, where appropriate in the context of this Agreement, aggregated together with the actual energy output of other Facilities.

3. "Additional Invoice Due Date" means any Business Day, not to occur more than one time per Calendar Quarter.

4. "Adjustment Quarter" is defined in Section 2.6(1).

5. "Administrative Services Agreement" means the Administrative Services Agreement, dated as of June 28, 2019, as amended from time to time.

6. "Affected Party" is defined in Section 12.6(1).

7. "Affiliate" of any Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified, provided that notwithstanding anything in this Agreement to the contrary, Seller is not an Affiliate of Buyer and no ESA Customer is an Affiliate of Buyer or Seller. For purposes of this Agreement, the direct or indirect ownership of over fifty percent (50%) of the outstanding voting securities of an entity, or the right to receive over fifty percent (50%) of the profits or earnings of an entity shall be deemed to constitute control. Such other relationships as in fact results in actual control over the management, business and affairs of an entity, shall also be deemed to constitute control.

8. "After-Tax Basis" means, with respect to any payment to be actually or constructively received, the amount of such payment (the "base payment") and any further payment (the "additional payment") to such recipient so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all federal income taxes required to be paid by such recipient in respect of the receipt or accrual of the base payment and the additional payment, using an assumed rate equal to the Corporate Tax Rate (and ignoring state and local taxes), taking into account any federal income tax savings realized by the recipient as a result of the event giving rise to the payment, using an assumed rate equal to the Corporate Tax Rate, equals the amount required to be received.

9. "Aggregate Purchase Price" means, with respect to a given Facility, the sum of (i) the Purchase Price of such Facility, (ii) the Purchase Price Adders, if any, of such Facility, and (iii) any Taxes due and payable pursuant to Section 2.3(3) for such Facility, in each case as adjusted under Section 2.6.

10. "Agreement" is defined in the preamble.

11. "Agreement Date" is defined in the preamble.

12. "Agreement Date Consent" means that certain Purchase, Use and Maintenance Agreement Consent, by and between Buyer and Seller, dated as of the Agreement Date.

13. "[***] Equipment" means "Customer Equipment" as defined in the [***] ESA.

"[***] ESA" means the Master Energy Services Agreement, dated December 20, 2018, by and between Buyer, as assignee of 2017 Fuel Cell Operating Company I, LLC, and [***], a Delaware limited liability company, as amended by the Omnibus Amendment, dated as of August 27, 2019, together with any applicable "Statements of Work" (as defined therein).

14. "Ancillary Equipment" means certain ancillary equipment installed in connection with a Bloom System pursuant to the design thereof, to allow such Facility to perform in accordance with the requirements of the applicable ESA. "Ancillary Equipment" may include, by way of example and without limitation, AOMs, Battery Solutions, Low-Pressure Gas Boosters, UPMs, and similar equipment. For the avoidance of doubt, "Ancillary Equipment" includes any Delayed Ancillary Equipment.

15. "Anti-Corruption Laws" means: (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended; (b) the U.K. Bribery Act 2010, as amended; and (c) any other anti-bribery or anti-corruption laws, regulations or ordinances in any jurisdiction in which the Seller or its Affiliates is located or doing business.

16. "Anti-Money Laundering Laws" means applicable laws or regulations in any jurisdiction in which Seller is located or doing business that relates to money laundering, drug trafficking, terrorism financing, any predicate crimes to money laundering, or any financial record keeping, and reporting requirements related thereto.

17. "AOM" means an auxiliary output module, to be included in certain of the Facilities.

18. "Appraisal" means the appraisal of the fair market value of a Facility including a cost segregation report prepared by the Appraiser allocating the Buyer's basis in the Facility among the assets of the Facility.

19. "Appraisal Procedure" means within fifteen (15) days of a Party invoking the procedure described in this definition Buyer and Seller shall engage a Qualified Appraiser, mutually

acceptable to them, to conclusively determine within fifteen (15) days after appointment the Fair Market Value of a Facility.

20. "Appraiser" means Marshall & Stevens Incorporated.

21. "Approved Facility" means, in respect of each distinct Facility listed in Part I to Schedule 2.10 and its related rights, obligations and equipment, the Site, Customer, ESA, Site License and Facility listed on such Part I to Schedule 2.10.

22. "Approved LDC" means, with respect to each Site, the local natural gas distribution company serving the ESA Customer at such Site. For the avoidance of doubt, natural gas supplied by any Approved LDC shall be deemed to satisfy Seller's requirements regarding the quality and composition of natural gas supplied to the Bloom Systems sold to Buyer hereunder.

23. "Assets" means, with respect to any Person, all assets and properties of every kind (whether real, personal or mixed, whether tangible or intangible), which assets and properties are owned or leased by such Person.

"Assignment Date" means, with respect to any Standby Facility, the first Available Assignment Date on which all the Standby Facility Conditions for such Standby Facility are (and continue to be) satisfied or waived by Buyer in its sole discretion; provided, that none of the foregoing shall constitute a waiver of any of Buyer's rights to seek legal remedies based on any failure of any of Seller's representations and warranties to be true and correct on and as of such Assignment Date.

24. "Assignment Notice" is defined in Section 2.11(3).

"Available Assignment Date" means, with respect to any Standby Facility, any one of the following dates: July 31, 2020, August 31, 2020 and September 30, 2020.

25. "Bankruptcy" or "Bankrupt" as to any Person means the filing of a petition for relief as to any such Person as debtor or bankrupt under the Bankruptcy Code or like provision of law (except if such petition is contested by such Person and has been dismissed within sixty (60) days); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of its Assets; commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, *provided*, that if such proceeding is commenced by another, such Person indicates its approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within sixty (60) days.

26. "Bankruptcy Code" means 11 U.S.C Chapter 11.

27. "Bankruptcy Laws" is defined in Section 11.4.

"Base Case Model" means the economic model titled "Bloom Fund 8 Model Q2 20 Quarterly Adj with Upsize 6-26-20 TO SEND FINAL," posted to the Data Room on the Agreement Date and last modified on June 26, 2020 at 12:27 p.m. PST.

"Battery Solution" means, with respect to any Facility, an integrated battery solution or a UPM, in each case as described in the specifications set forth on Schedule 3.3(1).

"BDI" means BE Development, Inc., a Delaware corporation.

28. "Bill of Sale" means a bill of sale substantially in the form set forth in Exhibit G.

29. "BloomConnect" " means a web-based data portal with datasets and pointers for access to such datasets through a dashboard interface that provides, with respect to a given Facility, (i) for a period of aggregated 15-minute intervals, full-time visibility into operational status, capacity, efficiency, fuel consumption and generation output, which may be acquired in downloadable format, and (ii) interactive graphs and animations that illustrate the benefits of sustainability, gas consumption, and energy generation, in each case tailored to the Portfolio.

30. "Bloom System" means a solid oxide fuel cell power generating system, capable of being powered by natural gas, that is designed, constructed and installed by Seller.

31. "BOF" means, for each Site, the balance of facility items included in each Facility including, as applicable, Electrical Interconnection Facilities, the natural gas supply facilities, the water supply facilities, the data communications facilities, the foundations for the Bloom Systems and any other facilities and equipment ancillary to the Bloom Systems and installed in connection with the Facility at each Site and all other things ancillary to the Facility and required on or in the vicinity of the Site which are necessary to achieve Commencement of Operations at each such Site or which are otherwise required by the applicable ESA or Site License for such Site, but excluding Ancillary Equipment.

32. "Business Day" means a day other than a Saturday, Sunday or other day on which banks in New York, New York, or San Francisco, California, are authorized or required to close.

33. "Buyer" is defined in the preamble.

34. "Buyer Default" is defined in Section 12.2.

35. "Buyer Indemnitee" is defined in Section 13.3(1).

36. "Buyer Manager" is defined in Section 4.6(2).

37. "Buyer's Notice" is defined in Section 3.6.

38. "Buyer Parent" means Project Oxygen Holdings, LLC, a Delaware limited liability company.

39. "Calculation Date" is defined in Section 2.11(8).

40. "Calendar Quarter" means each period of three months ending on March 31, June 30, September 30 and December 31.

41. "Capacity Warranty" means the Performance Warranty or the Performance Guaranty, as applicable.

42. "Cash Equivalent Investments" means:

Section a. direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

Section b. investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

Section c. investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $250,000,000;

Section d. fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

Section e. money market funds that (i) comply with the criteria set forth in SEC Rule 2a-7 under the Investment Company Act of 1940, and (ii) are rated AAA by S&P and Aaa by Moody's.

43. "Certificate of COO" means a certificate, substantially in the form set forth in Exhibit F.

44. "Certificate of Delivery Milestone Completion" means a certificate, substantially in the form set forth in Exhibit E.

45. "Certificate of Deposit Milestone Completion" means a certificate, substantially in the form set forth in Exhibit D.

"[***] ESA" means the Energy Services Agreement, dated as of September 30, 2019, by and between Buyer, as assignee of 2019 ESA Project Company, LLC, and [***].

46. "Claiming Party" is defined in Section 12.6(1).

47. "Code" means the Internal Revenue Code of 1986, as amended.

"[***] ESA" means the Energy Services Agreement, dated as of June 28, 2019, between Buyer, as assignee of 2017 Fuel Cell Operating Company I, LLC, and [***].

48. "Commencement of Operations" means, with respect to any Facility, the completion and the performance of all of the following activities:

Section a. all Bloom Systems, Ancillary Equipment and related BOF comprising such Facility has been Delivered;

Section b. such Facility has been installed at the location specified in the applicable Site License and Placed in Service;

Section c. (i) such Facility (A) has been attached to the load at the applicable Site, (B) is producing power at one hundred percent (100%) of the aggregate System Capacity of all Bloom Systems included in such Facility, and (C) is operating at or above the Minimum Efficiency Level, and (ii) Seller has provided Buyer with evidence reasonably satisfactory to Buyer of each of the foregoing;

Section d. all Pre-COO Equipment Warranty Claims raised by Buyer in respect of such Facility shall have been addressed by Seller in accordance with Section 3.3(2);

Section e. Seller has (i) performed and successfully completed all necessary acts under the applicable Interconnection Agreement (including performance testing) and (ii) obtained PTO from the applicable Person; and

Section f. Seller shall have performed and successfully completed all obligations required to be completed on or before such date under the Transaction Documents and the applicable ESA, Site License, Incentive Agreements and any other applicable contract or agreement by which Buyer is bound or to which such Facility or the components thereof are subject (including, for the avoidance of doubt, obtaining all Permits, PTO and valid, binding and enforceable Interconnection Agreements and successfully completing all items that would, if not so completed, materially impact the operational capability, durability or reliability of the Facility);

49. *provided*, if the applicable ESA provides that items of Delayed Ancillary Equipment to be installed in connection with a Facility shall be installed or commissioned subsequent to Commencement of Operations of the Bloom System, in any case if not in breach or violation of, or default under, such ESA, "Commencement of Operations" of such Facility shall not require the completion of the installation and commissioning of such Delayed Ancillary Equipment items, but this proviso shall not relieve Seller of its obligations in Section 3.4(1)(xiv).

50. "Commencement of Operations Date" means, with respect to any Facility, the date on which it achieves Commencement of Operations.

51. "Commencement of Operations Date Deadline" means December 31, 2020.

52. "Competitor of Seller" means any Person, including its Affiliates, subsidiaries and parent, and any successors thereto, that (1) engages in the business of designing, engineering, fabricating, manufacturing, deploying, installing, operating or maintaining (A) combustion engines and generators that are between 50kW and 1.5MW, including the list set forth in Schedule 14.4(a), as may be amended from time to time pursuant to Section 14.4(5) (B) fuel cells for use in residential, commercial or industrial settings, including fuel cells that are hydrogen, phosphoric acid, proton exchange membrane, regenerative, zinc air, protonic ceramic, microbial, polymer electrolyte membrane, direct methanol, alkaline, phosphoric acid, molten carbonate, solid oxide and reversible, or (C) distributed energy resources, (2) is known by recent and unrefuted press release, credible news source, or securities filing, to be interested in, investigating or pursuing the development of fuel cells, (3) is not a "United States person" as defined in 26 U.S.C. 7701(a)(30) and (x) is owned, in whole or in part, directly or indirectly, by a government agency, or (y) has a score that is less than 37 on the most recent U.S. Chamber of Commerce's IP Index or, regardless of its score on such index, is organized under the laws of or headquartered in China, Russia or South Korea, or (4) is engaged in material litigation or another material dispute with Seller; *provided*, a Competitor of Seller shall not include (i) a passive investor with ownership interest in any Person that meets the foregoing definition, so long as such passive investor does not itself satisfy any of the foregoing descriptions or (ii) under any circumstances the Persons listed or set forth on Schedule 14.4(b), as may be amended from time to time pursuant to Section 14.4(5).

53. "Components" means any tangible materials, components and spare or replacement parts reasonably required for the construction, installation, commissioning, operation, maintenance and repair of a Facility.

54. "Confidential Information" is defined in Section 10.1.

"[***] ESA" means the ESA between Buyer and [***], dated as of December 26, 2018.

55. "Construction Update" is defined in Section 6.2(2).

56. "Contract" means any agreement, contract, instrument, obligation, commitment, covenant, understanding, promise, promissory note, bond, indenture, insurance policy, deed, lease, license, franchise, purchase order, sales order or other obligation, undertaking or arrangement (whether written or oral) that is legally binding.

57. "Corporate Tax Rate" means as of a given date of determination, the maximum allowable U.S. federal corporate income tax rate applicable to corporations but excluding S corporations.

"[***] Amendment" means Amendment One to Amended and Restated Energy Services Agreement, by and between Buyer and [***], a Delaware limited liability company, dated as of June 1, 2020.

"[***] ESA" means the Amended and Restated Energy Services Agreement, dated as of September 18, 2018, between Buyer, as assignee of 2017 Fuel Cell Operating Company I, LLC, and [***], as amended by the [***] Amendment.

58. "Credit Support" means any deposit, performance or payment assurance or amounts otherwise posted by any Person in support of any obligation or duty of such Person or another Person (whether in the form of a guarantee, letter of credit, payment or performance bond, cash or other deposit or otherwise).

59. "CT LRECs" is defined in Section 3.2(2).

"Customer Equipment" means (i) equipment installed by Seller or an ESA Customer pursuant to the terms of any ESA Customer's ESA, to which equipment the ESA Customer (or an Affiliate or predecessor of ESA Customer, or a site lessor) or Seller takes or retains title, including (except to the extent described in the following clause (ii)) Kaiser Equipment, Intel Equipment, [***], [***], and [***] Equipment, (ii)(A) equipment or balance of plant/facilities items, as the case may be, installed pursuant to a Preexisting Seller Agreement, to which Buyer does not take title, to which equipment the ESA Customer (or its Affiliate) or Seller holds or takes title, which remains at the Site during the term of an ESA and is used, or is intended as of the date the applicable Facility became a part of the Scheduled Portfolio to be used, with the applicable ESA Customer's Facility, and/or (B) equipment or balance of plant/facility items, as the case may be, installed by an ESA Customer on its own to which it has and keeps title, which remains at the Site during the term of an ESA and is used, or is intended to be used with the applicable ESA Customer's Facility, including [***].

60. "Data Room" means Egnyte (or similar FTP solution) (i) created and maintained by Seller, (ii) that provides upload, download and read only access, (iii) that promptly transmits an email alert to Buyer when any files are added, modified or deleted (identifying each such addition, modification or deletion) and (iv) to which Buyer has 24/7 electronic access to read, download and print files therein provided.

61. "DDP (Incoterms 2010)" means Delivered Duty Paid (DDP) as such term is used in the International Rules for the Interpretation of Trade Terms (identified as "INCOTERMS® 2010") as prepared by the International Chamber of Commerce.

62. "Delayed Ancillary Equipment" means, with respect to any ESA Customer, ESA and Site for which there is Delayed Battery Power Rating (kW) and Delayed Battery Energy Capacity (kWh) set forth in Schedule 1, the Battery Solutions contemplated to be delivered under such ESA with respect to such Site.

63. "Delayed Facilities List" is defined in Section 2.11(1).

64. "Delayed Facility" is defined in Section 2.11(1).

65. "Delivery" or "Delivered" means the physical delivery of a Bloom System or item of Ancillary Equipment or BOF to a Site.

66. "Delivery Date" means for each Facility, the date upon which the "Delivery Milestone" is achieved for such Facility, as set forth in the Certificate of Delivery Milestone Completion.

67. "Delivery Milestone" means, with respect to any Facility, the completion of the following activities on or before December 11, 2020:

(i) the Bloom Systems and all Ancillary Equipment (if any) comprising such Facility have been Delivered;

(ii) BOF for such Bloom Systems necessary to place such Bloom Systems on concrete pad for such Bloom Systems has been Delivered and installed;

(iii) Such Bloom Systems have been placed upon such concrete pad and are available for installation, startup and commissioning;

(iv) Seller has obtained, on behalf of itself, Buyer or the applicable ESA Customer (as applicable), in respect of such specific Facility, any approvals, drawings and notices described in clause (a) of the definition of "Deposit Milestone" that (i) are required to be obtained before Delivery pursuant to such ESA or such Site License and (ii) were not obtained in connection with the Deposit Milestone for such Facility's Tranche;

(v) Seller shall have performed and successfully completed (i) all obligations required to be completed on or before such date under this Agreement and the applicable Facility Contracts, Permits and Legal Requirements and (ii) all upgrades required to be performed in respect of the applicable Facility pursuant to an Interconnection Agreement (whether or not executed) or as otherwise required by a Transmitting Utility; and

(vi) No portion of such Facility has been Placed in Service.

68. "Deposit Date" means, with respect to a Tranche, the date that such Tranche achieves the Deposit Milestone, as set forth in the Certificate of Deposit Milestone Completion.

"Deposit Milestone" means, for a Tranche, the achievement of each of the following activities:

Section a. Seller has received (on behalf of Buyer or itself, as applicable) approval of Site plans and single-line drawings from one or more ESA Customers for Facilities with aggregate System Capacity equal to or greater than the aggregate System Capacity of Facilities included in such Tranche (and all other Tranches for which Seller previously delivered a Certificate of Deposit Milestone Completion to Buyer); provided, that if any Third Party Consents (including the issuance of notices to proceed, if applicable) are

required from an ESA Customer or a Site License grantor (or either of their Affiliates), or if the satisfaction of any other conditions precedent is required (including the construction of separate buildings and other facilities), as a condition to Buyer or its subcontractors (including Seller) commencing installation pursuant to the applicable ESA or Site License, then such Third Party Consents shall have been received or achieved, and such other conditions precedent shall have been satisfied, as applicable;

Section b. Seller has received all materials required for the commencement of fabrication of Bloom Systems with aggregate System Capacity equal to or greater than the aggregate System Capacity of Facilities included in such Tranche, and all materials required as of such time to allow for completion of such fabrication in order to achieve Commencement of Operations of such Facilities (and all Facilities included in all other Tranches for which Seller previously delivered a Certificate of Deposit Milestone Completion to Buyer) within ninety (90) days; and

Section c. Seller shall have performed and successfully completed all obligations required to be completed on or before such date under the Transaction Documents and the applicable Facility Contracts (including, for the avoidance of doubt, obtaining all Permits if required as a condition to the Deposit Milestone under any Facility Contract).

"Disparage" is defined in Section 2.11(7).

"Documentation" means all Bloom System documentation necessary for constructing, testing, operating, and maintaining a Facility, including testing documentation, engineering documentation, specifications, and operations and maintenance manuals, Training Materials, drawings, reports, standards, schematics, directions, samples and patterns, including any such Documentation required to be delivered prior to Commencement of Operations.

69. "Efficiency" means the quotient of E/F, where (i) E = the electricity produced by the applicable Facility, measured in BTUs (British Thermal Units) at an assumed conversion rate of 3,412 BTUs per kWh, and (ii) F = the fuel consumed by such Facility, measured in BTUs on a lower heating value basis as determined by the mass flow controller included in the applicable Facility.

70. "Efficiency Warranty" is defined in Section 5.3.

71. "Electrical Interconnection Facilities" means, with respect to any Facility, the equipment and facilities required to safely and reliably interconnect such Facility to the transmission system of the Transmitting Utility, including the collection system between the related Bloom System, transformers and all switching, metering, communications, control and safety equipment, including the facilities described in any applicable Interconnection Agreement.

72. "Energy" means three-phase, 60-cycle alternating current electric energy constituting the Actual kWh.

73. "Energy Tolling Agreement" means an energy services agreement, power purchase agreement, or similar agreement, by and between Buyer and an ESA Customer, a New Customer or a customer, as the case may be.

74. "Environmental Law" means any Legal Requirement which pertains to health, safety, welfare, pollution, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) or protection of natural, cultural, archaeological or biological resources and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

75. "Environmental Requirements" means any Environmental Law, any Permit issued pursuant to Environmental Law and any agreement or restriction (including but not limited to any condition or requirement imposed by any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, welfare, any Hazardous Material, the environment or protection of natural, cultural, archaeological or biological resources.

"Equinix" means Equinix, Inc.

"Equinix ESA" means each of the ESAs listed on Schedule 1 with an ESA Customer of Equinix.

76. "Equipment Fee" means, with respect to each Facility, amounts due in connection with achievement of the Deposit Milestone or Delivery Milestone for such Facility.

77. "ESA" means each Energy Tolling Agreement between Buyer and an ESA Customer listed on Schedule 1, as the same may be updated from time to time by the mutual agreement of the Parties. If any such agreement is executed and delivered in respect of more than one Facility, then such agreement with respect to each individual Facility shall constitute and be deemed to mean one (1) "ESA" hereunder (i.e., a single agreement with an ESA Customer in respect of three (3) Facilities shall be deemed to be three (3) ESAs hereunder). If any such agreement is in the form of a master agreement with Facility-specific confirmations attached, then with respect to each applicable Facility, "ESA" shall be deemed to mean such master agreement and such confirmation applicable thereto.

78. "ESA Customer" means each counter-party to an ESA.

79. "ESA Remarketing Activities" is defined in Section 4.8(1).

80. "ESA Warranties" means the payment obligations of Buyer to each respective ESA Customer (i) arising out of any performance guarantee, any power performance shortfall, any efficiency warranty (or other guarantee or warranty, including availability, output, minimum production, peak demand reduction, demand charge reduction, backup power provision, islanding, net metering or otherwise), (ii) as a reimbursement to such ESA Customer for any deficiency in the benefits received by such ESA Customer under the applicable state incentive programs for any ESA, or (iii) as a payment or reimbursement obligation to such ESA Customer (or the applicable site licensor) under the applicable ESA or Site License or as an indemnity payment under the applicable ESA or Site License, in any such case arising in connection with (1) the procurement or manufacturing by any Person of fuels or trading in any attribute, incentive or credit, or financial or other derivative, related to emissions or fuels or (2) modification or replacement of the terms of service under any Interconnection Agreement or Transmitting Utility tariff (including loss of eligibility for net metering programs, any charges related to demand, departing load or departing customer generation and standby and other service charges), in any such case contemplated by the foregoing clauses (1) or (2), in connection with any Legal Requirement that (x) governs, or may in the future govern, emissions of energy generators and (y) is, or may become, applicable to any Facility. ESA Warranties include (i) any payment obligations of "Supplier" under Section 3.4(c) of [***] and (ii) the payment obligations of Buyer to the applicable ESA Customer arising under Amendment No. 2 to Energy Services Agreement, dated as of August 16, 2019, by and between 2017 Fuel Cell Operating Company I, LLC and [***] (including in Buyer's capacity as successor or assignee under the applicable ESA).

81. "ESA Warranty Reimbursement Payment" is defined in Section 5.8(1).

82. "Event Log" means a written log substantially in the form of Exhibit I that includes (subject to the reporting criteria, event types and descriptions contained therein) information in respect of certain facts, events or circumstances in connection with the Facilities.

83. "Extended Warranty Period" means, with respect to each Facility, the period commencing on the first (1st) anniversary of the date such Facility achieves Commencement of Operations and ending on the thirtieth (30th) anniversary of the date of Commencement of Operations of such Facility.

84. "Facility" means, collectively, the Bloom Systems and the BOF at a particular Site and interconnected behind a single utility meter, sharing a single Commencement of Operations, and thereafter operated as a unified whole. For the avoidance of doubt, "Facility" includes, where applicable, any Ancillary Equipment installed in connection with the Bloom Systems at a particular Site. Where an ESA provides for multiple "Phases" at a Site (i.e., discrete installations of Bloom Systems to be installed behind a single Transmitting Utility meter), each Phase shall be understood to be a separate "Facility" for purposes of this Agreement.

85. "Facility Contracts" means, with respect to a Facility, (A)(i) the ESA, (ii) the Site License, (iii) the Interconnection Agreement, (iv) any Third Party Consents, (v) any Incentive Agreements, and (vi) any Governmental Approvals, and (B)(i) any Contract between the Seller

or the Buyer, on the one hand, and any other Person (other than Seller's or Buyer's Affiliates, respectively), on the other hand, that governs the rights and obligations of such parties arising under or in connection with the Facility (provided, if Buyer is a party to such Contract and such Contract was not executed and delivered on or before the First Agreement Date (or as and when otherwise expressly contemplated herein), such Contract shall only be a Facility Contract if Seller and Buyer have so agreed in writing (including, for the avoidance of doubt, Contracts deemed or otherwise agreed by Buyer and Seller to be Facility Contracts pursuant to the Original PUMA or any Transaction Documents (as defined therein) after the First Agreement Date and on or prior to the Agreement Date), and (ii) to Seller's Knowledge, any Contract between the applicable ESA Customer and a Person other than Buyer, Seller or a Seller Affiliate that governs the rights and obligations of such parties arising under or in connection with the Facility, which Contracts described in the foregoing clauses (B)(i) or (B)(ii) would, in the course of Seller's performance of its obligations under this Agreement or Buyer's performance of its obligations under the applicable ESA or Site License, require Seller or Buyer (respectively) to satisfy or comply with, on its own behalf or its counterparty's behalf, any terms or conditions contained in such Contract; *provided, however*, Facility Contracts shall not include (1) any contracts solely between Seller and its Service Providers, including general construction, subcontracts, or procurement contracts, (2) except for the Interconnection Agreement, the ESA and the Site License, any supply agreement between the ESA Customer (or one of its Affiliates) and a supplier, for the supply of gas, water, high-speed internet service, or other materials and services other than electricity, (3) any services agreement between the ESA Customer and a service provider related to the care and management of the real property on which the Site is located or any agreement between the ESA Customer and another Person granting such ESA Customer rights in real property (unless (x) related specifically to the Site or Facility or (y) described in Section 9.2 of the Equinix ESA), and (4) any Contract of which Seller does not have Knowledge.

86. "Facility Meter" means, with respect to a Facility, the revenue quality electricity generation meter located at the metering point and approved by the Transmitting Utility, which shall register all Energy produced by a Facility and delivered to the Interconnection Point.

87. "Facility Services" is defined in Section 4.1(1).

88. "Facility Services Warranty" is defined in Section 5.1.

89. "Facility Transfer" is defined in Section 3.6.

90. "Fair Market Value" means, with respect to any Facility, the price at which such asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of the relevant facts, and specifically with respect to the Facility or any portion thereof, as determined consistently with Section 4.05 of Revenue Procedure 2007-65.

91. "[***] ESA" means the Energy Server Use Agreement, dated as of December 31, 2015, by and between [***] and 2017 Fuel Cell Operating Company I, LLC (as assignee of 2015 ESA

Project Company, LLC, a Delaware limited liability company) (but, from and after the applicable Assignment Date, Buyer as assignee of 2017 Fuel Cell Operating Company I, LLC).

92. "FERC" means the Federal Energy Regulatory Commission and any successor.

93. "First Agreement Date" means June 28, 2019.

94. "Force Majeure Event" means any event or circumstance that (a) prevents in any material respect the performance a Party from performing its obligations under this Agreement; (b) was not reasonably foreseeable by such Party; (c) was not (i) within the reasonable control of such Party, (ii) the result of the negligence or willful misconduct of such Party or its personnel, or (iii) the result of a breach of this Agreement or any other Transaction Document by such Party; and (d) such Party is unable to reasonably mitigate, delay, avoid or cause to be avoided with the exercise of due diligence such event or circumstance. "Force Majeure Event" may include, provided that the conditions in (a) through (d) in the foregoing sentence are met, (1) inability of Buyer to obtain or maintain market-based rate authority from FERC to operate the Facilities (except to the extent such inability results from a Buyer-initiated change in Buyer's business from that contemplated as of the First Agreement Date), (2) an act of God, including severe weather events, wildfires and hurricanes (but, in each case, only to the extent such event is not reasonably foreseeable, based on recent or frequent prior occurrence, in the geographic location in which it occurs, and for which reasonable precautions would not prevent such prevention of performance hereunder), (3) imposition of military authority, war, civil disturbances, strike (if affecting the general labor market and not Seller or any of its Service Providers or Affiliates, specifically), terrorist activities and (unless initiated at a Facility or caused in connection with the installation, operation or maintenance of a Facility or Component thereof) fire and explosions, (4) the external power delivery system (a/k/a the grid) (excluding any Electric Interconnection Facilities owned by Buyer or an ESA Customer) being out of the required specifications or totally failing (a/k/a brownout or blackout), or electric grid curtailment by the Transmitting Utility, or (5) the curtailment, interruption or issuance of operational flow orders by the delivering pipeline or local utility company supplying natural gas to any Site. Notwithstanding the foregoing, Force Majeure Event does not include (I) the lack of economic resources of a Party, (II) Seller's (or its' suppliers, vendors' or manufacturers') failure to timely design, transport or deliver any Facility (or any Component thereof), or one of Seller's suppliers', vendors' or manufacturers' failures to timely manufacture any Facility (or any Component thereof), (III) a Seller Default, (IV) unavailability of (or higher prices for) materials, goods, labor, services, supplies or components to be performed or provided, or necessary for Seller to perform, under this Agreement, (V) failure of a Facility, Bloom System or any Ancillary Equipment, Component, or BOF a part thereof, which failure is not characterized by all of the foregoing clauses (a) through (d), (VI) changes in Legal Requirements (it being acknowledged by the Parties that Section 12.9 shall apply in respect of such changes, rather than any relief in respect of a Force Majeure Event), (VII) the supply of natural gas from any source other than an Approved LDC or (VIII) to the extent it would otherwise constitute a Force Majeure Event, any act or omission by Seller, Seller Affiliate or a Service Provider or representative at any tier that result in a termination of the Equinix ESA based on a breach of Section 7.1(h)(i) of the Equinix

ESA. If an event or circumstance gives rise to a Force Majeure Event as defined herein under this Agreement, but such event or circumstance does not also constitute a 'Force Majeure Event' (or similar term) as defined under the applicable ESA or Site License (depending on which Facilities are affected), then for the purposes of any rights and obligations of the parties under this Agreement that relate to corresponding rights or obligations under such ESA or Site License such event or circumstance will not constitute a Force Majeure Event under this Agreement.

95. "FPA" means the Federal Power Act, as amended.

96. "Funding Suspension Event" means, as of a given date of determination, (A) more than one Facility has not achieved Commencement of Operations by sixty (60) days after payment of the portion of the Aggregate Purchase Price set forth in Section 2.3(2) for such Facility (provided, that if any actions or deliverables that were required to be performed, provided or obtained, respectively, for the applicable Facility to achieve Commencement of Operations were not performed, provided or obtained, respectively, and such failure to perform, provide or obtain is reasonably subject to cure within thirty (30) days after such sixtieth (60th) day, then no Funding Suspension Event shall occur until the thirtieth (30th) day after such sixtieth (60th) day, as long as Seller continues to pursue such cure using its best efforts), (B) failure to comply with Section 3.4(1)(xv), or (C) with respect to any Facility, the conditions precedent to the obligations of Buyer's indirect tax equity investor in the applicable organizational documents to make capital contributions in respect of any payment of the Aggregate Purchase Price hereunder are not, as of the applicable Milestone Date (in each case, as determined by Buyer in its sole discretion), (x) satisfied or waived, or (y) reasonably susceptible to satisfaction or waiver on or before the date such capital contribution would be due, assuming the proper and timely execution and delivery of contribution requests and other pro forma documents that are within the control of Buyer's sponsor investor and customarily delivered as of capital contribution dates (provided that such execution and delivery is actually effected); provided, with respect to any Facility for which the foregoing events occur, (i) if each such Facility is removed from the Scheduled Portfolio pursuant to the terms herein or (ii) (except with respect to any of the foregoing events described in clause (C)) the documentation required to be delivered under Section 3.4(1)(xv) for each such Facility is delivered, in each case the Funding Suspension Event shall be deemed resolved.

97. "GAAP" means United States generally accepted accounting principles consistently applied.

98. "General Product Warranty" is defined in Section 5.5(1).

99. "Governmental Approvals" means (a) any authorizations, consents, approvals, licenses, rulings, permits, tariffs (including emissions tariffs), rates, certifications, variances, orders, judgments, decrees by or with a relevant Governmental Authority and (b) any notice to, any declaration of, or with, or any registration or filing by, or with, any relevant Governmental Authority. Governmental Approvals do not include Permits.

100. "Governmental Authority" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority, including NERC, any Person that NERC has delegated its authority to under the Federal Power Act or any Person that operates an interstate or other wholesale electric transmission system; provided, that any Transmitting Utility, in its capacity as counterparty to any Interconnection Agreement but solely in such capacity, shall not be considered or deemed to be a Governmental Authority hereunder.

101. "Hazardous Material" means and includes those substances, pollutants, contaminants, elements or compounds which are contained or regulated as a hazardous substance, toxic pollutant, pesticide, air pollutant, or as defined in any Environmental Law, or is otherwise included in the definition of "Hazardous Materials," "Hazardous Substance" or a similar term in an ESA or a Site License.

"Home Depot ESA" means the Energy Services Agreement, by and between BDI (but, from and after the applicable Assignment Date, Buyer as assignee of BDI) and Home Depot U.S.A., Inc., dated as of December 31, 2019.

"[***] ESA" means the Energy Services Agreement, dated June 20, 2019, between Buyer, as assignee of 2017 Fuel Cell Operating Company I, LLC, and [***].

"IE" means [***], or if [***] is unavailable, another third-party, independent engineering consultant of similar capabilities and reputation chosen by agreement of the Buyer and Seller.

102. "IE Certificate" means a certificate, substantially in the form set forth in Exhibit J.

103. "Incentive Agreement" means the agreements listed on the applicable schedule of the Administrative Services Agreement.

"[***] Equipment" means "Customer Equipment", including the "Power Tower", in each case as defined in any [***] ESA.

"[***] ESA" means each of (i) the Energy Services Agreement between Buyer and [***], dated December 28, 2018, in respect of Sites located at [***] as amended by Amendment No. 1 to Energy Services Agreement, dated December 31, 2019, (ii) the Energy Services Agreements between Buyer and [***], dated December 28, 2018, in respect of Sites located at [***].

104. "Indemnifiable Loss" means any claim, demand, suit, loss, liability, damage (including any liquidated damages or rights of set-off), obligation, payment, fine, cost or expense (including the cost and expense of any investigation, action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith), whether involving claims solely between the Parties (or between the parties to any other Transaction Document) or by a Third Party (including any ESA

Customer) against a Party (or against any party to any other Transaction Document) unless otherwise expressly stated.

105. "Indemnified Party" is defined in Section 13.5(1).

106. "Indemnifying Party" is defined in Section 13.5(1).

107. "Indexed ESA is defined in Section 4.9.

108. "Installation Fee" means, with respect to each Facility, amounts due in connection with the achievement of Commencement of Operations for such Facility, less the Equipment Fee.

109. "Installation Services" is defined in Section 3.4(1).

110. "Intellectual Property" shall mean any or all of the following and all rights therein, whether arising under the laws of the United States or any other jurisdiction: (i) all patents, utility models and patent applications (and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof), patent disclosures and inventions (whether patentable or not); (ii) all trade secrets, know-how and confidential and proprietary information; (iii) all copyrights and copyrightable works (including Software and computer programs) and registrations and applications therefor and any renewals, modifications and extensions thereof; (iv) all moral and economic rights of authors and inventors, however denominated, throughout the world; (v) unregistered and registered design rights and any registrations and applications for registration thereof; (vi) trademarks, service marks, trade names, service names, brand names, trade dress, logos, slogans, corporate names, trade styles, domain names and other source or business identifiers, whether registered or not, together with all applications therefor and all extensions and renewals thereof and all goodwill associated therewith; (vii) semiconductor chip "mask" works, and registrations and applications for registration thereof, (viii) database rights; (ix) all other forms of intellectual property, including waivable or assignable rights of publicity or moral rights; and (x) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

111. "[***] Module Sale Agreement" means the Purchase and Sale Agreement, dated as of December 20, 2019 by and between Bloom Energy Corporation and [***].

112. "Interconnection Agreement" means an agreement between the ESA Customer (or Buyer, as may be required) and the applicable Transmitting Utility granting permission to interconnect a Facility to the transmission or distribution system of such Transmitting Utility.

113. "Interconnection Point" means, with respect to each Facility, the point at which title and risk of loss with respect to the electricity produced by such Facility passes to the applicable ESA Customer.

114. "Invoice Due Date" means, as of a given month, with respect to any package of materials delivered pursuant to Section 2.4(2), the requested date for payment provided therein, which date

shall be a Business Day (i) during the final seven (7) days of the calendar month in which such materials were delivered and (ii) at least ten (10) Business Days after the date such materials were delivered.

115. "Invoice Package" is defined in Section 2.3(5).

"IP License" is defined in Section 11.1.

116. "IRS" means the Internal Revenue Service or any successor agency.

117. "ITC" means an investment tax credit pursuant to Code Sections 38(b)(1), 46 and 48(a).

"[***] ESA" means the Energy Services Agreement, by and between BDI (but, from and after the applicable Assignment Date, Buyer as assignee of BDI) and [***] dated as of December 13, 2019.

"[***] Equipment" means the [***], the ownership and use of which is accurately described in clause (ii)(B) of the definition of "Customer Equipment" herein, in each case described in Schedule 2.1(a) to [***].

"Kaiser" means the ESA Customer under any Kaiser ESA.

"Kaiser Equipment' means "Purchaser Equipment" as defined in the Kaiser ESAs.

"Kaiser ESA" means each of the ESAs listed on Schedule 1, the ESA Customer party to which is either Kaiser Foundation Hospitals, a California nonprofit public benefit corporation, Kaiser Foundation Health Plan, Inc., a California nonprofit public benefit corporation, or either of their Affiliates.

118. "Knowledge" means (a) as to any Person other than a natural person, the actual knowledge (as well as any knowledge that would have reasonably been obtained after due inquiry) of such Person and its managers, directors, officers and employees who have responsibility for the transactions contemplated by this Agreement, and (b) in respect of any Person who is a natural Person, the actual knowledge (as well as any knowledge that would have reasonably been obtained after due inquiry) of such Person.

119. "kW" means kilowatt.

120. "kWh" means kilowatt-hour.

121. "Late Facility" means a Facility (or Delayed Ancillary Equipment) for which none of the events described in clauses (2) through (4) of the definition of Placed in Service has occurred on or before the Commencement of Operations Date Deadline.

122. "Late Facility Payment" means, in respect of any applicable Facility, the amount calculated pursuant to Section 2.11(8).

123. "Legal Requirement" means any law, statute, act, decree, ordinance, common law decision, rule, directive (to the extent having the force of law), tariff, order, treaty, code or regulation or any interpretation of any of the foregoing, as enacted, issued or promulgated by any Governmental Authority, including all amendments, modifications, extensions, replacements or re-enactments thereof, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

124. "Liens" means any lien, security interest, mortgage, hypothecation, encumbrance or other restriction on title or property interest.

125. "Liquid Assets" means the sum of Unrestricted Cash on Hand and accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business that are not ninety days or more past due.

126. "Long-Term Agreement" means, that certain long-term agreement, dated as of the First Agreement Date, between Seller and Buyer, as amended by its first amendment, dated August 30, 2019.

127. "Low-Pressure Gas Booster" means a component designed to increase the pressure of natural gas supplied to a Facility by the applicable local natural gas distribution company serving an applicable ESA Customer at the applicable Site to the level required for the ordinary operation of such Facility.

128. "Managers" means Operations Manager and Buyer Manager.

129. "Manufacturer's Warranty Period" means, for each Facility, the period beginning on the date the applicable Facility achieves the requirements of subsections (a), (c), (d), (e) and (f) of the definition of "Commencement of Operations" and ending on the first (1st) anniversary of the date of Commencement of Operations of such Facility.

130. "Material Adverse Effect" means, for any Person or Facility, as applicable, any change, effect or occurrence that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to (a) the business, earnings, assets, results of operations, property or condition (financial or otherwise) of such Person or Facility, as applicable, (b) the validity or enforceability of any Transaction Document, any applicable ESA, any applicable Site License or the transactions contemplated by this Agreement, or (c) any Person's (including any ESA Customer's) ability to perform its obligations under any Transaction Document, any applicable ESA, any applicable Site License (including any material adverse effect on any customer that has, or could reasonably be expected to have, a material adverse impact on such customer's ability to fully perform under any applicable ESA).

131. "Material Project Document" is defined in Part IV to Schedule 2.10.

132. "Maximum Aggregate Portfolio Purchase Price" means four hundred twelve million two hundred eighty-five thousand five hundred seven dollars ($412,285,507).

133. "Maximum Liability" means, with respect to (a) claims arising with respect to any Facility, the Aggregate Purchase Price for such Facility, and (b) claims arising with respect to more than one Facility, the total Aggregate Purchase Price of each of the Facilities with respect to which such claim arises.

134. "Milestone(s)" means each of the (i) Deposit Milestone, (ii) Delivery Milestone, and (iii) the achievement of Commencement of Operations.

135. "Milestone Date" means each of the (i) Deposit Date, (ii) Delivery Date, and (iii) the Commencement of Operations Date.

"Minimum Efficiency Level" means an Efficiency quotient of [***] ([***]%).

136. "Minimum kWh" means the product of (x) the number of hours in the applicable period *minus* the number of hours for each Facility, as of the last day of the applicable period following Commencement of Operations with respect to the applicable Facility, in each case to the extent not caused or contributed to by a breach of or failure to perform Seller's obligations hereunder (whether by Seller or its employees, agents, Service Providers or representatives), during which (i) the operation of such Facility was subject to an exclusion set forth in Section 5.6, (ii) such Facility was not delivering Energy during any period during which (A) the applicable ESA is subject to a day-for-day extension with respect to which the Warranty Period is subject to extension pursuant to Section 4.1(3) hereof, or (B) the applicable ESA Customer is liable for the payment of deemed delivered energy, and (iii) the period during which Seller ramps such Facility before or following the periods referred to in subsections (i)-(ii) of this definition, and (y) the Minimum Power Product for the applicable period. An example of a calculation of the Minimum kWh is set forth in Annex A.

"Minimum Power Product" means (1) when this term is used for the Performance Warranty, the aggregate System Capacity of the Bloom Systems in the Portfolio in kW for the applicable Calendar Quarter multiplied by [***] percent ([***]%), and (2) when this term is used for the Performance Guaranty, the aggregate System Capacity of the Bloom Systems in the Portfolio in kW for the applicable calendar year multiplied by [***] percent ([***]%), as may be updated pursuant to Section 5.2(5). An example of a calculation of the Minimum Power Product is set forth in Annex A.

137. "MIPA" means that certain Membership Interest Purchase Agreement, dated as of the First Agreement Date, between Seller and Buyer Parent.

138. "MIPA Representations" means Sections 3.1, 3.2(b), 3.20, 4.1, 4.2, 4.3(b), 4.7, and 4.9 of the MIPA.

139. "Mitigation Plan" is defined in Section 4.11.

140. "Module" has the meaning set forth in SH Sale Agreement or [***] Module Sale Agreement, as applicable.

141. "Moody's" means Moody's Investors Service, a division of Moody's Corporation.

142. "MW" means megawatt.

"NERC" means the North American Electric Reliability Corporation or any successor.

143. "New Customer" means a counter-party to an Energy Tolling Agreement that is not an ESA as of the Agreement Date. With respect to any applicable Facility, any mention of the "ESA Customer" in this Agreement shall be construed to include the ESA Customers as of the Agreement Date, and any New Customer approved by Buyer in its sole discretion, and any mention of an "ESA" in this Agreement shall be construed to mean the ESAs as of the Agreement Date and any Energy Tolling Agreement approved by Buyer in its sole discretion.

144. "New Customer Site" means a parcel of land licensed, or to be licensed, from a New Customer to Buyer under a site license agreement that is not a Site License as of the Agreement Date, together with all easements appurtenant, easements in gross, license agreements and other rights running in favor of Buyer which provide access to the applicable Facility. Any mention of the "Site" in this Agreement shall be construed to mean any New Customer Site that is approved by Buyer in its sole discretion, and any mention of a Site License in this Agreement shall be construed to mean the Site Licenses as of the Agreement Date and any site license approved by Buyer in its sole discretion.

145. "Non-Scheduled Facility" is defined in Section 2.9.

146. "Operations Manager" is defined in Section 4.6(1).

147. "Original PUMA" has the meaning set forth in the recitals.

148. "Party" and "Parties" have the meanings set forth in the preamble.

149. "Payment Certificate" means a Certificate of Deposit Milestone Completion, a Certificate of Delivery Milestone Completion, or a Certificate of COO, as applicable.

150. "Payment Notice" means a notice delivered from Seller to Buyer once per calendar month pursuant to Section 2.4(3) substantially in the form set forth in Exhibit H.

151. "Performance Guaranty" is defined in Section 5.2(1).

152. "Performance Guaranty Bank" means, with respect to the Performance Guaranty, a tracking account maintained by Seller setting forth the "banked" differences in kWh based on calculation of the Performance Guaranty with respect to the Portfolio during each calendar year of the Warranty Period.

"Performance Guaranty Payment Cap" means the product of (x) $[***] multiplied by (y) the aggregate Purchase Price paid by Buyer for all Facilities Purchased under this Agreement prior to the applicable date.

"Performance Guaranty Payment Rate" means $[***] per kWh.

153. "Performance Standards" is defined in Section 3.9.

154. "Performance Warranty" is defined in Section 5.4(1).

155. "Performance Warranty Bank" means, with respect to the Performance Warranty, a tracking account maintained by Seller setting forth the "banked" differences in kWh based on calculation of the Performance Warranty with respect to the Portfolio during the Warranty Period.

156. "Permits" means all Governmental Approvals that are necessary under applicable Legal Requirements or this Agreement to have been obtained at such time in light of the stage of development of the Scheduled Portfolio (and the applicable Facility and Site) to site, construct, install, test, operate, maintain, repair, own, use, remove, replace or decommission each Facility as contemplated in this Agreement.

157. "Permitted Liens" means any (a) Liens that are released or otherwise terminated at or prior to the date of achievement of the Purchase Date of the encumbered assets; (b) obligations or duties to any Governmental Authority arising in the ordinary course of business (including under licenses and Permits held by Buyer, to the extent de minimis in nature, and under all Legal Requirements); (c) obligations or duties under easements, leases or other property rights, in each case to the extent comprising a part of and referenced in the terms and conditions of the Site License, (d) Liens that arise from due and unpaid liabilities of Seller under this Agreement that are not dischargeable by timely payment of such liabilities (provided, that the circumstances described in clause (e)(ii) of this definition of "Permitted Liens" characterize any such Lien described in this clause (d)); (e) mechanics', materialmen's, repairmen's and other similar liens arising in the ordinary course of business or incident to the construction, improvement or restoration of a Facility in respect of obligations (i) that are not yet due or (ii) that are being contested in good faith by appropriate proceedings so long as (x) such proceedings shall not involve any material risk of forfeiture, sale or loss of any part of such Facility (y) do not exceed $1,000,000 in the aggregate and (z) the payment thereof is fully covered by cash reserves, bonds or other security reasonably acceptable to Buyer; and (f) any other Liens agreed to in writing by Seller and Buyer.

158. "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or governmental entity or any department or agency thereof.

159. "Placed in Service" means, (A) with respect to any Facility (other than any Delayed Ancillary Equipment that is not intended to generate electricity (e.g., a Battery Solution)) the completion and performance of all of the following activities: (1) obtaining the necessary Governmental Approvals for the operation of such Facility and the sale of power generated by the Facility in accordance with clause (4) of this definition, (2) satisfactory completion of critical tests necessary for the synchronization and interconnection of such Facility in accordance with clause (3) of this definition and for the proper operation of such Facility in accordance with clause (4) of this definition, (3) synchronization of such Facility onto the electric distribution and transmission system of the applicable Transmitting Utility and receipt of PTO, and (4) the commencement of regular, continuous, daily operation of such Facility and (B) with respect to any Delayed Ancillary Equipment that is not intended to generate electricity (e.g., a Battery Solution), such Delayed Ancillary Equipment is first placed in a condition or state of readiness and availability for its specifically assigned function, including by having been interconnected with the rest of such Facility; it being understood that (i) any references herein to "any of the events described in clauses (2) through (4) of the definition of 'Placed in Service'" shall be interpreted to mean the foregoing clause (B) with respect to any Delayed Ancillary Equipment and (ii) notwithstanding this definition, any reference to "Facility" (including in connection with the phrase "Placed in Service") shall include Delayed Ancillary Equipment where applicable.

160. "Placed in Service Date" means, with respect to a Facility, the date upon which such Facility is Placed in Service.

161. "Placed in Service Deadline" is defined in Section 3.4(1)(xii)(B).

162. "Portfolio" means, on an aggregate basis, all Bloom Systems, BOF and Ancillary Equipment to be owned by Buyer that are purchased pursuant to this Agreement and that have been incorporated into Facilities that have been, or are to be, Placed in Service and that have not thereafter been removed from the Portfolio and/or repurchased by Seller pursuant to the terms of this Agreement.

163. "Portfolio Warranty" is defined in Section 5.5(1).

164. "Power Module" means the complete assembly that contains the solid oxide fuel cell sub-system, contained by the hot box, that generates electrical power.

165. "PTO" means permission to interconnect a Facility with the distribution or transmission facilities of the Transmitting Utility.

166. "Pre-COO Equipment Warranty" is defined in Section 3.3(1).

167. "Pre-COO Equipment Warranty Period" is defined in Section 3.3(1).

"Preexisting Seller Agreement" means any Contract, such as a services agreement, sale agreement, energy services agreement, power purchase agreement, engineering, procurement and construction agreement, capital expenditures agreement, warranty agreement or otherwise, not

including an ESA or Site License, between an ESA Customer (or its predecessor) and any of Seller, an Affiliate of Seller or a financing partner of Seller, which Contract governed the ownership, sale, financing, installation, operation and/or maintenance of Bloom Systems (or similar or related equipment provided or serviced by Seller or its Affiliate or financing partner) or the use or purchase of electricity from Bloom Systems (or similar or related equipment), in each case, on such ESA Customer's (or its predecessor's) grounds.

168. "Pre-PIS Remarketing Activities" is defined in Section 4.8(2).

169. "Project Company" means a Person that is a wholly-owned subsidiary of Seller and an assignor (or intended assignor) under a Standby Facility Assignment Agreement, including but not limited to 2017 Fuel Cell Operating Company I, LLC, BDI and 2019 ESA Project Company, LLC.

170. "Project Information Spreadsheet" means, with respect to each Facility included in an Invoice Package, a certificate substantially in the form of Exhibit C covering such Facility.

171. "Project Model" means a financial model developed using the Base Case Model, as updated solely to the extent set forth in Section 2.6.

172. "Prudent Electrical Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by a significant portion of the grid-tied fuel cell electrical generation industry operating in the United States and/or approved or recommended by the NERC as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of electrical generating facilities, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC and all applicable Legal Requirements.

173. "Purchase" is defined in Section 2.5.

174. "Purchase Date" means, with respect to a Facility, the date that the conditions set forth in Section 2.5(2) (as such conditions may be waived by Buyer in its sole discretion) are satisfied with respect to such Facility, as such date is evidenced in the Bill of Sale for such Facility.

175. "Purchase Order" means Buyer's purchase order for a Facility or Facilities to be purchased by Buyer in substantially the form of Exhibit A.

176. "Purchase Price" means, with respect to a given Facility, the price for the design, installation and purchase of the Bloom Systems and BOF part of such Facility, based on the aggregate System Capacity thereof, as may be adjusted pursuant to Section 2.6.

177. "Purchase Price Adder(s)" means, with respect to a given Facility, the price for the design, installation and purchase of any Ancillary Equipment included in such Facility, as set forth on Schedule 2.3 hereto.

178. "QBR" means during the Warranty Term, a quarterly business review between Buyer (or its Affiliate) and Seller.

179. "Qualified Appraiser" means a nationally recognized third-party appraiser reasonably acceptable to Buyer and Seller which shall (i) be qualified to appraise power systems similar to the Bloom Systems, and experienced in such businesses in the general geographic region of the relevant Facility, and (ii) not be associated with either Buyer or Seller or any Affiliate thereof. If the Parties cannot agree on a third-party appraiser within fifteen (15) days of a Party invoking the Appraisal Procedure, then Marshall & Stevens Incorporated shall act as the Qualified Appraiser.

180. "Quarterly Report" means a report including (A) an Event Log, (B) a forecasted balance of the Performance Guaranty Bank to be calculated pursuant to Section 5.2, and (C) the balance of the Performance Warranty Bank pursuant to Section 5.4(4).

181. "Raw Data" means a series of measurements of energy generation or other delivery, taken at pre-defined 15-minute intervals of each day from a revenue grade meter, used to calculate energy generation and to permit simple integration of software applications that standardize invoicing for each ESA Customer.

182. "Reinstallation Deadline" is defined in Section 3.4(1)(xii)(B).

183. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Material.

"Representations Date" means the Agreement Date or, with respect to a Standby Facility, the applicable Assignment Date for such Standby Facility.

184. "Representatives" of a Party means such Party's authorized representatives, including its professional and financial advisors.

"Repurchase Value" means, with respect to any Facility (including Underperforming Facilities), the greater of (a) the Fair Market Value of such Facility (as determined under the Appraisal Procedure if Buyer and Seller cannot agree as to that Fair Market Value within ten (10) days), and (b) 100% of the Aggregate Purchase Price for such Facility reduced, on each anniversary of the Commencement of Operations Date of such Facility commencing with the second such anniversary, in a straight-line manner by a value equal to the fraction of (i) 1, over (ii) the term of the applicable ESA plus [***] ([***]), examples of which are set forth on Schedule 1.2.

185. "ROFR Threshold" is defined in Section 3.6(1).

186. "S&P" means Standard & Poor's Global Ratings, a division of S&P Global Inc.

187. "Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions.

188. "Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State or in any Presidential Executive Order, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b).

189. "Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

190. "SC Incentives" is defined in Section 3.2(4).

191. "SCADA" means the supervisory control and data acquisition systems.

192. "Scheduled Portfolio" means, as of a given date of determination, the Customers, Sites and Facilities set forth in Schedule 1 (excluding Non-Scheduled Facilities and, prior to the applicable Assignment Date, each Standby Facility), as may be amended from time to time.

193. "Second PUMA Consent" has the meaning set forth in the recitals.

194. "Seller" is defined in the preamble.

195. "Seller Attributes" is defined in Section 3.2(4).

196. "Seller Corporate Safety Plan" is set forth on Schedule 3.9.

197. "Seller Default" is defined in Section 12.1.

198. "Seller Deliverables" means, with respect to each Facility, the items listed in Schedule 3.4(1)(xv).

199. "Seller Facilities Assignee" is defined in Section 2.11(2).

200. "Seller Indemnitee" is defined in Section 13.2.

"Seller's Intellectual Property" is defined in Section 11.1.

"Seller's Offer Notice" is defined in Section 3.6(2).

201. "Service Fees" is defined in Section 4.3(1).

202. "Service Fee Adders" means an addition to the Service Fees for certain Facilities based on the Ancillary Equipment included in such Facilities, as set forth on Schedule 4.3(1) hereto, as the same may be updated from time to time by the mutual written agreement of the Parties.

203. "Service Provider" is defined in Section 14.14.

204. "Service Technicians" is defined in Section 4.2(4).

205. "Set-Off Amount" is defined in Section 4.3(6).

206. "SH Equipment" means [***] purchased by, and delivered to, the Seller in 2019, in each case identified with [***].

207. "SH Sale Agreement" means the Purchase and Sale Agreement, dated as of December 30, 2019, by and between Buyer and Seller.

208. "Shipment" means for each Bloom System, shipment of such Bloom System from Seller's manufacturing facility to the Site DDP (Incoterms 2010).

209. "Shipment Date" means for each Bloom System, the date of Shipment.

210. "Side Letter Agreement" means that certain Side Letter Agreement, dated as of the First Agreement Date, by and between Buyer and Seller.

211. "Site" means the parcel of land licensed from an ESA Customer to Buyer under a Site License and all easements appurtenant, easements in gross, license agreements and other rights running in favor of Buyer which provide access to the applicable Facility (including, as applicable, a New Customer Site).

212. "Site License" means each agreement between Buyer and an ESA Customer regarding the license or similar contractual arrangement providing Buyer with the right of access to a Site for the purposes of performing Buyer's obligations pursuant to the applicable ESA.

213. "Site Preparation Services" means preparing each Site for installation of a Facility, obtaining the required Permits to develop, construct, commission, operate and maintain the Facility, providing for natural gas interconnection facilities, the Electrical Interconnection Facilities and any other ancillary facilities and equipment between the Facility and the applicable Transmitting Utility and otherwise performing the tasks required to prepare each Site for the Facility to ultimately attain Commencement of Operations.

214. "Software" shall mean all computer software that is necessary for Buyer to own, operate, maintain and repair the Facilities in compliance with the terms of this Agreement, the ESAs, the Incentive Agreements and the Site Licenses.

215. "Software License" is defined in Section 11.2(1).

216. "[***] ESA" means the Energy Services Agreement, by and between 2017 Fuel Cell Operating Company I, LLC, a Delaware limited liability company (but, from and after the applicable Assignment Date, Buyer as assignee of such Project Company) and the [***], dated as of October 29, 2019.

217. "Spares" is defined in Section 2.8.

218. "Specifications" means the specifications for the Bloom Systems and Battery Solutions, as applicable, as set forth in Schedule 3.3(1).

"Standby Facility" means the facilities, equipment, sites and any other rights, interests and duties in respect of ESAs designated as "Standby Facilities" on Part I to Schedule 2.10.

"Standby Facility Assignment Agreement" means an assignment and assumption agreement in substantially the form attached hereto as Exhibit K, signed by Buyer, Seller and any of (as applicable) the Project Companies.

"Standby Facility Conditions" means, with respect to any Standby Facility, (A)(x) except in respect of [***] or the Home Depot ESA, execution and delivery by all required Persons of (i) to the reasonable satisfaction of Buyer, any required consents to assignment of the relevant customer agreements and related documents (including credit support provided pursuant to such customer agreements and agreements and other documents in respect of incentives, attributes and ancillary services), excluding, for the avoidance of doubt, those agreements set forth in Part III to the attached Schedule 2.10, and (ii) a Standby Facility Assignment Agreement or (y) in respect of each of [***] and the Home Depot ESA, to the satisfaction of Buyer in its sole discretion: (i) completion of due diligence and other review of such ESA, ESA Customer, Facilities, Sites and related matters by Buyer, (ii) execution and delivery by all required Persons of any required consents to assignment of the relevant customer agreements and related documents (including credit support provided pursuant to such customer agreements and agreements and other documents in respect of incentives, attributes and ancillary services), and (iii) execution and delivery by all required Persons of a Standby Facility Assignment Agreement and any consents, amendments or other modifications or supplements in respect of this Agreement requested by Buyer; (B) to the extent there are any amendments, modifications or supplements to any of the Material Project Documents listed in Part II of the attached Schedule 2.10 in respect of the applicable Standby Facility, Buyer's approval of such amendment, modification or supplement, in its sole discretion (provided, that Seller shall have delivered to Buyer true, correct and complete copies of any such amendments, modifications or supplements and an updated version of such Schedule 2.10); and (C) that the representations and warranties made by Seller in Part IV to Schedule 2.10 attached hereto and Section 8.1 hereunder shall be true and correct as of the applicable Assignment Date as though made on and as of such Assignment Date with respect to such Standby Facility.

219. "State Sanctions List" means a list that is adopted by any state Governmental Authority within the United States of America to the extent applicable to any Facility and pertaining to Persons that engage in investment or other commercial activities in Iran or any other country that is a target or Sanctions.

220. "System Attributes" means, with respect to a given Facility, any environmental attributes, energy credits, incentives or other rights, credits, benefits or interests arising in connection with

the ownership or operation of such Facility (including capacity attributes and ancillary services). For the avoidance of doubt, System Attributes do not include the ITC.

221. "System Capacity" means, with respect to a Bloom System, the "System Capacity" set forth on the applicable specification sheet provided by the manufacturer of such Bloom System. The aggregate System Capacity of the Bloom Systems comprising each Facility shall (i) be reflected in the Bill of Sale delivered by Seller to Buyer with respect to such Facility and (ii) shall not exceed the System Capacities for such Bloom Systems set forth in the applicable ESAs and the Base Case Model and subsequent Project Models.

222. "[***] ESA" means the Energy Services Agreement, by and between 2019 ESA Project Company, LLC, a Delaware limited liability company (but, from and after the applicable Assignment Date, Buyer as assignee of such Project Company) and [***], effective as of November 22, 2019.

"[***] Equipment" means "Customer Equipment" as defined in the Energy Services Agreement, dated as of December 19, 2019, by and between Buyer, as assignee of BDI, a Delaware corporation, and [***].

223. "Tax" (and, with correlative meaning, "Taxes" and "Taxable") means:

(1) any taxes, customs, duties, charges, fees, levies, penalties or other assessments imposed by any federal, state, local or foreign taxing authority, including, but not limited to, income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, net worth, employment, occupation, payroll, withholding, social security, alternative or add-on minimum, ad valorem, transfer, stamp, or environmental tax, or any other tax, custom, duty, fee, levy or other like assessment or charge of any kind whatsoever, together with any interest, penalty, addition to tax, or additional amount attributable thereto; and

(2) any liability for the payment of amounts with respect to payment of a type described in clause (i), including as a result of being a member of an affiliated, consolidated, combined or unitary group, as a result of succeeding to such liability as a result of merger, conversion or asset transfer or as a result of any obligation under any tax sharing arrangement or tax indemnity agreement.

224. "Tax Equity Items" means each of the items listed on Schedule 1.1.

225. "Tax Loss" means any and all federal income tax detriments suffered by Buyer, determined assuming a corporate tax rate equal to the Corporate Tax Rate and including any loss, disallowance, reduction of, recapture, or inability to claim, in each case, in whole or in part, the ITC or any federal income tax depreciation benefit, plus any penalties, interest or additions to tax relating thereto.

226. "Tax Proceeding" is defined in Section 10.3(5).

227. "Tax Records" means any and all records, reports or other documentation required to be maintained by Seller with respect to each Facility (A) under Sections 6.1(1)(i) and (ii), to support (I) the ITC eligibility of such Facility, (II) the date upon which such Facility was "placed in service" within the meaning of Section 48(a) of the Code, (III) the date upon which the construction of such Facility began within the meaning of Section 48(a)(6) of the Code and Notice 2018-59 and (IV) the determination that such Facility has not been taken out of service or otherwise subject to recapture of the ITC pursuant to Section 50 of the Code; and (B) under Section 4.2(3), to support compliance with the so-called "80/20 rule" in accordance with the principles set forth in Revenue Ruling 94-31.

228. "Term" means the period which (a) shall commence on the First Agreement Date and (b) shall, unless terminated earlier under ARTICLE XII of this Agreement or unless extended by mutual agreement of the Parties, terminate on the date that is the last day of the Warranty Period for the last Facility subject to the Warranty Period.

"[***] Equipment" means "Customer Equipment" as defined in the Energy Services Agreement, dated as of December 31, 2019, by and between Buyer, as assignee of BDI, a Delaware corporation, and [***], as amended by Amendment No. 1 to Energy Services Agreement, dated as of March 19, 2020.

229. "Third Party Claim" means any claim, action, or proceeding made or brought by any Person who is not (a) a Party to this Agreement, or (b) an Affiliate of a Party to this Agreement.

230. "Third Party Consents" means all consents, waivers, approvals and permissions that are necessary to have been obtained from any Persons (other than Buyer or any Governmental Authority), in each case, under applicable Facility Contracts, at such time in light of the stage of development of the Scheduled Portfolio (and the applicable Facility and Site) to site, construct, install, test, operate, maintain, repair, own, use, remove, replace or decommission each Facility as contemplated in this Agreement, in each case in accordance with such applicable Contracts so as not to cause any breach, violation, inaccuracy or conflict thereunder or to demonstrate such Person's confirmation, ratification or other approval of the achievement of any milestone, however defined, under such Contract; provided, for the avoidance of doubt, that Governmental Approvals and Permits shall not be deemed to be Third Party Consents hereunder, and provided, further, PTO is not a Third-Party Consent.

231. "Third Party Warranty" is defined in Section 3.7.

232. "Tolling Rate" means with respect to any period and any ESA, the specified rate used for the supply of electricity or for the conversion of natural gas into electricity in the calculation of the fees owed to Buyer by the ESA Customer pursuant to such ESA. Tolling Rates are set forth on a dollar-per-kWh ($/kWh) basis or a dollar-per-MMBtu ($/MMBtu) basis, as indicated in the applicable ESA.

233. "Training Materials" is defined in Section 14.15.

234. "Tranche" means an amount of Facilities, measured on the basis of the aggregate System Capacity of the Bloom Systems comprising such Facilities (in kW), for which Seller is invoicing Buyer pursuant to Section 2.3(1).

235. "Tranche Notice" is defined in Section 2.2.

"Transaction" is defined in Section 10.1.

236. "Transaction Documents" means this Agreement, the MIPA, the Long-Term Agreement, the Administrative Services Agreement, the Side Letter Agreement, the Agreement Date Consent and the Payment Certificates (in each case, notwithstanding whether effective on or prior to the Agreement Date).

237. "Transmitting Utility" means, with respect to a Facility, the local electric utility company in whose territory the Facility is located.

238. "Underperforming Facility" means any Facility that fails to deliver, in any Calendar Quarter which caused the Portfolio to fail to satisfy the Performance Warranty, a number of kWh greater than or equal such Facility's *pro rata* portion of the Minimum kWh in such Calendar Quarter.

239. "Unrestricted Cash on Hand" means book cash and Cash Equivalent Investments of the Seller held in accounts that are not subject to any restriction on use or designated for a particular purpose or any Lien; provided that the amount of such cash and Cash Equivalent Investments shall have been reconciled to the books and records (including bank statements) of the Seller in a manner reasonably acceptable to the Buyer.

240. "UPM" means an uninterruptible ultracapacitor to be included in certain of the Facilities.

"[***]" means [***].

"[***] ESAs" means, as amended, assigned, modified or supplemented from time to time (i) the Master Fuel Cell Power & Services Agreement ([***]), dated as of December 31, 2019, by and between Buyer, as assignee of BDI, as provider, and [***] (referencing in its Schedule 2.2 [***]) and (ii) the Master Fuel Cell Power & Services Agreement, dated as of December 31, 2019, by and between Buyer, as assignee of BDI, as provider, and [***] (referencing in its Schedule 2.2 [***]).

241. "Warranty Correction Date" means the date on which Seller has completed the repair, modification or replacement of a Facility or Facilities or component thereof under the Efficiency Warranty or the Performance Warranty, as notified to Buyer in writing.

242. "Warranty Period" means, for each Facility, the Manufacturer's Warranty Period, as extended or renewed by Buyer pursuant to Section 4.1(2) or Section 4.1(3), in which case the Warranty Period shall mean the specified end date of the Warranty Period as so extended or

renewed, unless the applicable ESA expires or terminates prior to such date, in which case the Warranty Period shall end on the date on which such ESA expires or terminates. For the avoidance of doubt, the Warranty Period shall in all events end, with respect to each Facility, at the expiration of the Extended Warranty Period.

243. "Warranty Specifications" means the Performance Warranty, the Performance Guaranty, and the Efficiency Warranty.

Section a. Other Definitional Provisions.

(i)All exhibits, annexes, and schedules attached to this Agreements are incorporated herein by this reference and made a part hereof for all purposes. References to sections, exhibits, annexes and schedules are, unless otherwise indicated, references to sections, exhibits, annexes and schedules to this Agreement. References to a section shall mean the referenced section and all sub-sections thereof. Any exhibit, annex, or schedule defined or referred to herein means (unless otherwise indicated herein) such exhibit, annex or schedule as from time to time amended, amended and restated, modified or supplemented in writing.

(ii)As used in this Agreement and in any certificate or other documents made or delivered pursuant hereto or thereto, financial and accounting terms not defined in this Agreement or in any such certificate or other document, and financial and accounting terms partly defined in this Agreement or in any such certificate or other document to the extent not defined, will have the respective meanings given to them under GAAP. To the extent that the definitions of financial and accounting terms in this Agreement or in any such certificate or other document are inconsistent with the meanings of such terms under GAAP, the definitions contained in this Agreement or in any such certificate or other document will control.

(iii)The words "hereof", "herein", "hereunder", and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement. Section references contained in this Agreement are references to Sections in this Agreement unless otherwise specified. The term "including" will mean "including without limitation".

(iv)The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(v)Any agreement or instrument defined or referred to herein or in any instrument or certificate delivered in connection herewith means (unless otherwise indicated herein) such agreement or instrument as from time to time amended, amended and restated, modified or supplemented in writing and includes (in the case of agreements or instruments) references to all written attachments thereto and written instruments incorporated therein.

(vi)Any references to a Person are also to its successors and permitted assigns.

(vii)References to any statute, code or statutory provision are to be construed as a reference to the same as it exists and is updated from time to time, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires.

(viii)Reference to days shall mean calendar days unless the term "Business Day" is used.

(ix)The singular includes the plural and the plural includes the singular;

(x)In the computation of periods of time from a specified date to a later specified date, the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including"; and

(xi)The word "including" shall be construed as "including without limitation".

ARTICLE II.

PURCHASE AND SALE

Section b. Appointment of Seller

. Subject to Section 14.13, Buyer hereby appoints Seller to act as Buyer's provider of Bloom Systems, Ancillary Equipment, BOF, Installation Services, and Facility Services, and Seller hereby accepts such appointment and agrees to provide all such Bloom Systems, Ancillary Equipment, BOF, Installation Services, and Facility Services, inclusive of all labor, equipment, and tests therefor, in accordance with the terms and conditions set forth in this Agreement. Seller's entire consideration for supplying the Bloom Systems, Ancillary Equipment and BOF shall be the Equipment Fee portion of the Aggregate Purchase Price for such Facility, and Seller's entire consideration for supplying the Installation Services with respect to a Facility through Commencement of Operations for such Facility shall be the Installation Fee portion of the Aggregate Purchase Price for such Facility, and in each case Seller shall bear the financial risk regarding any cost overruns, claims from subcontractors and other liabilities, in accordance with the terms hereof. Following Commencement of Operations with respect to a Facility, Seller shall be entitled to Services Fees in respect of Facility Services rendered with respect to such Facility as described in Section 4.3.

Section c. Purchase Orders

. In connection with the First Agreement Date and thereafter not later than fifteen (15) Business Days prior the first date of each Calendar Quarter, Seller will provide to Buyer a tranche notice substantially in the form hereto attached as Exhibit B (each, a "Tranche Notice"), which shall contain (a) the aggregate System Capacity of the Facilities that Seller reasonably expects will satisfy the applicable Deposit Milestones in such Calendar Quarter, and (b) a draft Purchase Order from Buyer for such Facilities. So long as no Seller Default or Funding Suspension Event described in clause (A) or clause (B) of the definition thereof has occurred and is continuing hereunder, Buyer will, within five (5) Business Days of such notice, submit to Seller an executed

Purchase Order for such Facilities. So long as no Buyer Default has occurred and is continuing hereunder, Seller shall promptly accept each such Purchase Order by countersigning and returning it to Buyer; provided that the failure of Seller to countersign or return to Buyer a Purchase Order shall not invalidate such Purchase Order, and Seller shall be obligated to deliver the Bloom Systems, Ancillary Equipment and BOF comprising such Facility under such Purchase Order as contemplated by this Agreement.

Section d. Invoicing of Purchase Price

. Seller shall invoice Buyer hereunder as follows:

On or after the Deposit Date for a Tranche, a portion of the Purchase Price for such Tranche in the amount of [***] dollars per kW ($[***]/kW), calculated on the basis of the System Capacity of the Bloom Systems to be included in the Facilities comprising such Tranche (and not calculated in any way to include any Purchase Price Adders).

(i)On or after the Delivery Date of each Facility,

in the event that such Facility was previously included in a Tranche for which Buyer has made payment of a portion of the Purchase Price, [***] dollars per kW ($[***] /kW) for each Bloom System in such Facility calculated based on the System Capacity of such Bloom Systems, *plus* (2) [***] percent [***]% of the Purchase Price Adders (excluding the Purchase Price Adder for any Delayed Ancillary Equipment) applicable to such Facility, if any; or

subject to Section 2.4(1)(ii)(B), (1) in the event that such Facility was not previously included in a Tranche for which Buyer has made payment of a portion of the Purchase Price, [***] dollars per kW ($[***]/kW) for each Bloom System in such Facility calculated based on the System Capacity of such Bloom System, plus (2) [***] percent ([***]%) of the Purchase Price Adders (excluding the Purchase Price Adder for any Delayed Ancillary Equipment) applicable to such Facility, if any.

(ii)On or after the Commencement of Operations Date for each Facility, (1) the remainder of the Aggregate Purchase Price (but not including the Purchase Price Adder for, or Taxes with respect to, any Delayed Ancillary Equipment), if any, not previously paid, as may be calculated, and adjusted from time to time, in accordance with Section 2.6, for such Facility, *including* (2) one hundred percent (100%) of the Taxes to be paid by Buyer pursuant to Section 2.3(6) for such Facility (except for Taxes with respect to any Delayed Ancillary Equipment).

(iii)On or after (i) the Delivery Date for Delayed Ancillary Equipment, the Purchase Price Adder for such Delayed Ancillary Equipment and (ii) the Commencement of Operations Date for Delayed Ancillary Equipment, the remainder of the Aggregate Purchase Price, if any, not

previously paid for such Delayed Ancillary Equipment, as adjusted from time to time in accordance with Section 2.6, *including* one hundred percent (100%) of the Taxes solely with respect to such Delayed Ancillary Equipment, to be paid by Buyer pursuant to Section 2.3(7).

(iv)Each invoice issued pursuant to Sections 2.3(1) through 2.3(3), with respect to each Facility covered thereunder, shall contain the documents and other information described in the following clauses (i) through (vii) (such documents and other information, or (if applicable) the documents and other information described in Section 2.3(6)(i) through (iii), issued in respect of any invoice are collectively an "Invoice Package"):

i.a Certificate of Deposit Milestone Completion, a Certificate of Delivery Milestone Completion, and/or a Certificate of COO, as applicable;

ii.a completed Project Information Spreadsheet, which shall include:

a. Buyer's Purchase Order number;

b. the Tranche (indicated by the invoice date) in which such Facility is deemed to be included;

c. the Site on which such Facility will be installed;

d. the serial number and System Capacity of each Bloom System comprising such Facility;

e. a components list of all Ancillary Equipment to be installed in connection with such Facility, if any;

f. the Aggregate Purchase Price, including details of (x) all amounts previously paid towards or credited against the Purchase Price and any Purchase Price Adders (excluding any Delayed Ancillary Equipment), if applicable, and (y) all amounts remaining due and payable on the Aggregate Purchase Price, including Taxes;

g. other than with respect to Facilities that are reasonably expected to be Placed in Service on or before December 31, 2019, a detailed description of (i) the year "construction began", (ii) the method used for the "beginning of construction" with respect to such Facility, (iii) for each Facility that began construction through the incorporation of (A) Modules that were purchased by the Company under SH Sale Agreement, (B) Modules described in [***] Module Sale Agreement, and/or (C) SH Equipment, (x) the type and serial numbers of such Modules and/or SH Equipment (or, in the case of SH Equipment similar identifying information on a batch basis in lieu of a serial number), and (y) the ratio of the cost of such Modules and/or SH Equipment over the aggregate cost of such Facility, expressed as a percentage (which percentage will be at least

[***]%), and (iv) for each Facility that began construction by a method other than as set forth in the foregoing clause (iii), the method used for the "beginning of construction" with respect to such Facility, and evidence satisfactory to the Buyer of the factual means by which Seller complied with such method;

h. the Delivery Date or expected Delivery Date, as applicable;

i. the Purchase Date or expected Purchase Date, as applicable;

j. the Commencement of Operations Date or expected Commencement of Operations Date, as applicable;

iii. solely with respect to any invoice issued pursuant to Section 2.3(2) or Section 2.3(3), a list of, and copies of, all then applicable Permits, PTO (only pursuant to Section 2.3(3), to the extent PTO is memorialized in writing), other Governmental Approvals, Third Party Consents, Incentive Agreements, Interconnection Agreements and other Facility Contracts, to the extent not yet delivered and required to have been obtained as of such date;

iv. a waiver and release of liens by Seller as general contractor hereunder, conditioned only upon final payment of the Aggregate Purchase Price for the Facility, substantially in the statutorily prescribed form required by the applicable state Governmental Authority in which the Site is located (and, if there is no such prescribed form, then in form and substance reasonably satisfactory to Buyer);

v. with respect to any Facility that is related thereto, the applicable Tax Equity Item;

vi. solely with respect to any invoice issued pursuant to Section 2.3(2), each of the Delivery Milestone Deliverables set forth on Schedule 2.5 to the extent not yet delivered; and

vii. solely with respect to any invoice issued pursuant to Section 2.3(3), the Seller Deliverables identified on Schedule 3.4(1)(xv) as required to be delivered before the Commencement of Operations Date to Buyer and each of the COO Milestone Deliverables set forth on Schedule 2.5 to the extent not yet delivered.

(v) Each invoice and Invoice Package delivered pursuant to Section 2.3(4), with respect to the Delayed Ancillary Equipment covered thereunder, shall contain the documents and other information described in the following clauses (i) through (iii):

viii. a Certificate of Delivery Milestone Completion, and/or a Certificate of COO, as applicable;

ix. a completed Project Information Spreadsheet, which shall include:

a. Buyer's Purchase Order number;

b. the Site on which such Delayed Ancillary Equipment will be installed;

c. a components list of such Delayed Ancillary Equipment,

d. with respect to the Facility of which the Delayed Ancillary Equipment comprises a part, the Aggregate Purchase Price of such Facility, including details of (x) all amounts previously paid towards or credited against the Purchase Price and any Purchase Price Adders, if applicable, (y) the Purchase Price Adder for the Delayed Ancillary Equipment, and (z) all amounts remaining due and payable on the Aggregate Purchase Price, including Taxes;

e. the Delivery Date;

f. the Purchase Date or expected Purchase Date, as applicable;

g. the Commencement of Operations Date or expected Commencement of Operations Date, as applicable;

h. the increased Tolling Rate in the related ESA contemplated in Section 2.4(1)(iv); and

x.a waiver and release of liens by Seller as general contractor hereunder, conditioned only upon final payment of the Aggregate Purchase Price for such Delayed Ancillary Equipment (substantially in the statutorily prescribed form required by the applicable state Governmental Authority in which the Site is located (and, if there is no such prescribed form, then in form and substance reasonably satisfactory to Buyer)).

(vi)Buyer shall pay all state and local sales, use or other transfer Taxes (other than state real estate or controlling interest transfer Taxes) required to be paid by Buyer and attributable to the transfer of the Facility to Buyer, except that Seller shall be responsible for and pay any Taxes arising as a result of any components of such Facility or any Facility being acquired from a source outside of the United States; provided that any Taxes that are required by applicable law to be paid prior to the date upon which Buyer is obligated to pay such Taxes pursuant to Section 2.3(3) or Section 2.3(4), as applicable, shall be paid by Seller when due and shall be reimbursed by Buyer in accordance with (i) this Section 2.3(7) and (ii) Section 2.3(3) or Section 2.3(4), as applicable.

Section e. Payment of Purchase Price

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(i)Buyer shall pay all outstanding invoices in respect of any portion of the Aggregate Purchase Price (including the Purchase Price Adder for Delayed Ancillary Equipment) on a monthly basis in accordance with the terms of this Section 2.4; *provided,* (x) Buyer's obligation to pay any amounts due and payable under any such invoice shall be subject to the satisfaction by Seller of the following conditions precedent and (y) Buyer shall have no obligation to pay any portion of the Aggregate Purchase Price in respect of a Delayed Facility (or Component thereof) at any time it appears on the Delayed Facilities List:

xi.with respect to an invoice delivered pursuant to Section 2.3(1) and Section 2.3(5) for a Tranche that reached the Deposit Milestone Date, (A) Seller shall have executed and delivered a complete Certificate of Deposit Milestone Completion, together with the remaining Invoice Package, to Buyer, (B) Seller shall have not included in such invoice any amounts for Purchase Price Adders or Taxes, (C) no Funding Suspension Event shall have occurred and remains un-remedied (provided, to the extent this condition (C) fails to be satisfied solely because of a Funding Suspension Event described in clause (C) of the definition thereof, this condition (C) shall only affect any Facilities to which such described Funding Suspension Event is then applicable), and (D) as of the last day of the month most recently ended, (I) [***] and (II) [***], in each case as certified by the Chief Financial Officer of Seller in a written certificate that sets forth calculations of each of the foregoing, together with reasonably supporting detail, in the form attached hereto as Exhibit M;

xii.with respect to an invoice delivered pursuant to Section 2.3(2) and Section 2.3(5) for a Facility that reached the Delivery Date, (A) Seller shall have executed and delivered a completed Certificate of Delivery Milestone Completion, together with the remaining Invoice Package, to Buyer, (B) if such Facility was not previously included in a Tranche for which Buyer has made an earlier payment of a portion of the Purchase Price as described in Section 2.3(2)(ii), Buyer shall have consented to such invoice, (C) Seller shall have not included in such invoice any Taxes, and (D) no Funding Suspension Event shall have occurred and remains un-remedied (provided, to the extent this condition (D) fails to be satisfied solely because of a Funding Suspension Event described in clause (C) of the definition thereof, this condition (D) shall only affect any Facilities to which such described Funding Suspension Event is then applicable);

xiii.with respect to an invoice delivered pursuant to Section 2.3(3) and Section 2.3(5) for a Facility that reached the Commencement of Operations Date, (A) Seller shall have executed and delivered a completed Certificate of COO, together with the remaining Invoice Package, to Buyer, and (B) no Funding Suspension Event described in clause (C) of the definition thereof shall have occurred with respect to an applicable Facility and remains un-remedied; *provided* the Parties will work in good faith to resolve how to fund the unfunded portion of the Aggregate Purchase Price;

xiv.with respect to an invoice delivered pursuant to Section 2.3(4) and Section 2.3(6) for Delayed Ancillary Equipment that reached the Delivery Date, (A) the related ESA

shall provide for an increased Tolling Rate that reflects the addition of such Delayed Ancillary Equipment, which increase is legally enforceable against the applicable ESA Customer, (B) Seller shall have executed and delivered a completed Payment Certificate, together with the remaining Invoice Package, to Buyer, (C) Seller shall have not included in such invoice any Taxes, and (D) no Funding Suspension Event shall have occurred and remains un-remedied (provided, to the extent this condition (D) fails to be satisfied solely because of a Funding Suspension Event described in clause (C) of the definition thereof, this condition (D) shall only affect any Facilities to which such described Funding Suspension Event is then applicable); and

xv. with respect to an invoice delivered pursuant to Section 2.3(4) and Section 2.3(6) for Delayed Ancillary Equipment that reached the Commencement of Operations Date, (A) Seller shall have executed and delivered a completed Certificate of COO, together with the remaining Invoice Package, to Buyer, and (B) no Funding Suspension Event described in clause (C) of the definition thereof shall have occurred with respect to an applicable Facility and remains un-remedied.

(ii) Not less than ten (10) Business Days prior to the Invoice Due Date for all invoices to be paid by Buyer for the applicable calendar month, and in no event more than one time during a single calendar month (except as otherwise set forth in this Section 2.4(2)), Seller shall deliver to Buyer (A) a draft Payment Notice setting forth the anticipated aggregate amounts due and payable towards the Aggregate Purchase Price for the Tranche and/or all Facilities included in such Payment Notice to be paid in such month and (B) a draft invoice and draft Invoice Package (containing as many of the documents and information comprising such Invoice Package as Seller is able to provide as of such date) for such Tranche and/or Facilities; provided, that not more than one time per Calendar Quarter, Seller may provide written notice to Buyer of an Additional Invoice Due Date no later than ten (10) Business Days prior to such Additional Invoice Due Date (and Seller shall make all deliveries listed in clauses (A) and (B) of this Section 2.4(2) not later than (10) Business Days prior to such Additional Invoice Due Date for all invoices applicable thereto). If Buyer has no comments or objections on such draft Payment Notice, invoice or Invoice Package, it shall be deemed to have provided consent as required under Section 2.4(1)(ii)(B) for invoices delivered as described therein.

(iii) Not less than three (3) Business Days prior to the applicable Invoice Due Date or Additional Invoice Due Date, for all invoices to be paid by Buyer for such calendar month (or applicable to such Additional Invoice Due Date), Seller shall deliver to Buyer:

xvi. an executed Payment Notice, setting forth the actual aggregate amounts due and payable towards the Aggregate Purchase Price for the Tranche and/or all Facilities included in such Payment Notice, which amount shall in no event exceed the amount notified by Seller to Buyer in such applicable draft Payment Notice; and

xvii. a final invoice and Invoice Package, including Payment Certificates evidencing the achievement of all applicable Milestones achieved as of such date for all Milestones

achieved by the applicable Tranche and/or Facilities; provided, that Tranches (or portions thereof) and/or Facilities that were not included in the applicable draft Payment Notice shall not be added to the executed Payment Notice without the prior written consent of Buyer.

(iv)Subject to Seller's delivery of a complete invoice, Invoice Package and Payment Notice pursuant to Section 2.4(3), Buyer shall, on the applicable Invoice Due Date or Additional Invoice Due Date indicated in the executed Payment Notice delivered by Seller, make the applicable payment towards the Aggregate Purchase Price for each Tranche and/or Facility included in such Payment Notice for which Seller has delivered Payment Certificates, an invoice and the Invoice Package evidencing the satisfaction of the applicable Milestone(s).

(v)If Buyer defaults in any payment when due for any Facility (other than with respect to amounts being disputed in good faith), Seller may, on not less than five (5) Business Days prior notice to Buyer, at its option and without prejudice to its other remedies (until all such outstanding payment defaults have been cured), (i) suspend performance of its obligations hereunder for such Facility, or defer delivery of such Facility to Buyer and (ii) require that the payment of the portion of the Aggregate Purchase Price for future Facilities required under Section 2.3(2) and Section 2.3(2)(ii) above be made immediately prior to the Shipment of the applicable Bloom Systems, but Seller shall not be able to otherwise suspend performance of its obligations hereunder for other Facilities for which no such default exists.

(vi)With respect to any payment due from one party to the other pursuant to this Agreement, unless being contested in good faith, interest shall accrue daily at the lesser of a monthly rate of one percent ([***]%) or the highest rate permissible by law on the unpaid balance.

(vii)If an ESA is terminated with respect to a Facility, after such Facility reaches the Delivery Milestone, but prior to the date such Facility achieves any of the events described in clauses (2) through (4) of the definition of "Placed in Service", then (at Buyer's sole discretion) such Facility shall be deemed to be removed from the Scheduled Portfolio, and Seller shall (A) refund any payments previously paid by Buyer for such Facility, in accordance with Section 2.6 and (B) remove such Facility in accordance with Section 4.10(1). If, as of the Commencement of Operations Date Deadline, there exist any Late Facility or Late Facilities (including any applicable Delayed Ancillary Equipment), then (at Buyer's sole discretion) (I) Seller will refund to Buyer any payments made under Section 2.4 in respect of such Late Facility to Buyer in accordance with Section 2.11(8), together with such other amounts as are required pursuant to Section 2.11(8), and (II) such Late Facility or Late Facilities shall, if any Component thereof has been Delivered, be subject to (but without duplication of any payment obligations set forth in) Buyer's rights and remedies pursuant to Section 4.10(1) (provided, that without limiting any of Buyer's other rights and remedies pursuant to Section 4.10(1), Buyer shall not exercise the remedy described in Section 4.10(1)(iv) with respect to an affected Facility during ongoing negotiations of a 2020 Facilities Assignment in respect of such Facility, as long as consummation of such 2020 Facilities Assignment without unreasonable delay remains reasonably likely). Neither Section 12.6 nor Section 12.9 shall provide any excuse from, or justification for delay or

reduction of, the obligations of Seller under this Section 2.4(7) (excluding, if applicable, to the extent and for the duration necessary, Seller's obligations under Section 4.10(1)(iv)). With respect to a given Facility, payments made hereunder with respect to the Equipment Fee for each Facility shall be, from and after the Placed in Service Date, irrevocable and non-refundable, and non-cancellable, except as expressly set forth herein. This Section 2.4(7) shall not limit any of Buyer's rights and remedies pursuant to Section 2.11 or Section 3.4(1)(xii).

(viii)The Aggregate Purchase Price for a Facility shall be allocated, for purposes of Section 1060 of the Code and the Treasury Regulations thereunder, consistently with the cost segregation allocation information provided in the Appraisal with respect to such Facility and in accordance with Treasury Regulations Section 1.1060-1(e). The Parties shall make consistent use of the cost segregation allocation information reflected in the Appraisal for all income Tax purposes and in all filings, declarations and reports with the IRS (or where applicable, state and local taxing authorities) in respect thereof, including any reports that may be filed under Section 1060 of the Code, and in any proceeding related to the determination of any Tax, neither Buyer nor Seller shall contend or represent that such is not a correct allocation for income Tax purposes. The Parties shall allocate and report to the appropriate taxing authorities any adjustments to the Purchase Price, including as a result of any payment made subsequent to the applicable Purchase Date pursuant to Section 2.3(3), any adjustments pursuant to Section 2.6 or any payment for indemnification hereunder, in accordance with Treasury Regulations Section 1.1060-1(e) and this Section 2.4(8).

Section f. Purchase and Sale of Facilities

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(i)Upon the satisfaction of the conditions set forth in Section 2.5(2) (as may be waived by Buyer in its sole discretion) with respect to a Facility, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase, assume and acquire from Seller, all of Seller's right, title and interest in and to such Facility, to the extent not already purchased under SH Sale Agreement, effective as of the Purchase Date (a "Purchase").

(ii)Conditions Precedent to the Purchase Date. Buyer's obligation to purchase, assume, and acquire a Facility from Seller shall be subject to Seller's satisfaction, as of the Purchase Date, of the following conditions precedent (as may be waived by Buyer in its sole discretion):

xviii.(x) None of the events described in clauses (2) through (4) of the definition of "Placed in Service" shall have commenced or occurred, (y) the representation and warranty made by Seller in Section 8.1(12)(i) shall be true and correct as though made on the Purchase Date and (z) Seller shall have performed all of its obligations under Section 3.4(1)(i);

xix.Seller shall have delivered a Bill of Sale for such Facility to Buyer, dated as of the Purchase Date for such Facility;

xx.Seller shall have delivered all invoices for such Facility in respect of the Deposit Date and the Delivery Date, together with the respective Invoice Packages;

xxi.Such Facility is not at such time on the Delayed Facilities List; and

xxii.Seller has not been notified that a Funding Suspension Event described in clause (C) of the definition thereof and applicable to tax equity investor capital contributions in respect of such Facility's Commencement of Operations Date in the applicable organizational documents has occurred or is, in the sole discretion of Buyer, reasonably likely to occur with respect to the applicable Facility and remain un-remedied as of the date last indicated by Seller to be the anticipated Commencement of Operations Date in respect of such Facility.

Section g. Purchase Price Adjustment for Portfolio Price Changes.

(i)From the First Agreement Date until the expiration of the last Calendar Quarter of 2020, subject to Section 2.6(5), no less than ten (10) Business Days prior to the end of each such Calendar Quarter (for purposes of this Section 2.6, the "Adjustment Quarter"), Seller shall deliver to Buyer a Project Model that reflects (i) with respect to each Facility that has achieved Commencement of Operations during and prior to the Adjustment Quarter, the final Aggregate Purchase Price of such Facility, (B) the dates on which Buyer paid each portion of the Purchase Price, Purchase Price Adders, if any, Purchase Price Adders for Delayed Ancillary Equipment, if any, and Taxes for such Facility, the amount of such payments, and any adjustments thereto, (C) such Facility's actual Commencement of Operations Date, and (D) the installation and commissioning of any Delayed Ancillary Equipment with respect to a Facility that is or will be performed after such Facility's Commencement of Operations Date, with respect to each Facility that Seller reasonably expects to achieve Commencement of Operations following the delivery of such Project Model, (A) the dates on which Buyer has paid, or is expected to pay, each portion of the Purchase Price, the Purchase Price Adders, if any, Purchase Price Adders for Delayed Ancillary Equipment, if any, and Taxes for such Facility and the amount of such payments, and (B) the date on which Seller reasonably expects (x) such Facility to achieve its Delivery Milestone and Commencement of Operations and (y) any Delayed Ancillary Equipment in respect of such Facility to achieve its Delivery Milestone and Commencement of Operations, the addition or removal of any Facilities or parts thereof as may be required pursuant to amendments to ESAs (or otherwise, including by operation of Sections 2.9, 4.7 or 4.8) during such Adjustment Quarter, any refunds required pursuant to Section 2.4(7) or Section 3.4(1)(xii)(B) (it being understood that neither Section 12.6 nor Section 12.9 shall provide any excuse from, or justification for delay or reduction of, such refunds), (v) any adjustments made pursuant to Section 5.2(5), if applicable, (vi) any adjustments to Tolling Rates in ESAs, (vii) any adjustments to the System Capacity of any Facility, (viii) any reduction of the Aggregate Purchase Price of any Facility pursuant to Section 2.6(3), (ix) if the Project Information Spreadsheet indicates (or will indicate when delivered) that construction of such

Facility within the meaning of Notice 2018-59 did not begin before January 1, 2020, a corresponding adjustment to the amount of the ITC percentage associated with such Facility, (x) any reimbursements or adjustments to the Tolling Rate pursuant to performance by Kaiser of any portion of the services under any Kaiser ESA, (xi) subject in the aggregate to a cap of [***], reimbursement by Seller of any transactional costs, fees and expenses (including the reasonable costs, fees and expenses of legal counsel and modeling and financial advisors) incurred by Buyer, or by Buyer's Affiliates or Representatives on its behalf, in connection with (A) any amendments (including this Agreement), modifications or supplements to any Transaction Documents, Facility Contracts or Contracts related to any Non-Scheduled Facility or (B) the modification after the Agreement Date of the list of facilities and sites comprising either of the Scheduled Portfolio or Non-Scheduled Facilities (including the negotiation of consents and amendments with ESA Customers and other necessary Persons), in each such case described in the foregoing clauses (xi)(A) or (xi)(B), arising out of or in connection with (I) the transactions relating to any Assignment Date in respect of any Standby Facility, (II) coordinating or adjusting the composition of, or schedule of construction with respect to, the Scheduled Portfolio considering the Parties' desire to complete the Installation Services for the Facilities before the Commencement of Operations Date Deadline or (III) events or circumstances described in Section 2.9, Section 2.10 or Section 2.11, and (xii) any reimbursement obligations of Seller pursuant to the final sentence of Section 3.5(1). Each Project Model delivered pursuant to this Section 2.6(1) shall contain a change log listing all changes made or proposed to be made, compared with the immediately preceding Project Model (or, in respect of the first Project Model delivered hereunder, compared with the Base Case Model).

(i)Within five (5) Business Days of Buyer's receipt of the Project Model, subject to Section 2.6(5), the Parties will mutually agree on an adjusted Aggregate Purchase Price for the Facilities, which shall be used as (i) the final Aggregate Purchase Price for all Tranches and Facilities invoiced and paid in the current (and then-expiring) Adjustment Quarter, and (ii) the Aggregate Purchase Price for purposes of all invoices delivered in the following Calendar Quarter (until the date of the next adjustment made pursuant to this Section 2.6). Within five (5) Business Days after such determination of the adjusted Aggregate Purchase Price, Buyer shall amend and reissue each invoice (not including any accompanying materials or lien waivers) previously delivered by Seller to Buyer for the current (and then-expiring) Adjustment Quarter to reflect the adjusted Aggregate Purchase Price determined pursuant to this Section 2.6(2). For the avoidance of doubt, no adjustments shall be made hereunder with respect to any payments from Buyer to Seller made in any Calendar Quarter prior to the Adjustment Quarter, except to the extent any information reportable under this Section 2.6 with respect to any such prior Calendar Quarter was not included or was incorrect when reported pursuant to this Section 2.6.

(ii)Under no circumstance will (A) the combined Aggregate Purchase Price of all Facilities purchased hereunder, as may be adjusted pursuant to this Section 2.6, exceed the Maximum Aggregate Portfolio Purchase Price, (B) Buyer be obligated to make any payment in respect of the Aggregate Purchase Price of any Facility after Buyer has paid in full the Maximum Aggregate Portfolio Purchase Price or (C) Seller invoice Buyer under Section 2.4 or Buyer have any obligation to make payment under Section 2.4 after the Commencement of Operations Date

Deadline, in each case unless otherwise agreed upon by both parties in writing. It is Seller's responsibility to manage the forecasting and invoicing of payments in respect of the Aggregate Purchase Price such that Buyer never pays more, in the aggregate, than the Maximum Aggregate Portfolio Purchase Price. If at any time it is discovered that Buyer has paid, in respect of its obligations to pay the Aggregate Purchase Price, more in the aggregate than the Maximum Aggregate Portfolio Purchase Price, Seller shall refund or reimburse to Buyer such excess amount. Any amount in excess of the Maximum Aggregate Portfolio Purchase Price that is refunded shall be deemed to have reduced pro rata the Aggregate Purchase Price of all Facilities.

(iii)Following the reissuance of invoices pursuant to Section 2.6(2), if Buyer has made any over-payments or under-payments in respect of such invoices, Seller shall apply such over-payments as a credit against, or such under-payments as an addition to, the amount owed by Buyer with respect to the invoices to be paid on the final Invoice Due Date of the Adjustment Quarter (or, if such Invoice Due Date has passed, the next Invoice Due Date after the reissuance of invoices pursuant to Section 2.6(2)); *provided, however*, that if such adjustment results in Buyer owing no payments to Seller with respect to such invoices but fails to fully compensate Buyer for prior over-payments, Seller shall remit the remaining balance of any over-payments to Buyer within thirty (30) days following the applicable Invoice Due Date.

(iv)For the last Calendar Quarter of 2020, Seller will deliver a Project Model as contemplated by Section 2.6(1); *provided, however*, such Project Model will not include (i) any Facility Seller reasonably believes will be a Late Facility, (ii) any Facility in respect of which a 2020 Facilities Assignment has been consummated or (iii) any Delayed Facility returned to Seller (or in respect of which Buyer has otherwise exercised any refund or removal remedies) during such Calendar Quarter pursuant to Section 2.4(7) or Section 3.4(1)(xii)(B).

(v)Seller represents and warrants that as of the date each Project Model is delivered, the static coded cells reflecting specifics about each Facility on the "System Master Tab", as evidenced by blue font therein (the "Static Cells"), will be true and accurate in all material respects as of such date. Seller will not change the contents of any Static Cells or any calculations in the "Formula Bar" of the Project Model without the prior written consent of Buyer. Except as expressly provided in the foregoing two sentences, Seller makes no representation, warranty or guaranty regarding (i) any other information set forth in the Project Model, including the amount of Buyer's expected investment tax credit or depreciation or underwriting assumptions in the Project Model, or (ii) Buyer's expected rate of return as a result of the purchase of the Facilities hereunder.

Section h. Purchase Price

. Unless expressly stated otherwise, the Aggregate Purchase Price shall be the full consideration paid or to be paid by Buyer in exchange for all of Seller's obligations under Article III, and Buyer shall have no obligation to make further payment with respect to such performance hereunder. Seller shall bear any cost overruns in connection with any services provided by a Service Provider.

Section i. Spare Parts.

At any time, but not more frequently than once a month, Buyer may order from Seller up to [***] of critical replacement parts, including Power Modules and inverters ("Spares"), at Seller's cost of direct procurement or manufacture. Seller will procure or manufacture (as applicable) and deliver to Buyer (DDP Incoterms, at a location to be agreed between the Parties, it being understood that agreement as to location is not required if Buyer elects for Seller to store such Spares pursuant to this Section 2.8) at such cost, together with a bill of sale and any other necessary documentation evidencing transfer of ownership to Buyer, such Spares within [***] from when both Parties execute and deliver a complete purchase order for such Spares (provided, that if Seller is diligently pursuing such procurement, manufacture and delivery, and if delivery is reasonably practicable within an additional thirty (30) days, then Seller shall have such additional thirty (30) days to deliver such Spares), which shall be executed and delivered by each Party promptly upon finalization of the terms of such purchase and sale, which may include the payment by Buyer of Seller's costs in accordance with a milestone schedule. The parties will negotiate the customary terms and provisions of such purchase and sale in good faith. At Buyer's election, Seller will store the Spares for a market storage fee and otherwise upon terms to be agreed in the related purchase order (provided, that Seller shall segregate any Spares owned by Buyer hereunder from the other inventory and equipment of Seller or any other Person, as applicable, and shall identify such Spares as belonging to Buyer throughout the period of such storage).

(2) On the date that is [***] after delivery of the Spares from Seller to Buyer, Seller shall repurchase back from Buyer such Spares at the same price Buyer paid for such Spares, unless Buyer notifies Seller in writing not later than thirty (30) before the end of such period of Buyer's desire to continue to own such Spares. In the event of such repurchase, the Parties will negotiate terms and provisions in good faith, after which Buyer will transfer ownership from itself to Seller, and (unless Seller is already storing such Spares) deliver to Seller, together with a bill of sale and any other necessary documentation evidencing transfer of ownership to Buyer, such Spares.

(i)With respect to any Spares that Buyer has purchased from Seller pursuant to Section 2.8(1), Buyer may, at any time, notify Seller in writing of its desire to provide such Spares to Seller for Seller's use in performing the Installation Services or Facilities Services, after which notification Seller shall use its commercially reasonable efforts to use such Spares in its performance hereunder; *provided*, in no circumstance will the use of such Spares change or reduce Buyer's obligation to pay any portion of the Aggregate Purchase Price or Service Fees or as a credit against any amounts that are or become due to Seller hereunder.

Section j. Non-Scheduled Facilities.

(i)The Sites and related ESAs identified as "Non Scheduled Facilities" in Schedule 1 hereto are "Non-Scheduled Facilities". Seller shall not install or operate any Facility in connection with a Non Scheduled Facility without Buyer's express written consent. At any time prior to its grant of such consent (and without limiting any of Buyer's rights and remedies pursuant to Section 2.11), Buyer may elect, in its sole discretion, for any Non Scheduled Facility to be assigned from the applicable ESA affected thereby, upon which time Seller shall facilitate and accomplish such assignment, together with a release in writing of any liabilities and obligations of Buyer in respect of such Non Scheduled Facility, such that the applicable Non Scheduled Facility does not comprise a part of any such ESA.

(ii)Seller and Buyer hereby agree that, until Buyer provides its written consent: (1) title to and risk of loss with respect to any Non Scheduled Facility, or any equipment in connection therewith, shall not at any time pass to Buyer, (2) to the extent Buyer has any obligations with respect to such Non Scheduled Facility under the applicable ESA, Seller shall perform such obligations for no additional consideration hereunder in accordance with (i) the requirements set forth therein, which shall include any obligations of Buyer under any such ESA in respect of such Non Scheduled Facility to make any payments to the applicable ESA Customer and (ii) the Performance Standards and (3) Buyer shall have no obligations in connection the Non Scheduled Facilities hereunder.

Section k. Standby Facilities.

(i)As of the Agreement Date, notwithstanding characterization of any applicable facilities, equipment, energy services agreements and sites as "Approved Facilities" or "Non-Scheduled Facilities" hereunder, the Parties acknowledge and agree that (i) the Standby Facility Conditions have not been satisfied or waived with respect to the Standby Facilities, (ii)(x) no Standby Facility shall be assigned by any Project Company to Buyer until such Standby Facility meets all of the Standby Facility Conditions (except that the execution and delivery of a Standby Facility Assignment Agreement referenced in either of clauses (A)(x)(ii) or (A)(y)(iii) of the definition of "Standby Facility Conditions" may be delivered on the applicable Assignment Date), and (y) with respect to each Standby Facility, until such Standby Facility's Assignment Date, it will be treated as a Non-Scheduled Facility as set forth in Section 2.9(2) in each case as if such Standby Facility were a Non-Scheduled Facility, and (iii) upon the Assignment Date with respect to any Standby Facility indicated as being within the Scheduled Portfolio on Schedule 1 hereof, automatically and without further action of the Parties, (x) the Customer, Site, Facility, ESA, and Site License associated with such Standby Facility will be deemed approved and treated as Customer, Site, Facility, ESA and Site License under this Agreement (except to the extent any Standby Facility (and its customer, site, facility, energy services agreement and site license) is designated a Non-Scheduled Facility on Schedule 1 hereof, in which case such Standby Facility (and its customer, site, facility, energy services agreement and site license) shall on such Assignment Date, to such extent, be deemed a Non-Scheduled Facility), and (y) Seller shall be deemed to make the representations and warranties set forth in Section 8.1 and on Part IV to Schedule 2.10 hereof.

(ii)With respect to any Standby Facility, (i) Buyer's consent and acknowledgement that Seller has met the Standby Facility Conditions for such Standby Facility, as of a given date, in its sole discretion, (ii) Buyer's acknowledgement that it has received all of the applicable Material Project Documents for such Standby Facility, and any amendments, supplements or modifications thereto, (iii) Buyer's consent (with respect to satisfaction or waiver of the Standby Facility Conditions) to any amendments, modifications, or supplements to any Material Project Document for such Standby Facility, and (iv) Buyer's consent (with respect to satisfaction or waiver of the Standby Facility Conditions) to the addition of a document or contract as an additional Material Project Document, that occurs after the Agreement Date, in each case, may be provided by electronic mail.

(iii)Any Standby Facility for which an Assignment Date has not occurred on or before the last Available Assignment Date shall, as of the day immediately after the last Available Assignment Date, lose its status as a Standby Facility, and Schedule 1 shall be amended to the extent necessary to reflect such change. The next update of the Project Model after the last Available Assignment Date shall reflect removal from the Project Model of all such Standby Facilities described in the preceding sentence, and any Aggregate Purchase Price adjustments with respect to any such removals (without limiting any other adjustments set forth in Section 2.6) shall be incorporated therein.

(iv)Seller shall cause to be obtained, as soon as is reasonably practicable and in any event prior to the Commencement of Operations of the applicable Approved Facility, any consents or approvals of any Transmitting Utilities that are required for a legal, valid and binding assignment from the applicable Project Company to Buyer or the applicable ESA Customer (as applicable) of any Interconnection Agreement (or interconnection application, as applicable), in each case pursuant to the terms thereof, in respect of any Approved Facility, to the extent such consent or approval is not obtained on or prior to the Agreement Date (or, in respect of a Standby Facility, the Assignment Date).

(v)With respect to any Approved Facility that is not a Standby Facility, as of the Agreement Date, Seller makes the representations and warranties to Buyer that are set forth in Part IV of Schedule 2.10.

Section l. Commencement of Operations Date Deadline.

(i)On or before [***], Seller will, in good faith and upon the exercise of reasonable due diligence, provide to Buyer a draft of a written list (the "Delayed Facilities List") identifying those Facilities (and Delayed Ancillary Equipment) for which Seller believes, after due inquiry, that none of the events described in clauses (2) through (4) of the definition of "Placed in Service" will be achieved on or before the Commencement of Operations Date Deadline (collectively, the "Delayed Facilities" and each, a "Delayed Facility"). Buyer shall have the opportunity to review the Delayed Facilities List, and the Parties shall cooperate during the month of [***] 2020 to make such modifications to the Delayed Facilities List as the Parties together deem necessary to reflect their collective best estimate as to the identification of the

Delayed Facilities. The Delayed Facilities List, including any such modifications, shall be deemed final in the form it exists on [***], 2020; provided, that nothing in this Section 2.11 shall in any way limit Buyer's rights or remedies hereunder or any ESA, Site License or other Facility Contract. Seller may, with the written consent of Buyer (which consent may be provided by electronic mail), add Facilities to the Delayed Facility List if it becomes clear that, after due inquiry, none of the events described in clauses (2) through (4) of the definition of "Placed in Service" are likely to be achieved on or before the Commencement of Operations Date Deadline.

(ii)No later than [***], 2020, within the body of the final Delayed Facilities List, Seller shall designate one or more Project Companies (or Seller) as assignees and novatees of all of the rights, benefits, interests, duties and liabilities of Buyer under each ESA, Site License and other Facility Contract to which Buyer is party in respect of (and solely as applicable to) each Delayed Facility and each Non-Scheduled Facility (each such Project Company (or Seller) in such capacity, a "Seller Facilities Assignee"). Each Seller Facilities Assignee shall, as of [***], 2020 and at all times until consummation of each applicable 2020 Facilities Assignment, (i) be in good standing under the laws of its state of formation or incorporation, (ii) have all corporate or other organizational power and authority to own, lease and operate its business as currently conducted (and as would be conducted if each applicable 2020 Facilities Assignment were to be consummated at such time) and (iii) be duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction that its business, as currently conducted (and as would be conducted if each applicable 2020 Facilities Assignment were to be consummated at such time), would require it to be so qualified, and Seller shall cause the matters described in the foregoing clauses (i) – (iii) to continue be true and correct in all respects as and when required pursuant to this sentence.

(iii)On or after [***], 2020, Buyer may send a notice (each, an "Assignment Notice") to any ESA Customer who is a counterparty to an ESA in respect of which a Delayed Facility has been identified on the final Delayed Facilities List, or a Non-Scheduled Facility exists as of such date (and any other necessary Person in Buyer's sole discretion). Each Assignment Notice shall notify the ESA Customer or other Person of the intention of Buyer, Seller and the applicable Seller Facilities Assignee to consummate a transaction in which all of the rights, interests, benefits, duties and liabilities of Buyer in the applicable ESA, Site License and any other Facility Contracts to which Buyer is party in respect of such Delayed Facility or Non-Scheduled Facility will be assigned and novated to, and assumed by, such Seller Facilities Assignee (each such transaction, a "2020 Facilities Assignment") and shall indicate that such Persons intend for such 2020 Facilities Assignment to be consummated no later than December 31, 2020.

(iv)With respect to any Delayed Facility or Non-Scheduled Facility in respect of which Buyer has sent an Assignment Notice, Seller shall use (and shall cause the applicable Seller Facilities Assignee to use) commercially reasonable efforts to cause the applicable 2020 Facilities Assignment to be consummated on or before December 31, 2020 (subject to extension in the sole discretion of Buyer). The Parties acknowledge that any applicable 2020 Facilities Assignment shall not be consummated on or before December 31, 2020, to the extent it would require for its validity the consent or waiver of a Person other than Buyer, Seller or their

Affiliates (and such consent or waiver has not been obtained). With respect to any such 2020 Facilities Assignment not consummated by December 31, 2020, Seller shall continue to use commercially reasonable efforts to obtain any such required consent or waiver and any other documents or other items so that such 2020 Facilities Assignment is consummated and so that Buyer will have no responsibility for any Delayed Facility or Non-Scheduled Facility after December 31, 2020. For the avoidance of doubt, nothing in this Section 2.11, including the use (or lack of use) by any Person of any efforts to cause any 2020 Facilities Assignment to be consummated, shall limit in any way the rights and remedies of Buyer pursuant to Section 2.4(7) or Section 3.4(1)(xii). Upon a 2020 Facilities Assignment being consummated for a Facility, the fuel cell system associated therewith shall no longer be a "Facility," the real property of such fuel cell system shall no longer be a "Site", and the energy services agreement for both of the aforementioned shall no longer be an "ESA" in each case under and subject to this Agreement.

(v)With respect to any Delayed Facility or Non-Scheduled Facility, upon the consummation of an applicable 2020 Facilities Assignment, Seller shall refund to Buyer any payments made pursuant to Section 2.4 in respect of such Facility (or Delayed Ancillary Equipment) pursuant to Section 2.11(8), together with any other amounts required pursuant to Section 2.11(8); provided, that Seller may pay such refund and other amounts to Buyer on an earlier date than required pursuant to Section 2.11(8), subject to reasonable coordination with Buyer, and if Seller makes any such earlier payment then the amount of such payment shall be netted against the aggregate Late Facilities Payments due pursuant to Section 2.11(8) (it being agreed by the Parties that such earlier payments shall be excluded from the Project Model pursuant to Section 2.6(5)). Neither Section 12.6 nor Section 12.9 shall provide any excuse from, or justification for delay or reduction of, the obligations of Seller set forth in this sentence.

(vi)Seller shall use its good faith efforts at all times to facilitate and maintain a productive and harmonious business relationship between (on the one hand) each applicable ESA Customer, Site Licensor and any other Person whose Contract relates to any Delayed Facility or Non-Scheduled Facility that comprises a part of the Delayed Facilities List or a 2020 Facilities Assignment, and (on the other hand) Buyer. Such efforts shall include keeping each such Person (but, with respect to Persons other than the applicable ESA Customer and Buyer, only to the extent reasonably necessary in furtherance of a 2020 Facilities Assignment or in connection with a Facility in respect of which Facility Services will be performed hereunder) informed of and involved in the process of negotiating such 2020 Facilities Assignment, providing drafts, documents and responses to inquiries with reasonable promptness and making appropriate personnel available to such Persons.

(vii)With respect to any Non-Scheduled Facility or Delayed Facility that forms a part of a 2020 Facilities Assignment, before the effectiveness of such 2020 Facilities Assignment, neither Seller nor Buyer will Disparage the other Party in writing to any ESA Customer in respect of a Delayed Facility or a Non-Scheduled Facility; *provided*, in no event will either Party be required to make a factual misrepresentation. This Section 2.11(7) shall not preclude either Party from (i) providing truthful statements in any governmental or judicial inquiry or proceeding or (ii) exercising rights protected by applicable law. For purposes of this Section 2.11(7),

"Disparage" means, with respect to a given Person, to make comments or statements about such Person with intent to cause reputational harm, impugn, criticize, defame, malign, disparage, or cast in a negative light such Person's character, honesty, integrity, morality, business acumen, qualification, abilities, quality or performance.

(viii)Late Facility Payment.

xxiii.On or before the date that is thirty (30) days after the Commencement of Operations Date Deadline (the "Calculation Date"), Seller shall deliver to Buyer an Excel spreadsheet substantially in the form of Exhibit L that (x) lists all of the Late Facilities, Facilities in respect of which a 2020 Facilities Assignment has been consummated and Delayed Facilities returned to Seller (or in respect of which Buyer has otherwise exercised any refund or removal remedies) during the final Calendar Quarter of 2020 pursuant to Section 2.4(7) or Section 3.4(1)(xii)(B) and (y) calculates the Late Facility Payment for each such Facility (or Delayed Ancillary Equipment).

xxiv.The Late Facility Payment in respect of each Facility (or Delayed Ancillary Equipment) described in Section 2.11(8)(i)(x) shall be calculated as of the Calculation Date, notwithstanding anything to the contrary in Section 13.6, as the sum of: (I) any and all refunds remaining due and payable pursuant to Section 2.4(7), Section 2.11(5) or Section 3.4(1)(xii) in respect of such Facility (or Delayed Ancillary Equipment), *plus* (II) a holding cost which shall be calculated by multiplying a rate of return that is equal to [***] by each payment in respect of the Aggregate Purchase Price in respect of such Facility actually paid by Buyer hereunder, such rate of return to be applied with respect to each such payment from and after the date such payment is made until the Calculation Date (or, if earlier, until the date Seller refunds such payment pursuant to Section 2.11(5)), plus (III) subject in the aggregate to a cap in the amount of [***] *minus* the sum of any reimbursements credited to Buyer after the Agreement Date pursuant to Section 2.6(1)(xi), reimbursement in full by Seller of any transactional costs, fees and expenses (including the reasonable costs, fees and expenses of legal counsel and modeling and financial advisors) incurred by Buyer, or by Buyer's Affiliates or Representatives on its behalf, in connection with the matters described in this Section 2.11 (including the negotiation of consents and amendments with ESA Customers and other necessary Persons), *minus* (IV) any reductions in other Facilities' purchase prices effected no later than in the Project Model update corresponding with the Calendar Quarter ending in September 2020 and made because of delays in construction with respect to the Facility forming the basis for such refund. For the avoidance of doubt, the Late Facility Payment shall not be calculated with any duplication of positive or negative amounts to the extent paid by Seller to Buyer as of an earlier date pursuant to Section 2.11(5).

xxv.Seller will pay to Buyer the sum of all Late Facility Payments no later than [**] after the Calculation Date. For the avoidance of doubt, and without limiting any of Buyer's rights, benefits or remedies hereunder, if Seller fails to timely make such

payment to Buyer when required pursuant to the foregoing sentence, Buyer may immediately set off any such obligations of Seller against any amounts owed or to become owed by Buyer pursuant to this Agreement in accordance with Section 4.3(6).

xxvi. To the extent not already effected after the Commencement of Operations Deadline, Seller will use commercially reasonable efforts to effect a 2020 Facilities Assignment for any remaining Delayed Facilities, Non-Scheduled Facilities or Late Facilities. Except to the extent otherwise agreed in writing by Buyer, payment by Seller of any Late Facility Payments shall not constitute a waiver, release or discharge (or be deemed to effect any of the foregoing), with respect to any applicable Facility, Delayed Ancillary Equipment or Non-Scheduled Facility, of any of Buyer's rights and remedies hereunder (except Buyer's rights to receive Late Facility Payments, to the extent received) or under any ESA or other Facility Contract.

xxvii. In the event of a conflict between a calculation set forth in the Excel spreadsheet of Exhibit L and this Section 2.11(8), this Section 2.11(8) shall govern.

(ix) Upon completion of all necessary 2020 Facilities Assignments, Seller and Buyer will use commercially reasonable efforts to timely amend this Agreement to update Schedule 1 and make any other necessary changes, in each case to reflect the matters described in this Section 2.11 and the composition of the final Scheduled Portfolio.

Section m. [***] ESA Fuel Cell Capacity Tag Charges

. Buyer and Seller hereby agree that any obligations of Buyer in its capacity as "Supplier" pursuant to the [***] ESA to pay or reimburse the applicable ESA Customer for any "Fuel Cell Capacity Tag" charges, including specifically the reimbursement obligations referenced in Section 2.5(b) of the [***] ESA, shall be promptly reimbursed to Buyer by Seller. For the avoidance of doubt, and without limiting any of Buyer's rights, benefits or remedies hereunder, if Seller fails to timely make such reimbursement to Buyer when required pursuant to the foregoing sentence, Buyer may immediately set off any such reimbursement obligations of Seller against any amounts owed or to become owed by Buyer pursuant to this Agreement in accordance with Section 4.3(6). This Section 2.12 supersedes Section 1(c) of the Second PUMA Consent.

ARTICLE III.

DELIVERY AND INSTALLATION OF FACILITIES AND OTHER WORK

Section n. Access to Site

. Seller shall be responsible for ascertainment of the suitability of the Sites, the environment around the Sites, the Sites' soil condition and other ground conditions for the construction and operation of the Facilities and the performance by Seller of all of its obligations hereunder in accordance with Section 3.9. As between Seller and Buyer, Seller shall be solely responsible for all Site Preparation Services at Seller's cost. Buyer shall provide Seller with access to the Sites in a manner consistent with the applicable ESAs and Site Licenses to permit Seller to deliver and

install each Facility at the applicable Sites and to connect the applicable Facility to the distribution and transmission facilities of the Transmitting Utility, as applicable. If, prior to the Facility's achievement of any of the events described in clauses (2) through (4) of the definition of "Placed in Service" with respect to any Facility, an ESA Customer requires a change in the location of a Site from that specified in a Purchase Order or applicable Site License, whether temporary or permanent, and such change in location is permitted under the applicable ESA, (a) Buyer shall submit a written notice to Seller setting forth the details of such location change (unless an ESA Customer has notified Seller directly, in which case Seller shall notify Buyer), (b) Seller shall administer and perform the Site Preparation Services as required for that changed location to the extent required and in accordance with the relevant ESA and Site License, and (c) Seller shall bear all costs associated with such relocation; *provided, however* to the extent the applicable ESA Customer reimburses Buyer for (or otherwise pays Buyer in respect of) such costs pursuant to the terms of the applicable ESA, then Buyer shall remit such payments to Seller to the extent of Seller's bearing costs under this clause (c).

Section o. Delivery; Title; Risk of Loss

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(i)Delivery of each Facility (and each Bloom System and each item of Ancillary Equipment and BOF comprising such Facility) shall be DDP (Incoterms 2010) to its Site, in accordance with the Uniform Commercial Code then in effect. Title to each Bloom System and each item of Ancillary Equipment (other than Delayed Ancillary Equipment, if applicable) and BOF shall pass to Buyer upon the Purchase Date of such Facility, and such title shall be good and marketable and free of all Liens, except for Permitted Liens. Title to any Delayed Ancillary Equipment shall pass to Buyer upon the Purchase Date for such Delayed Ancillary Equipment, and such title shall be good and marketable and free of all Liens, except for Permitted Liens. From and after the Purchase Date of each Facility or any Delayed Ancillary Equipment, all risk of loss or damage to such Facility or Delayed Ancillary Equipment shall be borne by Buyer.

(ii)System Attributes

xxviii.Buyer has all title, right and interest in and to all of the System Attributes arising under and in connection with each Facility purchased by Buyer hereunder. It is understood that Schedule 1 sets forth (i) the System Attributes to which ESA Customers are entitled under their respective ESAs, for which Seller will, on behalf of Buyer, administer, and (ii) the System Attributes that Buyer has agreed to transfer to Seller pursuant to this Section 3.2(2). To the extent any such ESA Customer is entitled to System Attributes (or any financial benefit or reimbursement in respect thereof) pursuant to its ESA or Site License, Seller shall obtain and maintain such System Attributes on behalf of and for the benefit of such ESA Customer, and shall provide to such ESA Customer such financial benefit or reimbursement (if applicable), in each case without any additional consideration hereunder. Without limiting the foregoing, solely with respect to [***], Buyer will have all right, title and interest in and to the Connecticut Low

and Zero Emission Renewable Energy Credit (the "CT LREC") procured by the applicable ESA Customer, as contemplated in Section 4.2(a) of [***]. Seller is responsible for making any deposits required under Section 4.2(a)(i)(b) of [***] and, in the event such deposits are returned, they will be returned to Seller (unless earlier paid to Seller pursuant to Section 4.3(5)). Seller will use commercially reasonable efforts to facilitate such ESA Customer's procurement of the CT LRECs pursuant to the [***], without any additional consideration hereunder. In the event the proceeds of, or monies in respect of, any System Attributes are received by a Party who is not entitled to such proceeds or monies pursuant to this Section 3.2(2), such receiving Party shall promptly remit such proceeds or monies to the entitled Person. In the event an ESA obligates Buyer to consult or cooperate with the applicable ESA before obtaining any System Attributes in the future, Seller shall perform such consultation and cooperation on behalf of Buyer.

xxix. With respect to Seller's obligations under this Section 3.2(2), (A) the obligations of Buyer pursuant to (i) Section 4.2(e) of [***] to deliver "RECs" and "Green-e Certification Eligible RECs", in each case as defined therein, (ii) Section 5.2 of the [***] in respect of the CT LRECs, (iii) Section 4.2 of the [***] ESA in respect of any "Environmental Attributes" (as defined thereunder) pursuant to the Massachusetts Alternative Energy Portfolio Standards, and (iv) Section 2 of the Omnibus Amendment to the [***] ESA, dated as of August 27, 2019, in respect of the "Environmental Incentives" described therein (including obtaining and maintaining such "Environmental Incentives", without regard to the allocation of benefits pursuant thereto as between Buyer and such ESA Customer), shall be, in each of the cases described by any of the foregoing clauses (i) – (iv), deemed System Attributes to which an ESA Customer is entitled pursuant to its ESA; provided, that with respect to such clause (iv), Buyer shall be entitled hereunder to the allocation of benefits of the applicable "Environmental Incentives" agreed pursuant to Section 2 of the Omnibus Amendment to the [***] ESA, and (B) Seller is entitled to the SC Incentives; provided, that neither Seller nor any of its Affiliates shall enter into a Contract in respect of the SC Incentives without Buyer's prior written consent (not to be unreasonably withheld, conditioned or delayed) if such Contract results in Seller or such Affiliate benefitting from such SC Incentives, directly or indirectly (including by virtue of a Contract with an ESA Customer or its Affiliate).

(iii) Customer Equipment.

xxx. Solely with respect to the ESAs in which Buyer has agreed to install and perform any other obligations (including making any payments) with respect to Customer Equipment, Seller and Buyer hereby agree that (1) the Customer Equipment does not and shall not be deemed to comprise a part of the Facility pursuant to this Agreement, and the ownership of the Customer Equipment shall be as set forth in the applicable ESA, (2) title to and risk of loss with respect to Customer Equipment, or any Component thereof, shall not at any time pass to Buyer, (3) to the extent "Provider" or "Supplier" (or similarly situated Person), as the case may be, has any obligations with respect to Customer

Equipment under the applicable ESAs, Seller shall perform such obligations for no additional consideration hereunder in accordance with (i) the requirements set forth therein, which shall include any obligations of Buyer under any ESA in respect of Customer Equipment to make any payments to the applicable ESA Customer, or perform any repairs and replacements for such ESA Customer and (ii) the Performance Standards. Buyer shall have no obligations in connection with the Customer Equipment hereunder, including any obligation to seek any remedy under Article V in respect of any Customer Equipment.

xxxi. With respect to any Facility and Site in connection with which Customer Equipment is used, Seller shall at all times from and after the commencement of performance of Installation Services (and during the performance of Facility Services) ensure that Buyer has the necessary rights to access, install, test, commission, operate, maintain and decommission any such Customer Equipment, to the extent required for (x) Buyer to perform and satisfy its duties, obligations and liabilities, and exercise its rights, interests and benefits, in each case pursuant to any applicable Legal Requirement, ESA, Site License or other Facility Contract, and the Transaction Documents, and (y) Seller to perform and satisfy its duties, obligations and liabilities hereunder. Without limiting the foregoing, upon any request made in writing by Buyer in its sole discretion, Seller shall use its commercially reasonable efforts to, within thirty (30) days of receiving such written request (but in no event later than ninety (90) days of receiving such written request), (A) facilitate amendments, modifications or supplements to any applicable ESA, Site License or Facility Contract that Buyer considers to be reasonably necessary in furtherance of Seller's obligations under this Section 3.2(3)(ii) and (B) facilitate the execution and delivery by Buyer and such ESA Customer (or its Affiliate) of other relevant, reasonably necessary access agreements in form and substance satisfactory to Buyer. Under no circumstances shall Customer Equipment be owned by any Person other than Seller or the applicable ESA Customer (or such ESA Customer's Affiliate), and for the avoidance of doubt, Seller shall not permit or suffer to exist any ownership of Customer Equipment by any of Seller's Affiliates. No Customer Equipment shall be sold, assigned, transferred or otherwise disposed of other than in accordance with the foregoing.

(iv) Seller Attributes. In consideration of Seller's obligations hereunder, Buyer hereby assigns and transfers to Seller (i) the capacity attributes arising under and in connection with any Facility and (ii) any cash incentives awarded on January 4, 2019, by the South Coast Air Quality Management District (SCAQMD), arising out of the Facility contemplated by the [***] ("SC Incentives"), in any case described in the foregoing clauses (i) or (ii), only in respect of which such assignment and transfer is expressly referenced and identified in Schedule 1 (such assigned and transferred capacity and other attributes and incentives are the "Seller Attributes"), to the extent such attributes can be transferred (and except to the extent any ESA Customer has a right or interest therein under its ESA), and any and all proceeds thereof. For the avoidance of doubt, Seller is responsible for all of the administration of the Seller Attributes and Buyer shall have no

obligation in connection therewith. Buyer shall have no obligation to seek any remedy under Article V in respect of any Seller Attributes.

Section p. Pre-COO Equipment Warranty

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(i)Subject to Section 5.6 and Section 13.5, Seller warrants to Buyer that, with respect to each Facility, during the period commencing on the achievement of the Delivery Milestone and continuing until achievement of Commencement of Operations for such Facility (the "Pre-COO Equipment Warranty Period"), (i) each Bloom System and each Battery Solution for such Facility shall conform to the Specifications for Bloom Systems and Battery Solutions, respectively, set forth on Schedule 3.3(1), and (ii) each such Facility and its Components shall be free from defects in design, materials and workmanship that prevent such Facility from achieving Commencement of Operations (collectively, the "Pre-COO Equipment Warranty").

(ii)Seller shall correct, at Seller's sole expense, all Bloom Systems, items of Ancillary Equipment or BOF provided, or Installation Services performed, by it or its subcontractors under this Agreement which proves to be in breach of the Pre-COO Equipment Warranty during the Pre-COO Equipment Warranty Period for such Facility. Any action by Buyer for a breach of the Pre-COO Equipment Warranty with respect to a Facility must be brought prior to achievement of Commencement of Operations for such Facility; provided, however, that such limitation shall not bar Buyer from raising a warranty claim under the General Product Warranty for such Facility (including with respect to any action for breach of the Pre-COO Equipment Warranty that is waived before completion of warranty work for purposes of a Facility's achieving any conditions precedent to any Milestone hereunder). WITHOUT LIMITING SELLER'S OBLIGATION TO INDEMNIFY BUYER PURSUANT TO SECTION 5.8, AND/OR WITH RESPECT TO CLAIMS PURSUANT TO SECTION 13.3, BUYER'S SOLE REMEDY FOR A BREACH OF THE PRE-COO EQUIPMENT WARRANTY SHALL BE THE CORRECTION OF DEFECTIVE FACILITY PURSUANT TO THIS SECTION 3.3(2).

(iii)The Pre-COO Equipment Warranty may only be transferred in accordance with Section 14.4.

(iv)Any period of time in which the Pre-COO Equipment Warranty is in breach for a Facility shall not extend the Pre-COO Equipment Warranty Period for such Facility beyond its Commencement of Operations Date.

Section q. Installation Services

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(i)Seller shall, and shall cause each of its Service Providers to, perform all development, design, engineering, procurement, construction, and commissioning services necessary in connection with the installation, interconnection, testing, start-up, and commissioning the

Facilities to achieve Commencement of Operation (collectively, "Installation Services"), including the following activities:

xxxii.Seller shall cause to be performed all studies, reports and applications (in the name of Buyer) that are necessary for interconnection of each Facility to the distribution and transmission facilities of the applicable Transmitting Utility. To the extent not already paid, Seller will pay on behalf of Buyer as "Supplier", all amounts required to be paid under Section 6.1(f) of [***].

xxxiii.Seller shall obtain and maintain, or cause to be obtained and maintained (where required, in the name of Buyer or each ESA Customer, as the case may be), all Permits, PTOs and Third Party Consents necessary to design, install, commission, construct, occupy, operate and maintain each Facility at each Site, including related performance assurance or other credit support requirements (including as required pursuant to any ESA, Site License, Incentive Agreement or Legal Requirements); *provided*, that Seller shall have no liability for any failure to obtain or maintain any Permit or Third Party Consent to the extent attributable to a breach by Buyer of its obligations in this Agreement or a breach by an ESA Customer of its ESA; *provided*, *further*, that absent Buyer's willful misconduct, the preceding proviso shall not limit the rights and duties of the Parties under Section 3.4(1)(xii).

xxxiv.Without limiting Seller's obligations pursuant to this Section 3.4, Seller shall perform all design, permitting and installation work in accordance with Schedule 3.4(1)(iii), including any and all upgrades required to be performed in respect of the applicable Facility pursuant to the requirements of the Interconnection Agreement (whether or not executed) or as otherwise required by the applicable Transmitting Utility.

xxxv.Seller shall deliver any and all approvals and notices required to be delivered under the ESAs and Site Licenses in accordance with the terms thereof.

xxxvi.Without limiting Seller's obligations pursuant to this Section 3.4, Seller shall perform all commissioning work in accordance with the provisions of Schedule 3.4(1)(v).

xxxvii.Seller shall install the Bloom Systems, the BOF and the Ancillary Equipment at each Site using items that are new and undamaged at the time of such use or installation.

xxxviii.Seller shall pay all amounts owed to its subcontractors and vendors in connection with the performance of the Installation Services on a timely basis and shall hold Buyer harmless against any claims asserted by such subcontractors and vendors.

xxxix.Until the Commencement of Operations Date for a Facility (excluding any Delayed Ancillary Equipment), Seller shall be responsible for providing physical security of such Facility, and thereafter Seller shall perform, on Buyer's behalf, Buyer's obligations and duties to the applicable ESA Customer pursuant to its ESA and Site

License to provide physical security for such Facility to the extent such performance is required thereunder.

xl.If requested by Buyer, Seller shall provide operator training and associated training materials to personnel and representatives of Buyer sufficient to instruct Buyer on operation of such Facility in connection with safety requirements and in conformance with Prudent Electrical Practices.

xli.Prior to Commencement of Operations of each Facility, Seller shall perform a performance test not less stringent than the testing applied to its fuel cell power generating systems for any other major customer of Seller of each Bloom System incorporated into such Facility and the applicable BOF and Ancillary Equipment in the presence of Buyer (if Buyer elects to attend), and such Bloom Systems and applicable BOF and Ancillary Equipment shall have passed such test; *provided*, Delayed Ancillary Equipment may be tested later in the presence of Buyer (if Buyer elects to attend). Seller shall, upon request by Buyer, inform Buyer of the date on which it expects to conduct the performance test of any Facility (or, if applicable, Delayed Ancillary Equipment) and cooperate with Buyer to provide Buyer with the opportunity to observe such testing to the extent practicable, *provided*, that in no event shall Seller be required to delay the performance of any performance test in order to allow Buyer to witness such test if all other pre-testing requirements have been satisfied.

xlii.At Buyer's request, Seller shall provide to Buyer, prior to the Commencement of Operations for each Facility (unless Buyer informs Seller that it may, under the terms of the applicable ESA, be provided thereafter, in which case Seller shall provide it by the deadline set forth in the ESA (but not later than the date on which it is provided to the applicable ESA Customer)), an "issued for construction" set in native electronic format, or, in the case of Delayed Ancillary Equipment, an updated set, if applicable, which shall include site information, permitting information, codes, project team contacts, project description, general construction notes, overall site plan, foundation plan, layout plan, detailed site plan, and other drawings and a product data sheet. Seller shall deliver to Buyer any other documentation necessary to establish placement in service for purposes of section 48 of the Code.

xliii.Commencement of Operations.

a. Subject to Section 3.4(1)(xiv), promptly following achievement of the Delivery Milestone for each Facility, Seller shall provide installation, inspection, commissioning and start-up for such Facility in accordance with the Performance Standards, and Seller shall use commercially reasonable efforts to cause such Facility to achieve Commencement of Operations within ninety (90) days of the date of achievement of the Deposit Milestone for such Facility, as set forth in Certificate of Deposit Milestone Completion for such Facility, but in no event later than any deadline for such Commencement of Operations that is

applicable to such Facility in its ESA. Seller shall promptly certify in writing to Buyer when each Facility achieves Commencement of Operations by delivery of a Certificate of COO. Without limitation of the foregoing, each Facility shall be connected by Seller to the applicable natural gas source, water source, SCADA, and Electrical Interconnection Facilities no later than the Commencement of Operations Date thereof.

b. If any Facility does not achieve any of the events described in clauses (2) through (4) of the definition of "Placed in Service" by the earlier of (i) one hundred eighty (180) days of the payment of the portion of Aggregate Purchase Price set forth in Section 2.3(2) for such Facility and (ii) the applicable deadline in the Facility's ESA (such earlier date, the "Placed in Service Deadline"), then Buyer shall have the right, in its sole discretion, to elect in writing that Seller (I) remove such Facility from the initial Site and restore such Site in accordance with Section 4.10(2) and (II) relocate the Bloom Systems to a substitute Site (subject to and in accordance with Section 4.8(2)), whether in the Scheduled Portfolio or otherwise, subject to compliance with Facility Contracts and agreement with ESA Customers entirely as a part of the Installation Services and at Seller's cost and expense, and if Buyer makes such election, Seller shall complete performance of such obligations on or before the date that is ninety (90) days after the Placed in Service Deadline (such ninetieth (90^{th}) day, the "Reinstallation Deadline"). If (x) Buyer does not exercise such right, which it may or may not do in its sole discretion, in respect of any Facility within five (5) Business Days of the Placed in Service Deadline thereof or (y) Buyer exercises such right with respect to any Facility, and such Facility has not achieved any of the events described in clauses (2) through (4) of the definition of "Placed in Service" before the earlier of (p) the Reinstallation Deadline or (q) the Commencement of Operations Date Deadline, then Seller shall refund all payments previously paid by Buyer for such Facility, (A) in accordance with Section 2.6 for refunds that occur before the end of the Calendar Quarter ending in September 2020 and (B) in accordance with Section 2.11(8) for refunds that occur after the end of the Calendar Quarter ending in September 2020, and in either such case contemplated by the foregoing clauses (A) or (B), such Facility shall be subject to (but without duplication of any payment obligations set forth in) Buyer's rights and remedies pursuant to Section 4.10(1) (provided, that without limiting any of Buyer's other rights and remedies pursuant to Section 4.10(1), Buyer shall not exercise the remedy described in Section 4.10(1)(iv) with respect to an affected Facility during ongoing negotiations of a 2020 Facilities Assignment in respect of such Facility, as long as consummation of such 2020 Facilities Assignment without unreasonable delay remains reasonably likely). If Seller reasonably anticipates that any Facility is reasonably likely to not achieve any of the events described in clauses (2) through (4) of the definition of "Placed in Service" on or before its Placed in Service Deadline, Seller shall promptly notify Buyer in writing, and in any event no later

than ten (10) Business Days in advance of such Placed in Service Deadline. Nothing in this Section 3.4(1)(xii)(B) shall limit Buyer's rights and remedies hereunder under Section 2.4(7), Section 2.9, Section 2.11, Section 12.8 or if there is a Seller Default.

c. Neither Section 12.6 nor Section 12.9 shall provide any excuse or justification for delay or reduction of Seller's requirements to timely perform its obligations, including in respect of Buyer's remedies, under this Section 3.4(1)(xii).

xliv. [*Intentionally omitted*.]

xlv. If any ESA provides that items of Delayed Ancillary Equipment may be installed or commissioned after the Commencement of Operations Date, Seller may install or commission such Delayed Ancillary Equipment after such Commencement of Operations Date, but Seller shall complete such installation and commissioning in accordance with the applicable Facility Contracts, and Seller shall perform and successfully complete all necessary acts under the applicable Interconnection Agreement (including performance testing) and shall have obtained permission from the applicable Person granting Buyer permission to interconnect, if applicable, such Delayed Ancillary Equipment with the distribution or transmission facilities of the Transmitting Utility, and in no event may Seller continue any such installation, commissioning or interconnecting after the Commencement of Operations Date Deadline.

xlvi. Post COD Deliverables.

d. With respect to each Facility, Seller shall use commercially reasonable efforts to deliver by uploading to the Data Room a final executed IE Certificate by the Invoice Due Date of the month in which such Facility's Commencement of Operations Date occurs, but in no event later than thirty (30) days after such Commencement of Operations Date; *provided, however*, if the IE Certificate is not final due to any event or circumstance that prevented the IE from performing its obligations within such period, and Seller is diligently and in good faith working to facilitate IE's complete review, such period shall be automatically extended for a period of thirty (30) additional days (but no longer than sixty (60) days from the date such Facility achieves its Commencement of Operations).

e. With respect to each Facility, Seller shall deliver by uploading to the Data Room each of the following within sixty (60) days of such Facility's Commencement of Operations Date: (I) Seller Deliverables set forth on Schedule 3.4(1)(xv) specified to be delivered before the Commencement of Operations Date to Buyer thereon, (II) to the extent not yet delivered, in connection with Delayed Ancillary Equipment, any lists and copies of items described in

Section 2.3(5)(iii), including lists and copies of Permits, PTO, other Governmental Approvals, Third Party Consents, Incentive Agreements, Interconnection Agreements and other Facility Contracts, and (III) each of the Post-COO Deliverables set forth on Schedule 2.5, to the extent not yet delivered (provided, that Seller shall use its commercially reasonable efforts to (x) provide the lists and copies described in this clause (III) as soon as is reasonably practicable during the performance of Installation Services, and (y) provide updates to Buyer if such lists and copies are amended, modified or supplemented).

f. Lien Waivers. With respect to each Facility, no later than (i) ten (10) Business Days after a Facility reaches its Commencement of Operations Date, pursuant to Section 3.4(4), Seller shall deliver final and unconditional waivers and releases of Liens for such Facility from Seller, and (ii) ninety (90) days after a Facility reaches its Commencement of Operations Date, pursuant to Section 3.4(4), final and unconditional waivers and releases of Liens for such Facility from all subcontractors performing any Installation Services at the applicable Site, substantially in the statutorily prescribed form required by the applicable state Governmental Authority in which the Site is located (and, if there is no such prescribed form, then in form and substance reasonably satisfactory to Buyer); provided, that the foregoing requirements in this Section 3.4(1)(xv)(C) shall only apply to subcontractors that have agreed to provide or perform equipment or services in respect of such Facility for purchase price or fees in excess of $[***] in the aggregate.

g. UCC-1 Fixture Filing. No later than ten (10) days after a Facility reaches the Commencement of Operations Date, Seller will file a UCC-1 fixture filing, naming the Buyer as "Secured Party" (or any other applicable capacity of the Buyer) and the Customer as "Debtor", in the real estate recording jurisdiction in which the Site is located, and upon making such filing Seller shall notify Buyer of the same; provided Seller shall not make any such filing without receipt of express written authorization from the ESA Customer, as "Debtor", to make such filing; provided, further, if, despite commercially reasonable efforts, if the ESA Customer will not provide such consent, each of Buyer and Seller shall cooperate to find a solution that is mutually agreeable to both parties thereto to protect Buyer's interest in the applicable Facility and ensure any such filing, if done, is permitted as a matter of law without consent of the ESA Customer.

xlvii. Following Commencement of Operations of a Facility, Seller shall promptly remove all waste materials and rubbish from and around the Site as well as all of its tools, construction equipment, machinery, and surplus materials as reasonably necessary to restore each Site to a condition reasonably satisfactory to such ESA Customer or as otherwise required by the applicable Site License or ESA.

xlviii.Seller's supply of the Bloom Systems, Ancillary Equipment (if applicable) and BOF hereunder, and performance of the Installation Services therefor, shall be fully comprehensive of all services, labor, and equipment necessary to complete installation of a fully commissioned and operating Facility in accordance with this Agreement, the applicable ESA, the applicable Interconnection Agreement, and the applicable Site License.

(ii)Seller shall be responsible, at its sole cost and expense, for obtaining, maintaining and complying with all Permits required to perform the Installation Services under this Agreement, including related performance assurance or other credit support requirements. Without in any way limiting the foregoing, Buyer agrees to cooperate with and assist Seller in obtaining such Permits, at Seller's cost and expense.

(iii)Seller shall cause all Installation Services to be performed in a good and workmanlike manner, free from defective materials, and in accordance with the Performance Standards, free and clear of Liens other than Permitted Liens.

Seller shall promptly pay all subcontractors under this Agreement (including, for clarification, subcontractors working off-Site) and shall, at the time of each payment made to any such subcontractor, obtain a conditional or final lien waiver (in each case, substantially in the statutorily prescribed form required by the applicable state Governmental Authority in which the Site is located (and, if there is no such prescribed form, then in form and substance reasonably satisfactory to Buyer)), and promptly provide Buyer with a copy of such lien waiver; provided, that the foregoing requirements in this Section 3.4(4) to provide Buyer with copies of lien waivers shall only apply to subcontractors that have agreed to provide or perform equipment or services in respect of the applicable Facility for purchase price or fees in excess of $[***] in the aggregate. Seller shall discharge any Liens by such subcontractors within thirty (30) days of obtaining Knowledge thereof. Seller shall release all Liens in favor of Seller on each Facility upon final payment of the Aggregate Purchase Price for such Facility. Upon the failure of Seller to discharge a Lien required to be discharged under this Section 3.4(4), or else promptly to provide a bond in an amount and from a surety acceptable to Buyer to protect against such Lien, in each case, within thirty (30) days after Seller is aware of the existence thereof, Buyer may, but shall not be obligated to, pay, discharge or obtain a bond or security for such Lien and, upon such payment, discharge or posting of security therefor, shall be entitled immediately to recover from Seller (and Seller shall indemnify and hold harmless Buyer for) the amount thereof, together with all reasonable and necessary expenses, including attorneys' fees, actually incurred by Buyer in connection with such payment or discharge, or to set off all such amounts against any amounts owed by Buyer to Seller hereunder.

Section r. Insurance

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(i)Seller shall maintain and comply with the insurance described in (and comply with the terms and conditions set forth in) Annex B until the end of the Warranty Period with respect to each Facility (including during performance of Installation Services and Facility Services, as applicable), and, to the extent any ESA or Site License contains additional or more stringent insurance requirements (including the addition of any named or additional insureds), Seller shall on Buyer's behalf satisfy and maintain compliance with such requirements. Without limiting any of Buyer's rights and remedies hereunder, to the extent Seller fails to procure or maintain an [***] insurance policy required hereunder, Seller shall reimburse Buyer for the cost of such policy, as well as any reasonable expenses and fees of third parties incurred in connection therewith, if Buyer chooses (in its sole discretion) to procure or maintain such policy.

(ii)Promptly after the First Agreement Date, and each year, promptly after effecting the renewal of its insurance policies, Seller shall provide to Buyer copies of any certificates of insurance evidencing its compliance with Annex B.

Section s. Right of First Refusal

. In the event that Buyer or its Affiliates desires to sell or otherwise transfer title to any Facility or Facilities that is not in conjunction with the assignment or other transfer of the direct or indirect equity interests of Buyer, as permitted pursuant to Section 14.4 (if not in conjunction as so described, a "Facility Transfer"), to a transferee other than an ESA Customer or an Affiliate of Buyer, Buyer shall first promptly notify Seller of the proposed purchase price and any material economic terms and conditions ("Buyer's Notice"). The Buyer's Notice shall constitute the Buyer's offer to sell the Facility or Facilities to Seller:

If such Facility Transfer is for a Facility or Facilities that in the aggregate are less than [***]% of the Portfolio (measured as the System Capacity of the Facility or Facilities to be transferred over the System Capacity of the Portfolio) (the "ROFR Threshold"), the Buyer's notice shall be irrevocable and Seller shall have an exclusive right of first refusal to purchase such Facility or Facilities on the same terms and conditions of such sale outlined in the Buyer's Notice for a period of 10 Business Days after receipt of such terms and conditions in the Buyer's Notice; and

(i)if such Facility Transfer is for a Facility or Facilities that in the aggregate are equal to or greater than the ROFR Threshold, Seller will have the option to make an offer to purchase such Facility or Facilities before the end of the period of ten (10) Business Days after receipt of such terms and conditions in the Buyer's Notice by delivering a written offer to Buyer on the terms specified in the Buyer's Notice ("Seller's Offer Notice"). Any Seller's Offer Notice so delivered to Buyer shall be binding upon delivery and be irrevocable by Seller. Buyer agrees to bargain in good faith on any terms not stated in the Seller's Offer Notice.

(ii)In the event that Seller elects to purchase such Facility or Facilities, Seller shall, promptly following payment of the purchase price, remove such Facility or Facilities at Seller's cost,

including the remediation of the Site in which the such Facility or Facilities were located in accordance with Section 4.10(2).

(iii)In the event that Seller declines to purchase such Facility or Facilities, or fails to respond within the applicable period, or if Buyer and Seller fail to agree on and execute a purchase and sale agreement within sixty (60) calendar days after the date of Buyer's receipt of Seller's Offer Notice, Seller shall be deemed to have waived its rights to purchase such Facility or Facilities pursuant to this Section 3.6(2), and Buyer shall have the right thereafter, without further notice to Seller, to effect any such Facility Transfer; provided, if the purchase price of any Facility Transfer offered to any such third-party decreases by more than ten (10%) percent of the original purchase price or there are material changes in material terms favorable to a potential independent buyer that a reasonable independent buyer would reasonably believe to be materially beneficial after Seller has waived its rights to purchase such Facility or Facilities pursuant to this Section 3.6, then Buyer shall notify Seller in writing of the change and shall give Seller another option to purchase the Facility or Facilities pursuant to clause (1) or (2) of this Section 3.6, as applicable, at the reduced purchase price or pursuant to such changed terms. Any Facility Transfer must be effected in accordance with the terms and conditions of the applicable ESA or ESAs. Buyer may not make a Facility Transfer to a direct Competitor of Seller without the express written consent of Seller.

(iv)Any Facility Transfer shall have no effect whatsoever on the terms and conditions of this Agreement with respect to the remaining Facilities not subject to such Facility Transfer.

(v)Notwithstanding anything to the contrary herein, this Section 3.6 shall in no way restrict an assignment or other transfer of this Agreement or a Party's rights, interests or obligations hereunder pursuant to the terms of Section 14.4, and the Parties acknowledge and agree that any restrictions applicable to such an assignment or transfer are set forth in Section 14.4.

(vi)Subject to clause (6) above, if Buyer effects a Facility Transfer pursuant to this Section 3.6, (A) Buyer may assign and delegate its rights and obligations under this Agreement solely with respect to those Facilities subject to such Facility Transfer to the applicable purchaser or (B) Buyer will facilitate and Seller will use commercially reasonable efforts to enter into an agreement with such purchaser for the operation and maintenance of such Facilities with terms substantially similar to the operation and maintenance terms set forth herein, after which this Agreement shall no longer be deemed to be effective with respect to those Facilities subject to such Facility Transfer.

Section t. Third Party Warranties

. If any express or implied warranties, indemnities, guaranties, remedies, covenants and other rights which any subcontractor or supplier has made to Seller with respect to any good, service, or other deliverable furnished under this Agreement in respect of a Facility (each a "Third Party Warranty"), including third party Software, would provide any additional rights to Buyer beyond the warranties under ARTICLE V, then (a) such Third Party Warranty providing additional

rights will be for the benefit of and passed through to Buyer to the fullest extent possible, (b) Seller hereby transfers and assigns (and shall transfer and assign in the future, to the extent not hereby transferred and assigned) to Buyer all of Seller's right, title and interest under such Third Party Warranty to exercise such additional rights (and shall execute and deliver any documents as and when required to effect the foregoing transfers and assignments), and (c) Seller hereby appoints Buyer as attorney-in-fact coupled with an interest to exercise and enforce all such additional rights in the name of either Buyer or Seller. Nothing in this Section 3.7 will limit Seller's obligations to Buyer under ARTICLE V or Section 3.3.

Section u. Access; Cooperation

. Seller shall provide to Buyer such other information that is in the possession of Seller or its Affiliates or is reasonably available to Seller regarding the permitting, engineering, construction, or operations of Seller, its subcontractors or the Facilities, and other data concerning Seller, its subcontractors or the Facilities that Buyer may, from time to time, reasonably request in writing, subject to Seller's obligations of confidentiality to third parties with respect to such information.

Section v. Performance Standards

. For the purpose of this Agreement, Seller shall perform all of its duties and obligations under this Agreement, including the Installation Services and the Facility Services, in accordance and consistent with each of the following (unless the context requires otherwise), including to such standards as are required of Buyer in respect of duties and obligations for which Seller bears responsibility under this Agreement: (A) plans and specifications attached hereto or provided pursuant to any Permit, ESA, Site License or Interconnection Agreement; (B) all Permits and other applicable Legal Requirements; (C) the manufacturer's recommendations and warranties with respect to all equipment and all maintenance and operating manuals or service agreements, whenever furnished or entered into, including any subsequent amendments or replacements thereof, issued by the manufacturer, provided they are consistent with generally accepted practices in the fuel cell industry; (D) the requirements of all applicable insurance policies; (E) any applicable provisions of the Site Licenses, including any landlord rules and regulations; (F) Prudent Electrical Practices; (G) the relevant provisions of each Interconnection Agreement and PTO; (H) each ESA and Site License; (I) each Incentive Agreement; (J) the requirements in respect of any applicable System Attribute in respect of which any services are being provided by Seller or its Affiliate (x) hereunder or (y) under the Administrative Services Agreement, (K) the Seller Corporate Safety Plan (as updated by Seller from time to time, with a copy provided promptly to Buyer); (L) all Legal Requirements, Permits and Governmental Approvals; and (M) all Environmental Requirements (collectively, the "Performance Standards"); provided, however, that meeting the Performance Standards shall not relieve Seller of its other obligations under this Agreement. Any Battery Solution associated with a Facility shall be charged solely by the associated Bloom System, and under no circumstances shall any electricity from any source other than the associated Bloom System be stored in the Facility.

ARTICLE IV.

FACILITY SERVICES AND OTHER WORK

Section w. In General

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(i)During the Warranty Period, in consideration of the Service Fees, Seller shall service each Facility constituting a portion of the Portfolio so that the Portfolio performs in accordance with the Warranty Specifications and so that the BOF and Ancillary Equipment will not cause the Portfolio to fail to perform in accordance with the Warranty Specifications, as more fully set forth in ARTICLE V, and in all cases subject to the Performance Standards. Without limiting the foregoing, Seller agrees to perform on behalf of Buyer all operations and maintenance obligations in respect of each Facility under the applicable ESA and Site License in a manner fully consistent with the terms and conditions of such documents. The services set forth in this Section 4.1, as more fully described in this ARTICLE IV, are collectively referred to herein as the "Facility Services." For clarity, Seller shall have no authority or responsibility under this Agreement with respect to the payment or receipt of monies to or from ESA Customers or with respect to serving or receiving formal notices to or from ESA Customers; provided, however, subject to the notice requirements set forth in Section 6.2, that Seller may informally communicate with ESA Customers regarding routine, day-to-day Facility Services matters. For so long as Seller is performing Facility Services in respect of a Facility, the Parties intend that Seller shall be responsible for all operational activities in respect of such Facility, including the performance of all obligations to ESA Customers that are required to be performed physically at any Site under the applicable Facility Contracts. If a Party has any uncertainty regarding which Party is responsible for particular obligations to ESA Customers, the Party's Manager shall discuss such matter with the other Party's Manager to implement the allocation of responsibility intended by this Agreement and the Parties thereafter shall, if necessary, amend this Agreement to clarify the Parties' agreement regarding such allocation of responsibility.

(ii)Until the expiration of the Extended Warranty Term, upon the expiration of the Warranty Period with respect to any Facility Buyer may, at its option, elect to renew the Warranty Period with respect to such Facility for a period of one (1) additional year. The Warranty Period for each Facility shall be automatically renewed for a period of one (1) additional year at the termination of the existing Warranty Period if Buyer has not informed Seller in writing of its election to terminate the Warranty Period at the end of such existing Warranty Period at least thirty (30) days prior to the final date of such existing Warranty Period. Notwithstanding anything to the contrary set forth in the foregoing, in the event that the "Term" of the Equinix ESA with respect to any Facility(ies) is extended pursuant to Section 4.7(c) thereof, then, upon the expiration of the then-applicable term of such Equinix ESA absent such extension, Buyer may elect to extend the Warranty Period for such Facility(ies) for a period equal to such extended "Term" instead of electing a one-year renewal.

(iii)Notwithstanding anything to the contrary set forth in the foregoing, in the event that the "Term" of an ESA with respect to any Facility is extended pursuant to any provision in such ESA (or any related agreement between Buyer and the applicable ESA Customer) providing for

a day-for-day extension thereof during a period in which the Facility is not generating electricity, then, (i) Buyer's obligation to pay Services Fees with respect to the applicable Facility shall be automatically suspended during the pendency of the Facility outage, (ii) the year of the Warranty Period in which the "Initial Term" (as extended) of the applicable ESA would otherwise have expired shall be automatically extended on a day-for-day basis equal to the extension of the applicable ESA so that the Warranty Period is coterminous with the "Initial Term" of applicable ESA, as extended, and (iii) during such idle period Seller will be obligated to perform only such maintenance services for the Facility as are designed to facilitate a safe and reliable restart of the Facility following such idle period.

(iv)If requested by Buyer, Seller shall use its commercially reasonable efforts to assist with and facilitate (i) the exercise by any ESA Customer of its rights to renew, or (ii) other renewal, in each case of the initial term or any renewal term of such ESA Customer's ESA. Such assistance and facilitation shall include the execution and delivery of reasonable documents and other instruments requested by Buyer.

Section x. Operation and Maintenance Services

. Without limiting, and in furtherance of, Section 4.1, Seller is hereby granted the right and authority (and, to the extent necessary to carry out its functions hereunder, a limited power of attorney) and agrees, for the benefit of Buyer, to operate safely and reliably each Facility and to maintain during the Warranty Period in accordance with the terms of this Agreement each such Facility in good condition and repair in accordance with the Warranty Specifications and the Performance Standards. During the Warranty Period, the specific responsibilities of Seller under this Agreement shall include the following:

(i)Facility Operations. Seller shall ensure that all Facility components are operated and maintained safely and in a manner designed to meet the Warranty Specifications and Performance Standards and as otherwise required under this Agreement.

(ii)Facility Maintenance. Seller shall perform, or cause to be performed, all scheduled and unscheduled maintenance required on the Facilities in order to perform in accordance with the Warranty Specifications and Performance Standards. In that regard, Seller's responsibilities hereunder shall include promptly correcting any malfunctions in compliance with the terms of this Agreement. Seller agrees to respond in a timely manner to any Facility outage or other casualty that materially reduces power output or efficiency, or materially impairs the capability of any Facility to comply with the terms and provisions of the applicable ESA or the Performance Standards, by (A) promptly diagnosing the source of such issue and, (B) if on-Site Facility Services are required, using its best efforts to (1) dispatch field service personnel to the Site within one Business Day after Seller obtains Knowledge that such on-Site Facility Services are required, and (2) cause its field service personnel to arrive at the applicable Site in order to commence repair services at the applicable Facility no later than the next Business Day. Without in any way limiting the foregoing, Seller shall in any event comply with any and all response time(s) and/or corrective activity(ies) required by the applicable ESA(s).

(iii)Repair and Replacement of Power Modules; ITC Recapture Covenant. Buyer agrees that Seller may replace the Power Modules included in each Facility with Power Modules of a different model, provided that Seller certifies to Buyer that such replacement model has been subjected to inspections and tests performed by Seller which indicate that such replacement Power Modules model is reasonably expected to perform at least as well as the model it replaces. Seller hereby covenants to Buyer that (i) any repair or replacement of Power Modules made within five (5) years of the date the applicable Bloom System was Placed in Service will have an aggregate cost of replaced parts (taking into account the cost of any other replaced parts pursuant to this Agreement or otherwise) that is less than eighty percent (80%) of the Bloom System's total value (the cost of the new parts plus the value of the remaining Bloom System originally Placed in Service), and (ii) Seller shall keep appropriate records and other documentation until the twelve-year anniversary of the date upon which the applicable Bloom System was Placed in Service that (A) specifically identify the Power Module relocated or removed, (B) evidence that such item is different than that used upon Placed in Service, (C) are sufficient to provide evidence to Buyer and other Persons, as necessary, of the cost of such replaced parts and (D) are sufficient to provide evidence to Buyer and other Persons, as necessary, whether any removed or relocated Power Modules or refurbished parts contain any equipment other than the specifically identified components relocated or removed; provided, Seller shall have no obligation to disclose such records or documentation unless required under Section 6.1(1)(ii) or Section 10.3(5) in connection with a Tax Proceedings.

(iv)Personnel. Seller shall ensure that all operations and maintenance functions contemplated by this Section 4.2 are performed by technically competent and qualified personnel (the "Service Technicians"). Seller shall ensure that all Service Technicians: (i) participate in a maintenance training program and receive confirmation of having achieved the requisite level of proficiency for the tasks they are assigned to perform, and (ii) attend periodic "refresher" training programs to the extent Seller deems necessary, in its reasonable judgment.

(v)Spare Parts. Seller shall establish and maintain an adequate inventory of spare parts in one or more locations to facilitate scheduled and unscheduled maintenance required on the Facilities.

(vi)Programs and Procedures. Prior to the date of the Commencement of Operations of the first Facility, Seller and Buyer shall have adopted and implemented programs and procedures, consistent with the Performance Standards, intended to ensure safe and reliable operation of the Facilities. Seller may update such programs and procedures from time-to-time during the Term that it believes to be appropriate, in its reasonable judgment and in accordance with the Performance Standards, such updates subject to Buyer's approval. Buyer may, not more than once per calendar year and at Buyer's sole cost and expense, review such programs and procedures from time to time to confirm compliance with the Performance Standards. Buyer may from time to time provide comments on any such Seller programs and procedures and Seller agrees to consider any such comments in good faith; provided, that Buyer's review and comment on any such program or procedure will not relieve Seller of any of its obligations under this Agreement.

(vii)Operations and Maintenance Procedures. Without in any way limiting Seller's obligations pursuant to this Section 4.2, Seller shall perform all operations and maintenance work in accordance with the provisions of Schedule 4.2.

(viii)Maximum Export Covenants and Net Metering. Seller shall cause each Facility to be operated such that the export off Site of any amount of output from any Facility does not cause the breach or violation of any obligation or duty in the applicable ESA in respect of net metering quantities or other output export limitations.

(ix)Kaiser Self Performance. Notwithstanding anything to the contrary herein, Buyer shall have no liability hereunder or under any Transaction Document arising from any performance by Kaiser pursuant to a Kaiser ESA.

(x)Plans Regarding Certain [***] Charges. To the extent Buyer, in its capacity as "Supplier" pursuant to [***], has any performance obligations pursuant to Section 3.4(c) of the [***] (including any obligations to coordinate maintenance schedules, develop or implement plans, modify physical plant or modify operations or maintenance), (a) Seller shall perform such obligations for no additional consideration hereunder in accordance with (i) the requirements set forth herein and (ii) the Performance Standards and (b) Buyer shall have no obligations hereunder. Without limiting the foregoing, upon receipt of notice from the applicable ESA Customer pursuant to Section 3.4(c)(ii) of [***], Seller shall cooperate with Buyer and such ESA Customer in furtherance of the obligations of Supplier thereunder.

Section y. Service Fees

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(i)Buyer shall compensate Seller for the Facility Services, on a calendar month basis, by paying Seller the "Service Fees" equal, for each Facility, to (i) (A) the rate (in $/kW) specified in Schedule 4.3(1) hereto for such Facility for the applicable calendar month since the applicable Facility achieved Commencement of Operations, multiplied by (B) the aggregate System Capacity (in kW) of the Bloom Systems comprising the applicable Facility, for the applicable calendar month, plus (ii) any additional Services Fees for such Facility set forth on Schedule 4.3(1) hereto based on the presence of Ancillary Equipment. If Facility Services are provided by Seller for a particular Facility for only a portion of any calendar month, the Service Fees due with respect to such partial calendar month shall be pro-rated based on the number of days such Facility Services were provided in respect of such Facility during the calendar month.

(ii)Commencing on the date each Facility achieves Commencement of Operations, with respect to each calendar month of such Facility's Warranty Period, the Service Fees shall be invoiced not more often than once per calendar month on a separate invoice (and not pursuant to a Payment Notice) not later than five (5) Business Days prior to the first day of such calendar month, and, subject to Section 3.4(1)(xii)(B) and Section 5.4, shall be payable no later than the thirty (30) calendar days following such proper delivery of such invoice; provided, that the pro rata Services Fees for the calendar month in which a Facility achieves Commencement of

Operations shall be invoiced and paid with the Services Fees for the subsequent calendar month. Interest shall accrue, unless being contested in good faith, daily on the Service Fees not paid when due, at the lesser of the monthly rate of (i) one and five-tenths percent (1.5%) and (ii) the highest rate permissible by law on such unpaid balance. Seller shall be under no obligation to provide or perform services hereunder for any Facility whose Service Fee, other than a Service Fee disputed in good faith, has not been paid in full (or offset pursuant to Section 2.11, Section 2.12, Section 3.4(1)(xii)(B), Section 4.3(6), Section 5.7 or Section 5.8) within thirty (30) days of invoice until such date upon which the Service Fee has been paid.

(iii)If Buyer disputes any amount shown in an invoice issued by Seller in accordance with Section 4.3(2): (i) Buyer must pay the undisputed portion of the invoice amount within the time prescribed by Section 4.3(2), and (ii) liability for the disputed portion of that invoice will be determined in accordance with the dispute resolution procedure set out in Section 14.5.

(iv)Any disputed portion of an invoiced amount which was not paid under Section 4.3(3) and is determined as being due to Seller in accordance with the dispute resolution procedure set out in Section 14.5 must be paid by Buyer within ten (10) days of the determination of the dispute in accordance with the procedure set out in Section 14.5 plus, if it is determined in accordance with the dispute resolution procedures that the disputed portion was not disputed in good faith, interest calculated in accordance with Section 4.3(2).

(v)Buyer shall, promptly following receipt of an invoice and reasonable supporting documentation thereof, reimburse to Seller the amount of any cash deposit Credit Support provided by Seller and described on Schedule 1.

(vi)Each Party shall have the sole and absolute right to set off any undisputed amounts to which it is entitled under this Agreement (each, a "Set-Off Amount"). If a right to set off so arises, Buyer or Seller, as the case may be, may invoice the other Party for such Set-Off Amount. If such Set-Off Amount is not paid within 30 days of receipt of such invoice, then the Party due such Set-Off Amount shall have the sole and absolute right to set off any undisputed amounts to which it is entitled under this Agreement against any amounts owed by such Party under this Agreement; *provided, however*, the Party setting off such amounts must deliver written notice to the other Party no later than three (3) Business Days from date the Set-Off Amount is actually set off, which notice identifies (i) the amount so invoiced pursuant to this Section 4.3(6),(ii) the Set-Off Amount, and (iii) the provision to which the Set-Off Amount relates. The deduction of any Set-Off Amount shall operate for all purposes as a complete discharge (to the extent of such deduction) of the obligation of the applicable Party to pay the amount from which such deduction was withheld and made. Neither the exercise of, nor the failure to exercise, such right of setoff will constitute an election of remedies or limit the applicable Party in any manner in the enforcement of any other remedies that may be available to it.

(vii)If Seller is prevented from performing the Facility Services for a given Facility, or if Buyer is prevented from performing its obligations hereunder, due to a Force Majeure Event under Section 12.6(1) or a Change in Law under Section 12.9, in either case for a period in

excess of thirty days in the aggregate (whether or not continuous) over a six month period, then, on and after the thirty-first day of such Force Majeure Event or Change in Law, as the case may be, Buyer shall not be required to pay the Service Fees for such Facility until the date Seller may resume performing the Facility Services for such Facility.

(viii)Unless expressly stated otherwise, the Service Fee shall serve as the full consideration for all of Seller's obligations in this Article IV and otherwise after each Facility's Commencement of Operations Date pursuant to this Agreement, and Buyer shall have no obligation to make further payment with respect to such performance hereunder. Seller shall bear any cost overruns in connection with any services provided by a Service Provider.

Section z. Remote Monitoring; BloomConnect

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(i)For purposes of monitoring the operational performance and determining when repair services are necessary, Seller shall monitor and evaluate the information gathered through remote monitoring of each Facility and Site as well as the maintenance and inspection Site visits. For so long as Seller is responsible for the Facility Services in respect of any Facility, Seller shall provide Buyer with access to (i) BloomConnect or any successor software and (ii) Raw Data, in each case with respect to such Facility.

(ii)To the extent an ESA Customer has a right to access BloomConnect or any successor software related to the management of its purchase of energy under an applicable ESA, Seller shall provide access to such ESA Customer for the same.

Section aa. Permits

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(i)Seller shall be responsible, at its sole cost and expense, for obtaining, maintaining and complying with all Permits and PTO required to perform the Facility Services under this Agreement, including related performance assurance or other credit support requirements in connection therewith, and shall promptly notify Buyer of any material challenges to the status of a Permit and PTO for a Facility, or any other material issues or anticipated material issues relating to obtaining or maintaining a Permit and PTO for a Facility. Without in any way limiting the foregoing, Buyer shall cooperate with and assist Seller in obtaining all such Permits and PTO.

(ii)Seller agrees, at its sole cost and expense, to consult, advise and otherwise assist with the Buyer's preparation and submission of all filings and notices of any nature which are required to be made by Buyer under the terms of any Permit held by Buyer or any Legal Requirements applicable to the Facilities or to Buyer on account of the Facilities.

Section ab. Coordination of Relationship

.

(i)Seller's Operations Manager. Seller shall at all times retain an operations manager (the "Operations Manager") who shall be dedicated to the overall supervision and management of performance of Seller's Facility Services obligations under this Agreement. Seller's initial Operations Manager is set forth on Schedule 4.6. Seller may, from time to time, designate another individual as a proposed replacement for the Operations Manager by notice to Buyer. Seller's suggested replacement Operations Manager shall be subject to Buyer's approval, which may not be unreasonably withheld or delayed in all instances. Where feasible, Buyer shall have the opportunity to meet the replacement Operations Manager in person or telephonically prior to assignment. Such meeting will take place telephonically except as otherwise agreed upon by the Parties. Nothing in this paragraph shall prevent Seller from assigning interim replacements on a temporary basis to enable it to continue to timely perform its obligations while assignment of a permanent replacement is pending. During the Warranty Term, Seller shall not assign the Operations Manager duties that are inconsistent or that conflict with the obligations of the Operations Manager in respect of his or her Facility Services duties.

(ii)Buyer Manager. Buyer will appoint an individual to serve as its primary contact person with regard to this Agreement (the "Buyer Manager"). Buyer's initial Buyer Manager is set forth on Schedule 4.6. Buyer may, from time to time, designate another individual as a proposed replacement for the Buyer Manager by notice to Seller.

(iii)Manager Meetings. The Buyer Manager and the Operations Manager will serve as each Party's main contact to, and for, the other Party with regard to day-to-day matters affecting the Parties' relationship in relation to Installation Services and Facility Services. The Buyer Manager and the Operations Manager (or their designees) will meet, by phone or in person, as often as they feel necessary to monitor and manage such day-to-day activities. Such managers shall operate by consensus to the extent practicable but shall have no authority to amend or waive compliance with the terms and conditions of this Agreement, or to approve actions of the Parties that are inconsistent with this Agreement. Any such waivers or amendments shall be implemented only as described in Section 14.1 or Section 14.2, as the case may be.

(iv)QBR. Unless waived in writing by Parties, senior representatives of Buyer (or its Affiliate) and Seller will meet for a QBR at least once each fiscal quarter, which meeting may be by phone or in person. The parties will mutually agree, reasonably in advance, upon an agenda for each QBR, which may include ESA Customer renewals and additional expansion activities. Each QBR shall provide the parties reasonable time to discuss the agenda and ask and respond to relevant questions.

Section ac. Relocation or Removals of Facilities or Power Modules Within Portfolio Pursuant to ESAs

. In the event that an ESA permits the applicable ESA Customer to request or require the relocation or removal of a Facility or any Power Modules therein after such Facility achieves any

of the events described in clauses (2) through (4) of the definition of "Placed in Service", Buyer may, upon request made by such ESA Customer pursuant to the provisions therein, require Seller to relocate or remove such Facility or Power Modules pursuant to this Section 4.7.

(i)In the event that a Facility or one or more Power Modules are to be relocated and remain subject to the same ESA pursuant to this Section 4.7, Seller shall promptly perform all actions necessary for the removal of such Facility or Power Modules from the original Site(s) and the transportation to, and reinstallation and resumption of operations of, such Facility or Power Modules at the relocation Site(s) determined in accordance with the applicable ESA. Buyer shall bear all costs associated with such relocation, provided, that Seller shall bear all such costs to the extent such relocation is due to a breach by Seller of the ESA Warranty or the Efficiency Warranty or a Seller Default, in each case as between Buyer and Seller.

(ii)In the event that a Facility or one or more Power Modules are to be removed pursuant to this Section 4.7, Seller will promptly remove such Facility or Power Modules from the applicable Facility or Facilities, and the Parties will cooperate in good faith to identify one or more Sites or Facilities in the Scheduled Portfolio at which to redeploy such Facility or Power Modules, either (in the event one or more Power Modules but not an entire Facility is being removed or relocated) as additional Power Modules installed in then-empty Power Modules cabinets or to replace operating Power Modules nearing the end of their useful life. In identifying such Sites or Facilities, the Parties will consider (among other things) (i) the availability of empty Power Module cabinets, (ii) wiring or other equipment limitations, and (iii) any restrictions or limitations imposed by Legal Requirements, the ESAs, and the applicable Interconnection Agreement. Upon Buyer's direction, Seller will promptly (x) perform all actions necessary for the handling, removal, shipping, transportation, storage, and reinstallation of such Facility or Power Modules from the original Site and the transportation to, and reinstallation and resumption of operations of, such Facility or Power Modules at the relocation Site in each case in accordance with the applicable ESA and (y) exercise its commercially reasonable efforts to assist Buyer in obtaining for Buyer's benefit a release in writing of all of Buyer's obligations and liabilities with respect to such Facility or Power Modules that are applicable at the initial Site, whether under the applicable ESA or any other agreements that are no longer applicable.

(iii)Any relocation or removal of Power Modules pursuant to this Section 4.7 shall be performed in accordance with Sections 4.2(3); provided, that without Buyer's prior written consent, Seller shall not perform such relocation or removal other than using specifically identified Components removed or relocated from the original Site.

Section ad. Remarketing and Redeployment

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(i)In certain circumstances an ESA may contain terms or conditions requiring Buyer to attempt to remarket and redeploy one or more Facilities, but not to remove or relocate such Facilities, which actions are instead addressed in Section 4.7 hereof. If Buyer becomes obligated

to attempt such remarketing and redeployment as described in the foregoing sentence or as required under Section 2.3(b) of a [***] ESA and defined as "Redeploy" under a [***] ESA, Seller agrees to assist Buyer in such applicable remarketing, resale or redeployment obligations (collectively, the "ESA Remarketing Activities"), using at least that degree of effort as is required of Buyer under the applicable ESA. Without in any way limiting the foregoing, Seller assistance shall include taking the following actions for Buyer's benefit upon request: (a) if necessary, remove such Facility in accordance with Section 4.10(2), (b) on a nondiscriminatory basis with respect to other similar equipment of Seller, distributing to its sales organization information on the availability, location and price of such Facility, and agreeing to provide to a prospective purchaser of such unit or the output thereof, as applicable, at no cost to such purchaser, a certificate of maintainability with respect to such unit, (c) subject to Buyer's approval of reinstallation and procurement plans, cause such Facility to be reinstalled at the applicable purchaser's site at Seller's then prevailing installation rates, including procuring and installing any necessary BOF equipment related thereto, (d) cause such Facility to be refurbished or reconfigured as necessary or appropriate to facilitate such resale or redeployment, and (e) enter into an Energy Tolling Agreement and site license agreement for all necessary operations and maintenance services necessary to operate such Facility following such resale or redeployment at Seller's then prevailing maintenance rates for similar equipment at a similar Site and including a scope of work, performance guaranties, and indemnification provisions similar in all material respects (except that Tolling Rates shall be subject to Buyer's approval in its sole discretion) to the ESA pursuant to which the applicable Facility was most recently installed. The purchaser described above shall be deemed a New Customer hereunder, and its site a New Customer Site, in each case approved in Buyer's sole discretion. Any ESA Remarketing Activities shall be performed in accordance with Section 4.2(3); provided, that without Buyer's prior written consent, Seller shall not perform such ESA Remarketing Activities other than using specifically identified Components removed or relocated from the original Site. In the event the requirements and obligations under the ESA conflict with the requirements and obligations in this Section 4.8(1), the provisions of the ESA shall prevail.

(ii)If Buyer elects that Seller relocate a Facility or Bloom Systems to a substitute Site pursuant to Section 3.4(1)(xii)(B) or Seller becomes obligated to do so as a result of removing a Facility under Section 2.4(7) (if applicable), then unless and until Buyer subsequently elects that Seller refund any amounts in respect of the Aggregate Purchase Price paid as of such date in and remove such Facility or Bloom Systems pursuant to Section 2.4(7) or Section 3.4(1)(xii)(B), as applicable, to the extent a substitute Site is not already available and approved by Buyer in its sole discretion in writing, Seller shall attempt to remarket or redeploy such Facility or Bloom Systems, including upon Buyer's request, on a nondiscriminatory basis with respect to other similar equipment of Seller, distributing to its sales organization information on the availability, location and price of such Facility, and agreeing to provide to a prospective purchaser of such unit or the output thereof, as applicable, at no cost to such purchaser, a certificate of maintainability with respect to such unit (collectively, the "Pre-PIS Remarketing Activities"). Seller will (a) if applicable, ensure any proposed New Customer and/or New Customer Site is approved by Buyer in its sole discretion in writing, (b) subject to Buyer's approval of reinstallation and procurement plans, cause such Facility to be reinstalled at the applicable

substitute Site at Seller's then prevailing installation rates, including procuring and installing any necessary BOF equipment related thereto cause such Facility to be refurbished or reconfigured as necessary or appropriate to facilitate such redeployment and (c) either (x) in its own name, enter into the applicable ESA and site license agreement for all necessary operations and maintenance services necessary to operate such Facility following such redeployment at Seller's then prevailing maintenance rates for similar equipment at a similar Site and including a scope of work, performance guaranties, and indemnification provisions similar in all material respects (except that Tolling Rates shall be subject to Buyer's approval in its sole discretion) to the ESA pursuant to which the applicable Facility was most recently installed and, upon approval in writing from Buyer, assign each of the foregoing to Buyer or (y) negotiate the final forms of the foregoing and present them to Buyer for approval and execution.

(iii)All of Seller's reasonable and documented costs and expenses (including a reasonable allocation of personnel hours) incurred in connection with any ESA Remarketing Activities shall be reimbursed by Buyer, and Seller will reasonably cooperate with Buyer to provide Buyer with any documentation that is required pursuant to the applicable ESA to support such costs and expenses. All costs and expenses in respect of any PrePIS Remarketing Activities and other services and equipment provided pursuant to Section 4.8(2) are for the account of Seller, it being understood that any portions of the Aggregate Purchase Price paid to date in respect of the related Facility shall fully compensate Seller for performing such obligations.

Section ae. Calculation of Indexed ESA Tolling Rates

. In the event that an ESA (including as applicable to any one or more Facilities) provides for the calculation of the Tolling Rate for any Facility as of any time based on external factors such as the prevailing price of electricity, electricity transmission and delivery, natural gas prices, or other factors (each, an "Indexed ESA"), Seller shall perform all required calculations of the Tolling Rate(s) on behalf of Buyer in accordance with the requirements of the applicable Indexed ESA, and Buyer hereby authorizes Seller, subject to Section 4.1, to perform such calculations, informally interact with the applicable ESA Customer(s) and generate proposed calculations of Tolling Rate(s) from time to time in accordance with the provisions of the applicable Indexed ESA. Seller shall keep Buyer informed, with reasonable documentation, throughout the performance of actions contemplated in this Section 4.9. In the event of any dispute between Seller and the applicable ESA Customer(s) regarding the calculations of the Tolling Rate(s), Seller shall provide prompt notice to Buyer of such dispute and thereafter Buyer shall have right to participate in and control all negotiations and to resolve such dispute with the applicable ESA Customer(s) regarding the calculations of such Tolling Rate(s). Seller shall deliver to Buyer the results of Seller's calculations of the Tolling Rate(s) under each applicable Indexed ESA at least five (5) Business Days prior to the date such calculations are to be delivered to the applicable ESA Customer so that Buyer may confirm Seller's calculations, and Seller shall not provide any such calculation to the applicable ESA Customer until Buyer has confirmed Seller's calculations. In the event that Buyer believes Seller has made any calculation errors, the Parties shall cooperate in good faith to resolve any discrepancies between Seller's calculations and Buyer's calculations prior to the date on which such calculations must be delivered to the applicable ESA

Customer pursuant to the terms of the applicable Indexed ESA, and as between Buyer and Seller any discrepancies that remain unresolved after a period of three (3) Business Days of discussions shall be resolved in favor of Buyer.

Section af. Repurchase and Remove

.

(i)If Seller repurchases a Facility pursuant to any of Sections 5.7(4), 5.8(1), 12.3, 12.7(2) or 12.7(4), or if a Facility is returned to Seller pursuant to Sections 2.4(7), 2.11, 3.4(1)(xii)(B) or Section 13.1, or if a Facility is the subject of a 2020 Facilities Assignment pursuant to Section 2.11 (provided, that without limiting any of Buyer's other rights and remedies pursuant to this Section 4.10(1), Buyer shall not exercise the remedy described in Section 4.10(1)(iv) with respect to an affected Facility during ongoing negotiations of a 2020 Facilities Assignment in respect of such Facility, as long as consummation of such 2020 Facilities Assignment without unreasonable delay remains reasonably likely), then:

xlix.Seller shall (x) pay to Buyer the Repurchase Value, if Seller is required to repurchase a Facility pursuant to any of Sections 5.7(4), 5.8(1), 12.3, 12.7(2) or 12.7(4), (y) if Seller is required to refund or repurchase a Facility pursuant to Sections 2.4(7), 2.11 or 3.4(1)(xii)(B) (or if such Facility is otherwise the subject of a 2020 Facilities Assignment pursuant to Section 2.11 pursuant to which a refund is due, but not in duplication of any Late Facility Payment for such Facility), (A) refund to Buyer all payments of the Aggregate Purchase Price paid in respect of such Facility or any Components thereof as of such date and (B) pay to any ESA Customers and any other Persons any amounts that are due or become due to be paid by Buyer pursuant to any ESA, Site License or other Facility Contract or Permit in respect of such Facility, or (z) pay to Buyer the amount specified in Section 13.1, if a Facility is returned to Seller pursuant thereto;

l.title to such Facility shall automatically transfer back to Seller on an AS IS basis upon Buyer's receipt of such payment and Buyer shall deliver a Bill of Sale to Seller evidencing such transfer of title;

li.upon Buyer's request, Seller shall use commercially reasonable efforts to assist Buyer in securing a release in writing of (and if such release cannot be secured within thirty (30) days, Seller shall assume in writing) all of Buyer's obligations and liabilities with respect to such Facility from the related ESA Customer under the applicable ESA and from any other Person party to a Facility Contract in respect of such Facility under such Facility Contract;

lii.Seller shall, at its sole cost and expense, remove such Facility from the applicable Site in accordance with Section 4.10(2) below;

liii.such Facility shall no longer be deemed a part of the Portfolio or the Scheduled Portfolio; and

liv.Seller and Buyer's rights and obligations with respect to such Facility under this Agreement shall terminate in full, except for those provisions that expressly survive by their terms.

lv.THE REMEDY DESCRIBED IN THIS SECTION 4.10(1) IS BUYER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE AND EXCLUSIVE LIABILITY, ARISING OUT OF ANY FAILURE SET FORTH IN SECTIONS 3.4(1)(xii)(B), 5.7(4), 5.8(1), 12.3 OR 12.7(2), EXCEPT AS EXPRESSLY SET FORTH IN SUCH SECTIONS; *PROVIDED*, SELLER SHALL BE RESPONSIBLE FOR ANY PAYMENTS DUE AND PAYABLE UNDER THIS AGREEMENT UP TO AND UNTIL THE DATE OF SUCH REPURCHASE.

(ii)Subject to Section 4.10(1), if Seller is required to remove a Facility from its Site pursuant to the terms hereunder, then:

lvi.Seller shall remove such Facility and all Ancillary Equipment and BOF (including the concrete pad to the extent required under the applicable ESA or Site License) from such Site;

lvii.Seller shall restore such Site to the condition before the installation and as required under the applicable ESA and Site License, closing all utility connections and properly sealing all Site penetrations in the manner required by Legal Requirements, the applicable ESA and Site License, if any; and

lviii.to the extent not already provided under Section 4.10(1)(iii), Seller shall, upon Buyer's request, use commercially reasonable efforts to assist Buyer in securing a release in writing of all of Buyer's obligations and liabilities with respect to such Facility, as applicable to the Site from which it was removed, from the related ESA Customer under the applicable ESA and from any other Person party to a Contract in respect of such Facility under such Contract (in each case if terminated or otherwise inapplicable to such Facility after such removal).

(iii)If Buyer becomes the owner of a Facility, or a Component thereof, that is no longer subject to, or, in Buyer's discretion, but subject to the terms and conditions of any applicable ESA, adequately monetized under, an ESA, Buyer may elect that Seller provide "Remarketing Services" under and as defined in the Administrative Services Agreement, for the fees set forth therein. Nothing in this Section 4.10(3) shall limit the rights of Buyer in connection with ESA Remarketing Activities or Pre-PIS Remarketing Activities, as set forth in Sections 4.8(1) and 4.8(2), respectively. Any such "Remarketing Services" shall be performed in accordance with Section 4.2(3); provided, that without Buyer's prior written consent, Seller shall not perform such "Remarketing Services" other than for specifically identified Components removed or

relocated from the original Site. This Section 4.10(3) shall be subject to Section 12.7(2) in all respects.

Section ag. Plans Regarding Fuel, Tariff Compliance and Mitigation.

(i)Promptly upon Seller's acquiring Knowledge that a change in, or an introduction of, any Legal Requirements governing the emissions of energy generators or interconnection requirements of a Transmitting Utility has occurred or is reasonably likely to occur with respect to one or more Facilities, which such change causes, or is reasonably likely to cause, Seller to become obligated to perform or make payments or reimbursements pursuant to Section 5.3 or Section 5.8 Seller will (A) notify Buyer thereof and provide a reasonably detailed summary of such change and (B) prepare for Buyer's review a mitigation strategy with respect to any potential liability under Sections 5.3 or 5.8 (such strategy, the "Mitigation Plan").

(ii)Seller will (i) periodically update Buyer on the scope and status of the Mitigation Plan, (ii) provide any other information reasonably requested by Buyer with respect thereto and (iii) use commercially reasonable efforts to cooperate with any of Buyer's reasonable due diligence efforts in connection therewith.

(iii)Seller shall under no circumstances execute, or cause to be executed, any Contract, which would, or would be reasonably likely to, result in Buyer becoming responsible for any additional duties, liabilities or obligations to any ESA Customer or its Affiliates, which duties, liabilities or obligations arise out of the circumstances and premises described in clause (iii) to the definition of "ESA Warranty" herein or in the final sentence of such definition.

(iv)To the extent Buyer has any obligations with respect to the circumstances and premises described in clause (iii) to the definition of "ESA Warranty" herein or in the final sentence of such definition, (a) Seller shall perform such obligations for no additional consideration hereunder in accordance with (i) the requirements set forth herein and (ii) the Performance Standards and (b) Buyer shall have no obligations hereunder.

ARTICLE V.

WARRANTIES

Section ah. Facility Services Warranty

. Without limiting Seller's obligations under ARTICLE IV, Seller shall perform, or cause to be performed, all such Facility Services in respect of the Bloom Systems, Ancillary Equipment and the BOF necessary for the Portfolio to perform in accordance with the Warranty Specifications (the "Facility Services Warranty").

Section ai. Performance Guaranty

.

(i)During the Warranty Period, Seller shall determine within ten (10) Business Days after the end of each calendar year, whether the Portfolio has delivered to the applicable Interconnection Points the Minimum kWh for purposes of the Performance Guaranty during such calendar year ("Performance Guaranty").

(ii)If such calculation indicates that the Actual kWh delivered by the Portfolio was greater than the Minimum kWh during such calendar year, then the difference (in kWh) between Actual kWh less Minimum kWh shall be recorded as a positive balance in the Performance Guaranty Bank.

(iii)If such calculation indicates that the Actual kWh delivered by the Portfolio was less than the Minimum kWh during such calendar year, then the difference (in kWh) between Minimum kWh less Actual kWh shall be recorded as a negative balance in the Performance Guaranty Bank.

(iv)Seller shall report the balance of the Performance Guaranty Bank to Buyer within thirty (30) days of the end of each calendar year. If Seller fails to perform any Performance Guaranty calculation within the periods required by this Section 5.2, Buyer may perform its own calculations and notify Seller of the results of such calculation and, if applicable, make a claim pursuant to Section 5.7. In the event that Buyer believes Seller has made any calculation errors, the Parties shall cooperate in good faith to resolve any discrepancies between Seller's calculations and Buyer's calculations.

(v)The Minimum Power Product for purposes of the Performance Guaranty shall be updated by amendment to this Agreement (which amendment shall be agreed upon and executed by both Buyer and Seller) promptly following the Commencement of Operations Date Deadline to reflect the final assumptions set forth in the Project Model used to calculate the Aggregate Purchase Price of the Facilities installed in the immediately prior Calendar Quarter (if such Project Model reflects a Minimum Power Product other than ninety-five percent (95%).

Section aj. Efficiency Warranty

. During the Warranty Period, Seller shall perform any required repairs, modifications (including algorithm or other adjustments) or replacements that Buyer is required to perform pursuant to the ESAs, whether based on the efficiency of any Facility or Facilities or other objective metrics used by Seller consistent with past practices, including availability, output, minimum production, peak demand reduction, demand charge reduction, backup power provision, islanding, net metering, interconnection requirement or otherwise (including the circumstances and premises described in clause (iii) to the definition of "ESA Warranty" herein and in the final sentence of such definition) (the "Efficiency Warranty"). If Buyer is obligated to perform any repair, modification or replacement of any Facility(ies), or any component thereof, pursuant to an ESA, Buyer may make a claim under Section 5.7(3).

Section ak. Performance Warranty

.

(i)During the Warranty Period, Seller shall determine within ten (10) Business Days after the end of each Calendar Quarter, whether the Portfolio has delivered to the applicable Interconnection Points the Minimum kWh for purposes of the Performance Warranty (as set forth in the definition of "Minimum kWh") during such Calendar Quarter ("Performance Warranty").

(ii)If such calculation indicates that the Actual kWh delivered by the Portfolio was greater than the Minimum kWh during such Calendar Quarter, then the difference (in kWh) between Actual kWh less Minimum kWh shall be recorded as a positive balance in the Performance Warranty Bank.

(iii)If such calculation indicates that the Actual kWh delivered by the Portfolio was less than the Minimum kWh during such Calendar Quarter, then the difference (in kWh) between Minimum kWh less Actual kWh shall be recorded as a negative balance in the Performance Warranty Bank.

(iv)Seller shall report the balance of the Performance Warranty Bank to Buyer with its delivery of the Quarterly Report. At any time the Performance Warranty Bank has a negative balance, Buyer may make a claim under Section 5.7. If Seller fails to perform any Performance Warranty calculation within the periods required by this Section 5.4, Buyer may perform its own calculations and notify Seller of the results of such calculation and, if applicable, make a claim pursuant to Section 5.7. In the event that Buyer believes Seller has made any calculation errors, the Parties shall cooperate in good faith to resolve any discrepancies between Seller's calculations and Buyer's calculations.

Section al. Portfolio Warranty

.

(i)Subject to Section 5.6 and Section 13.7, Seller warrants to Buyer that (i)(x) each Bloom System and each Battery Solution shall, upon Commencement of Operations, conform to the Specifications for Bloom Systems and Battery Solutions, respectively, set forth on Schedule 3.3(1) and (y) each Facility and its Components shall be free from defects in design, materials and workmanship until the second anniversary of the Commencement of Operations for such Facility (the warranties in the foregoing clauses (i)(x) and (i)(y) are collectively the "General Product Warranty"), and (ii) the Portfolio and each Facility will comply with the Warranty Specifications applicable to the Portfolio or such Facility, as the case may be, during the Warranty Period (collectively, the "Portfolio Warranty"). To the extent any claim under either the General Product Warranty or the Portfolio Warranty must be verified by Seller, Seller shall notify Buyer of its determination as promptly as is practicable.

(ii)Upon its receipt of a claim from Buyer relating to the General Product Warranty, or upon its obtaining Knowledge of a breach of the General Product Warranty Seller shall promptly

correct the applicable defect or failure to conform at Seller's sole expense, which proves to be or have been in breach of the General Product Warranty on or before the second anniversary of the Commencement of Operations for such Facility. Seller shall promptly notify Buyer of the date of completion of such correction, repair or replacement. Notwithstanding anything to the contrary in this Agreement, any action by Buyer for a breach of the General Product Warranty with respect to a Facility must be brought no later than ninety (90) days after the second anniversary of the Commencement of Operations for such Facility WITHOUT IN ANY WAY LIMITING SELLER'S OBLIGATION TO INDEMNIFY BUYER PURSUANT TO SECTION 5.8, AND/OR WITH RESPECT TO CLAIMS PURSUANT TO SECTION 13.3 BUYER'S SOLE REMEDY FOR A BREACH OF THE GENERAL PRODUCT WARRANTY SHALL BE THE CORRECTION OF DEFECTIVE OR NON-CONFORMING FACILITY AS STATED ABOVE.

(iii)The Portfolio Warranty is not transferable to any third person unless assigned pursuant to Section 14.4.

(iv)Any period of time in which the Warranty Specifications are not met shall not extend the Warranty Period.

Section am. Exclusions

. The Pre-COO Equipment Warranty, the Portfolio Warranty and the ESA Warranty shall not cover any obligations on the part of Seller to the extent caused by or arising from (a) a Facility being affected by vandalism or other third-party's actions or omissions occurring after Commencement of Operations (other than to the extent caused by actions or omissions of Seller, a Seller Affiliate, or a Service Provider, in any such case to the extent such action or omission constitutes a failure to perform or breach under a Transaction Document); (b) any failure by an ESA Customer to supply natural gas or interconnection services, as required under the applicable ESA (except to the extent from or through an Approved LDC); (c) Buyer's (as opposed to Seller, Seller Affiliate or a Service Provider) or an ESA Customer's (to the extent comprising a breach or failure to perform under an ESA) removal of any safety devices comprising a part of the Facility, (d) any conditions caused by unforeseeable movement of terrain in the environment in which a Facility is installed (provided that normal soil settlement, shifting, subsidence or cracking will not constitute 'unforeseeable movement'), (e) accidents, abuse, improper third party testing (unless caused by Seller, Seller Affiliate or a Service Provider), (f) to the extent and for the duration that Seller's performance is excused hereunder, Force Majeure Events, (g) installation, operation, repair or modification of a Facility by anyone other than Seller, Seller Affiliates or a Service Provider, in each case to the extent comprising a breach of an ESA Customer under the applicable ESA or a Buyer Default (other than any remedial action taken by Buyer following a Seller Default, solely to the extent allowed hereunder) and (h) subject to Section 12.9, and to the extent and for the duration that Seller's performance is excused thereunder, any Legal Requirement arising after Commencement of Operations Date for the applicable Facility (which for this purpose shall include any tariff change or other code or operating regulation change imposed by the Transmitting Utility, in any such case solely to the

extent such change requires a change in operations or methods of a Facility); provided, that the foregoing clauses (b) and (h) shall not limit or otherwise be applicable to any obligations of Seller hereunder with respect to ESA Warranties or Efficiency Warranties, in each case solely to the extent arising out of the circumstances and premises described in clause (iii) to the definition of "ESA Warranty" herein or in the final sentence of such definition. SELLER SHALL HAVE NO OBLIGATION UNDER THE PRE-COO EQUIPMENT WARRANTY OR PORTFOLIO WARRANTY AND MAKES NO REPRESENTATION AS TO ANY FACILITY WHICH HAS BEEN OPENED OR MODIFIED BY ANYONE OTHER THAN SELLER, SELLER'S AFFILIATE, A SERVICE PROVIDER OR SUBCONTRACTOR, OR ANY OF SUCH PERSON'S REPRESENTATIVES, IN EACH CASE TO THE EXTENT IN INTENTIONAL BREACH OF SECTION 10.2(3).

Section an. Efficiency Warranty, Performance Warranty and Portfolio Warranty Claims.

(i)Subject to the provisions of Section 13.7, if Buyer desires to make a Portfolio Warranty claim during the Warranty Period, Buyer must notify Seller of the defect or other basis for the claim in writing.

(ii)If, after the annual adjustment to the Performance Guaranty Bank, such Performance Guaranty Bank has a negative balance, then Buyer may make a claim under the Performance Guaranty by submitting written notice to Seller. Upon verification of such claim Seller shall make a payment to Buyer within ten (10) days of receipt of such claim equal to (x) the absolute value of the balance of the Performance Guaranty Bank, multiplied by (y) the Performance Guaranty Payment Rate. Upon payment of such amount, the Performance Guaranty Bank shall be reset to zero. Notwithstanding anything to the contrary set forth in this Agreement, Seller's cumulative aggregate liability for all claims related to the Performance Guaranty shall not exceed the Performance Guaranty Payment Cap.

(iii)In the case of a claim relating to the Efficiency Warranty, upon receipt of such claim and verification by Seller that such Efficiency Warranty is applicable, Seller or its designated subcontractor will promptly, and in all cases within the period afforded to Buyer pursuant to the applicable ESA, repair, modify or replace, at Seller's sole option and discretion, the applicable Facility or components thereof whose repair, modification or replacement is required in order for the applicable Facility to perform consistent with the Efficiency Warranty, and Seller shall notify Buyer of the Warranty Correction Date. In the event that the Warranty Correction Date has not occurred within the period afforded to Buyer pursuant to the applicable ESA (including if, pursuant to the applicable ESA, it is determined or agreed that a Component is to be removed from a Site and that the Buyer and ESA Customer are to negotiate revised Tolling Rates), Seller shall indemnify Buyer for any Indemnifiable Losses arising out of such failure in accordance with the terms of Section 5.8.

(iv)In the event of a claim relating to the Performance Warranty, upon receipt of such notice and verification by Seller that such Performance Warranty is applicable, Seller or its designated

subcontractor will promptly, and in all cases within ninety (90) days of receiving such claim, repair or replace, at Seller's sole option and discretion, any Underperforming Facility and will notify Buyer of the Warranty Correction Date. Thereafter, the Portfolio shall generate at least the Minimum kWh for purposes of the Performance Warranty in the ninety (90) day period immediately following the Warranty Correction Date. In the event that (i) the Warranty Correction Date has not occurred within ninety (90) days of Seller's verification of the Efficiency Warranty claim, or (ii) the Portfolio fails to generate at least the Minimum kWh for purposes of the Performance Warranty in the ninety (90) day period immediately following the Warranty Correction Date, then Buyer has the right to require Seller (in which case Seller agrees) to repurchase such Underperforming Facilities (calculated as of the date of such repayment) as will cause the remaining Portfolio to comply with the Performance Warranty calculated through the final day of the applicable Calendar Quarter, and Seller shall pay to Buyer the Repurchase Value of such Underperforming Facilities, in which case Seller shall be deemed to have taken title to such Underperforming Facilities upon payment of the Repurchase Value, and such Facilities shall be deemed to no longer constitute a portion of the Portfolio and shall be removed as described in the previous sentences and in accordance with Section 4.10. In the event that Seller is obligated to repurchase any Underperforming Facilities pursuant to this Section 5.7(4) in connection with a Performance Warranty claim, the first Underperforming Facility repurchased shall be the Facility with the lowest output as a factor of its System Capacity in the prior Calendar Quarter, followed by the next lowest, and so on until Seller's repurchase obligations are satisfied. If it is determined that a Facility will be removed pursuant to Section 5.7(4) Seller shall at its sole cost and expense remove the Facility and restore the Site pursuant to Section 4.10.

(v)Buyer is hereby notified that refurbished parts may be used in repair or replacement activities, provided that (i) any such refurbished parts will have passed the same inspections and tests performed by Seller on its new parts of the same type before such refurbished parts are used in any repair or replacement, (ii) any such repair or replacement activities using refurbished parts shall be performed in accordance with Section 4.2(3), (iii) Seller shall within thirty (30) days of a written request therefor by Buyer, provide a report for any or all Facilities purchased hereunder that lists all components that have been replaced in any individual Facility.

(vi)EXCEPT AS EXPLICITLY SET FORTH IN SECTION 5.8, THE REMEDIES SET FORTH IN THIS SECTION 5.7 ARE BUYER'S SOLE AND EXCLUSIVE REMEDY, AND SELLER'S SOLE AND EXCLUSIVE LIABILITY, ARISING OUT OF A FAILURE OF ANY FACILITY OR THE PORTFOLIO, AS APPLICABLE, TO PERFORM IN ACCORDANCE WITH THE WARRANTY SPECIFICATIONS; PROVIDED, THE REMEDIES SET FORTH IN THIS SECTION 5.7 ARE (WITH RESPECT TO ONE ANOTHER) CUMULATIVE AND NOT EXCLUSIVE OF ONE ANOTHER; AND PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION 5.7 SHALL LIMIT ANY RIGHTS OR REMEDIES OF BUYER IN RESPECT OF A SELLER DEFAULT.

Section ao. Indemnification Regarding Performance Under ESAs.

(i)Subject to Section 5.6, without in any way limiting and in addition to Buyer's other remedies in this Article V, if Buyer incurs any Indemnifiable Loss to an ESA Customer (including, for the avoidance of doubt, any reduction in Tolling Rates under an ESA) with respect to (x) any ESA Warranty, (y) (pursuant to Section 5.7(3)) any Efficiency Warranty or (z) any audit or adjustment as a result of meter readings that were determined to be inaccurate, Seller shall indemnify and hold Buyer harmless for any such Indemnifiable Loss ("ESA Warranty Reimbursement Payment"), pursuant to the indemnification claims procedure set forth in Section 13.5. Without in any way limiting and in addition to the foregoing, in the event that the failure of any Facility(ies) to comply with any ESA Warranty causes the termination of an ESA (in whole or in part), then (i) Seller shall (at Buyer's option) repurchase the applicable Facility for the Repurchase Value in accordance with Section 4.10(1), and (ii) Seller shall indemnify and hold Buyer harmless for any amount Buyer is liable to an ESA Customer in connection with such termination. If it is determined that a Facility(ies) will be removed pursuant to this Section 5.8(1), Seller shall at its sole cost and expense remove the Facility(ies) in accordance with Section 4.10(2). For the avoidance of doubt, claims, credits, reimbursements and any other payments made under this Section 5.8(1) are not subject to the cap set forth in Section 5.7(2) with respect to claims relating to the Performance Guaranty and shall not count against such cap.

(ii)ESA Warranty Reimbursement Payments owed pursuant to Section 5.8(1) shall be calculated by Seller on the first Business Day following the end of each Calendar Quarter and paid no later than the fifth Business Day of the Calendar Quarter immediately following the Calendar Quarter with respect to which such ESA Warranty Reimbursement Payment arose.

(iii)Buyer shall not modify, supplement, amend, amend and restate or otherwise change the terms of any ESA related to the ESA Warranty in a manner that increases Buyer's liability or obligations thereunder unless Seller has provided prior written consent (not to be unreasonably withheld, conditioned or delayed) to such modification, supplement, amendment, amendment and restatement, or change of such ESA; provided, that if such consent is not obtained, Seller shall continue to perform its obligations under this Section 5.8 to the extent they would have been required absent such modification, supplement, amendment, amendment and restatement, or change.

(iv)Notwithstanding anything to the contrary set forth herein, Seller shall have no liability to Buyer under this Section 5.8 with respect to an ESA Warranty to the extent (i) that Buyer's monetary liability or repair or replacement obligations thereunder are increased in any modification, supplement, amendment, amendment and restatement, or change of an ESA without Seller's consent, to the extent that such consent is required pursuant to Section 5.8(3) or (ii) excluded under Section 5.6.

Section ap. Disclaimers

. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 2.6(6), ARTICLE VIII, THIS ARTICLE V, SECTION 11.6 AND ELSEWHERE IN THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, THE FACILITIES ARE

TRANSFERRED "AS IS, WHERE IS", AND SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE FACILITIES, VALUE OR QUALITY OF THE FACILITIES OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE FACILITIES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 2.6(6), ARTICLE VIII, THIS ARTICLE V, SECTION 11.6 AND ELSEWHERE IN THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE FACILITIES, OR ANY PART THEREOF. NO PERSON IS AUTHORIZED TO MAKE ANY OTHER WARRANTY OR REPRESENTATION CONCERNING THE PERFORMANCE OF THE FACILITIES.

Section aq. Title

. Title to all replacement items, replacement parts, replacement materials and replacement equipment supplied under or pursuant to this Agreement to Buyer shall transfer to Buyer upon installation or inclusion in a Facility. Upon replacement of an item or part as part of the Facility Services provided hereunder, Seller shall remove such item or part and shall have the right to dispose of such replaced property in any manner that it chooses in its sole discretion (subject to Section 4.2(3)).

ARTICLE VI.

RECORDS AND AUDITS

Section ar. Record-Keeping Documentation; Audit Rights.

(i)Seller shall ensure that records concerning Seller's Installation Services and Facility Services activities hereunder are properly created and maintained at all times in accordance with all Legal Requirements. Such records shall be in electronic format and shall include the following:

lix.records and documentation in respect of each Facility's satisfaction of each Milestone, including records and documentation regarding the Delivery of Facility(ies), the completion of BOF and Ancillary Equipment, to the extent applicable, the achievement of Commencement of Operations, the fact and date(s) such Facility has achieved each of the four separate criteria set forth in the definition of "Placed in Service" and in support of and evidencing the start of construction for ITC eligibility purposes before January 1, 2020;

lx.Tax Records and any other records, reports, or other documentation reasonably requested by Buyer, including to support the ITC eligibility until the twelve-year anniversary of the date upon which the applicable Facility was Placed in Service. Seller agrees to use commercially reasonable efforts to promptly provide such documentation to

Buyer upon Buyer's request (provided, proprietary information may be redacted in Seller's reasonable discretion), and shall provide an explanation for any inability to provide such documentation;

lxi.records and documentation shall be maintained by Seller in respect of each Facility or the Portfolio or Scheduled Portfolio, as applicable, regarding the compliance of such Facility or the Portfolio or Scheduled Portfolio, as applicable, with the Warranty Specifications and any applicable ESA Warranties during the Warranty Period; and

lxii.any other records, reports, or other documentation related to the production and sale of energy from the Facilities or that Buyer is required to maintain in respect of any Facility under any applicable ESA;

(ii)All such records required to be created and maintained pursuant to Section 6.1(1) shall be (i) kept available at Seller's office in electronic format and made available for Buyer's inspection by transmission to Buyer (including, at Seller's option, by uploading to the Data Room), in electronic format upon request at all reasonable times (provided, proprietary information may be redacted in Seller's reasonable discretion) and (ii) retained by Seller for as long as is required under applicable Legal Requirements, or any longer period required under any ESA. Any documentation delivered by Seller during the Warranty Term to Buyer pursuant to this Agreement shall be for Buyer's benefit and immediately become Buyer's property. Any such documentation shall be stored by Seller on behalf of Buyer until its final delivery to Buyer. Seller may retain a copy of all such documentation related to each Facility for future analysis.

(iii)Inspection/Audit. Buyer shall have the right no more than once during any calendar year and going back no more than two (2) calendar years preceding the calendar year in which an audit takes place, upon reasonable prior written notice, including using an independent public accounting firm reasonably acceptable to Seller, to examine such records during regular business hours in the location(s) where such records are maintained by Seller for the purposes of verifying Seller's compliance with its obligations hereunder, including the accuracy of Quarterly Reports and Seller's calculations in respect of Warranty Specifications and applicable ESA Warranties; provided, however, that (A) such records may be audited only once during any calendar year under this Section 6.1(3) unless the first such audit reveals any inaccuracies or irregularities and (B) any such auditor shall be contractually or ethically subject to restrictions no less restrictive than those set forth in Article X (Confidentiality). Buyer shall pay the cost of the audit unless the results of the audit reveal that the Minimum kWh or Actual kWh reported by Seller in respect of the Portfolio or any Facility during any calendar year that is audited exceeds by five percent (5%) or more the true Minimum kWh or Actual kWh, as the case may be, in which case Seller shall pay the audit costs.

Section as. Reports; Other Information

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(i)Without in any way limiting Seller's other reporting, notification, and other similar obligations under this Agreement, before and during the Warranty Period, Seller shall furnish to Buyer the following reports, notices, and other information regarding the Facilities (which may be effected by e-mail communication to the Buyer Manager or other appropriate Buyer representative):

lxiii.within thirty (30) days after the end of each Calendar Quarter, the Quarterly Report;

lxiv.Promptly upon Seller's Knowledge of any event or circumstance which materially delayed or prevented, or is reasonably likely to materially delay or prevent, its performance of any of Buyer's obligations under any ESA or any other Facility Contract (including as performed by Seller or any other Service Provider), or any ESA Customer's or Seller's obligations under an Interconnection Agreement, notice of such event or circumstance in reasonable detail, including, for the avoidance of doubt, any Seller Default;

lxv.Promptly upon (but in no event more than five (5) Business Days after) Seller's acquiring Knowledge of any material manufacturing or design defect in any Facility, including any material Component thereof, notice of such defect;

lxvi.Promptly upon Seller's Knowledge of the occurrence of any material damage to any Facility or Site, notice of such damage in reasonable detail;

lxvii.Quarterly with delivery of the Quarterly Report, notice that a Facility was subject to an exclusion set forth in Section 5.6;

lxviii.Within three (3) Business Days following Seller's final determination of the applicability thereof, notice that (x) the operation of a Facility has experienced any of the circumstances described in clauses (i) through (iii) of the definition of "Minimum kWh" herein or (y) an ESA Customer plans an outage or curtailment;

lxix.Promptly upon Seller's Knowledge, notice that any Facility was or is not in compliance with any ESA Warranty;

lxx.Any information Buyer may reasonably request in connection with any claim filed by Buyer under any insurance maintained with respect to the Facilities, and any information such insurance providers may reasonably request in connection with such claim;

lxxi.Promptly upon (A) receipt, copies of all material documents furnished to Seller by any Governmental Authority (or to any Governmental Authority by Seller) in respect of Buyer or any Facility in the Scheduled Portfolio or (B) obtaining Knowledge thereof, any disputes with Governmental Authority in respect of Buyer or any Facility in the Scheduled Portfolio; and

lxxii.Immediately upon Seller's knowledge or reasonable belief that a Compliance Law Violation (as defined in the Equinix ESA) or a breach of any of the representations, warranties or covenants in Section 7.1(h)(i) of the Equinix ESA has occurred or will occur in connection with any act or omission by Seller, Seller Affiliate, the Service Provider or a Seller or Seller Affiliate agent, representative or subcontractor at any tier, written notice and a reasonably detailed explanation thereof.

(ii)Construction Update. From the Agreement Date until the Commencement of Operations Date Deadline, once each month, Seller will host a telephone call, scheduled with reasonable advance notice (but no less than five (5) Business Days' notice) to Buyer and which Buyer and its Representatives may attend, during which Seller shall discuss the status of each Facility reasonably expected to be included in the Scheduled Portfolio, including a summary narrative regarding the progress towards and any delays in the achievement of any of the Milestones (the "Construction Update"). During each Construction Update, Seller shall provide commercially reasonable answers to Buyer's commercially reasonable questions, and if Seller is unable to do so during such Construction Update, then Seller shall conduct such follow-up communications with Buyer in writing and by telephone as are necessary to provide such commercially reasonable answers as promptly as is practicable.

(iii)Financial Statements. In the event that Seller is no longer listed on a public stock exchange, Seller shall provide to Buyer (i) as soon as is reasonably practicable and in no event later than 120 days after the end of each year ending December 31 thereafter, an audited consolidated balance sheet of Seller and the related consolidated statements of income and cash flows for the year then ended and (ii) within 45 days after the end of each other Calendar Quarter thereafter, the unaudited balance sheet and the related unaudited statements of income and cash flows for such Calendar Quarter then ended.

(iv)[*Reserved*.]

(v)ESA Customer Notice. To the extent Seller receives any notice under an ESA from an ESA Customer, it shall promptly provide and forward such notice to Buyer.

(vi)Physical Security. Promptly upon its obtaining Knowledge thereof, Seller shall notify Buyer of any actual or attempted breach of a Facility's (or Component thereof) physical, electronic, cyber or other on-site or remote security mechanisms, including any locks or other means of preventing internal access, and Seller shall also promptly notify Buyer when any alarm is activated at any Facility.

ARTICLE VII.

DATA ACCESS

Section at. Access to Data and Meters

. After the Purchase Date and throughout the Warranty Period for each Facility, to the extent relevant to calculations necessary for periods prior to the end of such Warranty Period and

subject to any confidentiality obligation owed to any third party, any limitations under Legal Requirements as determined by Buyer in its reasonable discretion, and/or any restrictions on the disclosure of information which may be subject to Intellectual Property rights restricting disclosure, at the sole cost of Seller:

(i)Buyer shall grant Seller access to all data relating to the electricity production of each such Facility, it being understood that it is Seller's responsibility to determine the performance of the Facility, and any other calculations as required under this Agreement, and that it is Buyer's responsibility to handle all accounting and invoicing activities (except to the extent otherwise specified herein or pursuant to the Administrative Services Agreement);

(ii)Buyer shall allow Seller access to all data from all Facility Meters;

(iii)Buyer shall allow Seller access to Facility performance data delivered to ESA Customers for Facilities pursuant to obligations set forth in such ESAs for such Facility; and

(iv)Seller shall be entitled to use the foregoing data for its internal business purposes and make such data available to third parties for analysis, in all cases unless and to the extent such uses of or disclosures by Seller are restricted under the applicable ESA or Legal Requirements, including those related to privacy.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES OF SELLER

Section au. Representations and Warranties of Seller

. Seller represents and warrants to Buyer (i) as of the Agreement Date or Representations Date, as applicable, as though made on and as of such date, with respect to (x) the execution and delivery of this Agreement, the documents set forth as of such date in Part II of Schedule 2.10 and each Standby Facility Assignment Agreement as applicable, and (y) each Approved Facility (and the related ESAs, Site Licenses, System Attributes, customer parent guarantees and other rights, interests, duties and obligations) and (ii) as of each Milestone Date and Purchase Date (provided that, with respect to this clause (ii), any representation as to a Facility shall be made solely with respect to such Facility on its applicable Milestone Dates and Purchase Date) (in each case, except where otherwise noted) as follows:

(i)Incorporation; Qualification. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease, and operate its business as currently conducted. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction that its business, as currently being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Material Adverse Effect on the Facilities being sold under this Agreement.

(ii)Authority. Seller has full corporate power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of the Transaction Documents to which it is a party and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Seller and the Transaction Documents to which Seller is a party have been duly and validly executed and delivered by Seller. Each of the Transaction Documents to which Seller is a party constitutes the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(iii)Consents and Approvals; No Violation. Neither the execution, delivery and performance of the Transaction Documents to which Seller is a party nor the consummation by Seller of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the certificate of incorporation or bylaws of Seller, (ii) with or without the giving of notice or lapse of time or both, result in the creation of any Lien (other than Permitted Liens) on Seller's assets or materially conflict with, result in any material violation or material breach of, constitute a default under, result in any right to accelerate, or create any right of termination under the conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which a material part of its assets in respect of the Scheduled Portfolio is bound, or (iii) constitute material violations of any Facility Contract or Permit law, regulation, order, judgment or decree applicable to Seller or the transactions contemplated hereby.

(iv)Third Party Consents. Seller has received all material Third Party Consents that are required as of such date for the consummation and performance of the transactions contemplated hereunder.

(v)Legal Proceedings.

lxxiii.There are no pending or, to Seller's Knowledge, threatened claims, disputes, governmental investigations, suits, actions, arbitrations, legal, administrative or other proceedings, domestic or foreign, criminal or civil, at law or in equity, by or against Seller that challenge the enforceability of the Transaction Documents or Facility Contracts, to which Seller or any Seller Affiliate is a party or the ability of Seller to consummate the transactions contemplated hereby or thereby, in each case, that could reasonably be expected to result in a Material Adverse Effect on Seller or the ability of Seller to perform its obligations hereunder.

lxxiv.Solely as of the First Agreement Date, before the transaction contemplated by the MIPA is effected, there are no pending or, to Seller's Knowledge, threatened claims, disputes, governmental investigations, suits, actions, arbitrations, legal, administrative or

other proceedings, domestic or foreign, criminal or civil, at law or in equity, by or against Buyer that challenge the enforceability of the Transaction Documents or any Facility Contract to which Buyer is a party (or, to Seller's Knowledge, any other Facility Contract) or the ability of Buyer to consummate the transactions contemplated hereby or thereby, in each case, that could reasonably be expected to result in a Material Adverse Effect on Seller or the ability of Seller to perform its obligations hereunder, or on Buyer or the ability of Buyer to perform its obligations under any Facility Contract.

(vi)U.S. Person. Seller is not a "foreign person" within the meaning of Section 1445(b)(2) of the Code and has provided a Certificate of Non-Foreign Status in the form and substance required by Section 1445 of the Code and the regulations thereunder.

(vii)Title; Liens.

lxxv.As of the Deposit Date, the Delivery Date and the Purchase Date of the Facility (and, if applicable, any Delayed Ancillary Equipment), before and until the purchase thereof under Section 2.4 is effected, Seller has and will convey good and marketable title to such assets to be sold to Buyer on such date and all such assets are free and clear of all Liens other than Permitted Liens. Neither Seller nor any of its subcontractors have placed any Liens on the Sites or the Facilities other than Permitted Liens.

lxxvi.As of the Purchase Date and Commencement of Operations Date of the Facility (and, if applicable, any Delayed Ancillary Equipment), to the extent that Seller has Knowledge that any of its subcontractors has placed any Lien on a Facility or Site, Seller has caused such Liens to be discharged, or has provided a bond in an amount and from a surety acceptable to Buyer to protect against such Lien.

(viii)Intellectual Property.

lxxvii.To Seller's Knowledge, neither the Facility nor any part thereof, nor any other product or service marketed, manufactured, or sold (or proposed to be marketed, manufactured or sold) by or on behalf of Seller hereunder violates or will violate any license or infringes, misappropriates or otherwise violates, or will infringe, misappropriate or otherwise violate, any Intellectual Property rights of any other Person. Seller has received no written communication alleging that Seller has infringed, misappropriated, or otherwise violated, or by conducting its business, would infringe, misappropriate, or otherwise violate, or offering a license under, any of the patents, trademarks, service marks, tradenames, copyrights, trade secrets, mask works or other Intellectual Property rights or proprietary rights or processes of any other Person, and as of such date, no action has been instituted, or, to the Knowledge of Seller, threatened, that alleges any such infringement, misappropriation, or violation of any third party Intellectual Property, or offering a license under any third party Intellectual Property.

lxxviii.No claim or action by any Person contesting the validity, enforceability, or ownership of any of the Seller's Intellectual Property has been asserted against Seller, nor, to the Knowledge of Seller, is threatened.

lxxix.Seller exclusively owns all right, title and interest in and to the Seller's Intellectual Property. None of the former or present employees, officers, directors or independent contractors of Seller holds any right, title or interest in or to any Seller's Intellectual Property, or has asserted any claim with regard to any Seller's Intellectual Property.

lxxx.Seller is a party to a valid, binding and enforceable written contract with each of Seller's present and former officers, directors, employees and independent contractors employed or engaged by it at any time for the creation or development of Seller's Intellectual Property, which written contract assigns to, and vests in, Seller all right, title and interest in and to such Intellectual Property.

lxxxi.The Seller's Intellectual Property constitutes all the Intellectual Property necessary for constructing, using, operating and maintaining the Facility.

lxxxii.Seller is in compliance with all software licenses for the Software used in connection with the construction, use, operation and maintenance of the Facility, including any software that is subject to an "open source, "copyleft," or other similar type of license.

(ix)Real Property. The real property referred to in the applicable ESA and Site License is all the real property that is necessary for the construction, installation, operation and maintenance of the Facility in accordance with all Governmental Approvals and the Facility Documents including providing adequate ingress and egress in connection with the construction, operation and maintenance of the Facilities for the term of the ESA, other than those real property interests that can be reasonably expected to be available as and to the extent required. The Site has been licensed to Buyer pursuant to the terms of the applicable Site License. The Site has not been leased to Buyer.

(x)Tax Representations.

lxxxiii. The Facility is a fuel cell power plant that has a maximum electrical output determined at the normal operating conditions of at least 0.5 kilowatts of electricity using an electrochemical process and has an electricity-only generation efficiency greater than 30 percent. The Facility will function independently of each other Facility in the Portfolio to generate (and, if the Facility includes a Battery Solution, store) electricity for transmission and sale to an ESA Customer and is an integrated system comprised of a fuel cell stack assembly (and, if the Facility includes a Battery Solution, such Battery Solution) and associated balance of plant components that has all the necessary components to convert a fuel into electricity using electrochemical means.

lxxxiv. As of Purchase Date for the Facility, (x) no federal, state, or local Tax credit (including the ITC), or depreciation or amount of allowance or deduction, has been claimed with respect to any property that is part of such Facility and (y) no grants, rebates, or other incentives have been applied for or received in respect of such Facility (or any property that is part of such Facility) that are other than taxable income to the recipient.

lxxxv.No application has been submitted for a grant provided under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, as amended by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, with respect to any property that is part of any Facility.

lxxxvi.No private letter ruling has been requested or obtained for the Facility or the transactions contemplated hereunder from the IRS.

lxxxvii.As of the Purchase Date, the Facility was not originally Placed in Service and, specifically, none of the events described in clauses (2) through (4) of the definition of "Placed in Service" have been met with respect to such Facility.

lxxxviii.The Facility is not comprised of any property that (A) is "used predominately outside of the United States" within the meaning of Code Section 168(g), (B) is imported property of the kind described in Code Section 168(g)(6), (C) is "tax-exempt use property" within the meaning of Code Section 168(h), or (D) solely as of the Agreement Date, Deposit Date, and Delivery Date (i) is property described in Code Section 50(b) or (ii) "tax exempt bond financed property" within the meaning of Code Section 168(g)(5).

(A) Other than de minimis property, material or parts, and in no event more than [***]% of the cost or value of the Facility (or any Delayed Ancillary Equipment included in such Facility, but excluding any Customer Equipment described in clause (ii) of the definition thereof applicable to such Facility) consists of property, materials or parts used by any Person prior to having been first placed in a state of readiness and availability for their specifically assigned function as part of such Facility, and (B) with respect to any Facility in connection with which Customer Equipment described in clause (ii) of the definition thereof is used, other than de minimis property, material or parts, and in no event more than [***]% of the cost or value of the Facility (or any Delayed Ancillary Equipment included in such Facility, and including any Customer Equipment described in clause (ii) of the definition thereof applicable to such Facility) consists of property, materials or parts used by any Person prior to having been first placed in a state of readiness and availability for their specifically assigned function as part of such Facility.

lxxxix.No portion of the basis of the Facility is attributable to "qualified rehabilitation expenditures" within the meaning of Section 47(c)(2)(A) of the Code.

xc.The “original use” as defined in Section 48 of the Code of any equipment included in the Facility will not have commenced prior to such equipment’s Purchase Date.

xci.Seller is not related to the ESA Customer within the meaning of Code Section 267 or Code Section 707.

xcii.Unless expressly noted otherwise in Schedule 1, construction of the Facility (including, for the avoidance of doubt, any Delayed Ancillary Equipment included in such Facility) within the meaning of Notice 2018-59 began before January 1, 2020.

xciii.If the Facility includes a Battery Solution that has been Placed in Service, such Battery Solution is charged solely by the associated Bloom System and no electricity from the grid is stored in the Facility (including, for the avoidance of doubt, such Battery Solution).

xciv.Unless expressly noted in Schedule 1, all equipment included in a Facility is “eligible property” for purposes of Section 48 of the Code.

xcv.The Facility (including, for the avoidance of doubt, any Delayed Ancillary Equipment included in such Facility) is intended to be operated as a single unit, including for purposes of (A) the Placed in Service Date of such Facility (subject to any Delayed Ancillary Equipment having a later Placed in Service Date than the rest of the Facility in which it is included) and (B) determining whether construction of such Facility has begun within the meaning of Notice 2018-59.

xcvi.All of the factual information furnished in writing by or on behalf of Seller or any of its Affiliates to Buyer or to the Appraiser in connection with the Appraisal with respect to the Facilities to be purchased hereunder is true, correct and complete in all material respects, provided, Seller makes no representation or warranty with respect to factual information provided by unrelated third parties other than that Seller has no actual knowledge of any such information having been provided.

(xi)Permits; Regulatory.

xcvii.As of the Agreement Date, the Deposit Date, the Delivery Date and the Commencement of Operations Date, Seller, for itself or on behalf of Buyer or the ESA Customer (as applicable), has obtained all Permits and other Governmental Approvals and Interconnection Agreements required for (i) Seller’s performance of its obligations hereunder as of such date (including the sale to Buyer of Facilities and the appointment by Buyer of Seller to perform Installation Services and Facility Services), and (ii) the ESA Customer to benefit from its rights and interests, and perform its obligations, under its Facility Contracts, as of such date, and in each case in compliance with Legal Requirements, including any Environmental Law. On each of such dates, Seller, as applicable on behalf of Buyer, is in compliance in all material respects with all applicable

Permits, Governmental Approvals and Interconnection Agreements, each of the foregoing is final and in full force and effect, and Seller has not received any notice from a Governmental Authority of an actual or potential violation of any such Permit or other Governmental Approval or from the counterparty to an Interconnection Agreement of an actual or potential violation thereof or of any written challenge to issuance, validity or enforceability thereof.

xcviii. Permits and Government Approvals. Seller has obtained all material Permits (and, as of the Commencement of Operations Date, PTO) and Government Approvals required for the Facility as of such date for the consummation and performance of the transactions contemplated hereunder.

(xii) Energy.

xcix. As of the First Agreement Date only (except, with respect to Approved Facilities only, as of the Representations Date), no Facility (or equipment or component thereof) described in Schedule 1 has commenced synchronization or been energized (other than factory testing performed in the ordinary course of manufacture by the manufacturer or vendor of such equipment or component), and as of each Purchase Date, the applicable Facility being purchased by Buyer hereunder has not commenced synchronization or been energized to the extent required to comply with Section 203 of the FPA; and

c. As of the First Agreement Date only (except, with respect to Approved Facilities only, as of the Representations Date), no Facility described in Schedule 1 has been interconnected to the transmission or distribution system of the applicable Transmitting Utility, or generated any power, including test power. As of each Purchase Date, (1) the applicable Facility being purchased by Buyer hereunder has not been interconnected to the transmission or distribution system of the applicable Transmitting Utility; or (2) if such Facility has been interconnected to the transmission or distribution system of the applicable Transmitting Utility, such interconnection has not been synchronized or energized, and such Facility has not generated any energy, including any test energy.

(xiii) Facility Contract Disputes. As of such date, there are no pending or threatened (in writing) disputes or claims between any counterparties to a Facility Contract under such Facility Contract (provided, that to the extent neither Seller nor Buyer is party thereto, the foregoing representation and warranty is made only to Seller's Knowledge).

(xiv) ESAs and Other Contracts.

ci. The ESA is a legal, valid, binding and enforceable obligation of Buyer (as of the First Agreement Date, if in effect on the First Agreement Date) and, to Seller's Knowledge, of the ESA Customer, and the ESA is in full force and effect. To Seller's Knowledge, neither Buyer nor the applicable ESA Customer is in material breach or violation of the ESA and no event has occurred, is pending or is threatened, which, after

the giving of notice, with lapse of time, or otherwise, would constitute any such breach or default by Buyer or any other party thereto.

cii. With respect to the Facility, the applicable ESA includes a description of all labor, material and services required for the complete performance of the services and other work contemplated thereby. The Facility Services and the Installation Services are inclusive of all services and other work contemplated by, with respect to the Facility, the applicable ESA and Site License. Seller has thoroughly reviewed the terms and conditions of the ESA and Site License. Seller has visited and inspected the Site and is familiar with the Site and its conditions. Buyer, in its capacity as party to the applicable ESA and Site License, has the necessary rights to access, install, test, commission, operate, maintain and decommission Customer Equipment in each case such that Seller is able to perform its obligations hereunder. No Seller Affiliate owns any Customer Equipment. There is no equipment or balance of plant/facilities item at any Site, or intended to be used in connection with any Facility, that is owned by any Person other than Seller, an ESA Customer or an Affiliate of an ESA Customer, that would be Customer Equipment if it was owned by Seller, an ESA Customer or an Affiliate of an ESA Customer.

ciii. Each Facility Contract in connection with the Facility to which Seller or any of its Affiliates is a party as of such date is a legal, valid, binding and enforceable obligation of the parties thereto. On such date, Seller, as applicable on behalf of Buyer, is in compliance in all material respects with the Facility Contracts to which it or Buyer is a party, to the extent it has obligations hereunder as of such date, and has not received any notice from any Person who is party to a Facility Contract of an actual or potential violation of any such Facility Contract. Neither Buyer nor Seller nor, to Seller's Knowledge, any other Person party thereto is in material breach or violation of any Facility Contract in connection with the Facility, and no event has occurred, is pending or is threatened in writing, which, after the giving of notice, with lapse of time, or otherwise, would constitute any such breach or default by Buyer, Seller or any other party thereto.

civ. No claim has been made under any Third Party Warranty with respect to the Facility and, to Seller's Knowledge, no event, change or circumstance has occurred that would entitle Buyer, Seller (or any Affiliate of Seller) or the ESA Customer to make any such claim under any Third Party Warranty or in respect of portions of the Facility to which such Third Party Warranty applies. No claim under any Third Party Warranty for the Facility has been rejected or dishonored by the provider thereof. Neither Seller (nor any Affiliate of Seller) nor, to Seller's Knowledge, Buyer or any other Person party to any Third Party Warranty for the Facility, is in default under any such Third Party Warranty in any material respect. Each Third Party Warranty for the Facility is in full force and effect.

(xv) Insurance, Casualty and Condemnation.

cv.Seller has obtained the insurance described in Annex B, all such policies are in full force and effect and provide coverage in respect of all Facilities (and will, by their terms, automatically cover all Facilities that become part of the Scheduled Portfolio in the future), and all insurance premiums that are due and payable have been paid in full with no premium overdue.

cvi.With respect to any Facility, (A) Seller has made no claims under any such insurance policy with respect to the Facility, (B) there is no casualty which has occurred and is occurring (or any damage or disrepair due to any prior casualty) with respect to any portion of the Site or Facility, (C) there are no pending or contemplated condemnation or eminent domain proceedings against Seller or any ESA Customer in respect of the Facility or the Site (or any part thereof), and (D) neither Seller nor (to Seller's Knowledge) any ESA Customer has received written notice of any pending or threatened condemnation or eminent domain proceedings, or otherwise, that would affect the Facility or Site (or part thereof).

(xvi)Deposits and Credit Support. Except as set forth on Schedule 1 as 'Reimbursable Deposits and Credit Support' or in any ESA, there is no Credit Support posted or provided by Seller or otherwise on behalf of Buyer or an ESA Customer in connection with any Government Approvals, interconnection applications, Incentive Agreements or other Facility Contracts.

(xvii)Subcontractors, Service Providers. To the extent that the applicable ESA Customer has or had rights or privileges pursuant to its applicable ESA to be notified of, review or consent (or withhold its consent) to the retention of any Service Provider, such Service Provider has not been contracted with or retained, and is not otherwise performing any Installation Services or Facility Services hereunder, unless in accordance with such ESA Customer's rights.

(xviii)Facility Performance. Seller is not aware of any circumstances which could reasonably be expected to prevent the Portfolio or, with respect to any ESA Warranty or Efficiency Warranty, any Facility therein, as of such date from complying with the Warranty Specifications and the ESA Warranties for the Warranty Period applicable thereto.

(xix)Bankruptcy. No event of Bankruptcy has occurred with respect to Seller or, to the Knowledge of Seller, the ESA Customer.

(xx)Compliance. With respect to the Deposit Date, the Delivery Date, the Purchase Date, and the Commencement of Operations Date, Seller has performed in all respects all obligations, and complied in all material respects with the representations, warranties, agreements and covenants, required to be performed by or complied with by Seller hereunder as of each such date; provided that, for clarity, Seller has complied in all respects with the obligations set forth in Section 7.1(h)(i) of the Equinix PPA in its capacity as "Bloom" thereunder and as if Seller were a "Party" thereto.

(xxi)Material Adverse Effect. As of and since the First Agreement Date, no Material Adverse Effect has occurred with respect to Seller or, to the Knowledge of Seller, any applicable ESA Customer.

(xxii)Data Privacy. Seller has used all data that Seller has collected regarding any ESA Customer's electricity consumption at such Site consistent with and subject to Legal Requirements in the United States with respect to privacy.

(xxiii)Disclosures. The lists of and copies of Governmental Approvals, Incentive Agreements, Permits, PTOs, Interconnection Agreements and other Facility Contracts delivered by Seller pursuant to Section 2.3(5)(iii) and Section 3.4(1)(xv) are as of such delivery a true, correct and complete list, and true, correct and complete copies, thereof. Each of such Permits, PTOs, other Governmental Approvals and Interconnection Agreements obtained is validly issued, final and in full force and effect and is not subject to any current legal proceeding or to any unsatisfied condition. Each of such Permits, PTOs and other Governmental Approvals has been issued in the name of the appropriate Party as required by applicable Legal Requirements

(xxiv)Environmental.

cvii.Seller is in compliance with all applicable Environmental Requirements with respect to the Facility. Neither Seller nor (to Seller's Knowledge) any other person has released any Hazardous Material on, under, at or near the applicable Site in a manner that could reasonably be expected to result in any cleanup, removal, remediation, response or corrective action under Environmental Requirements. Neither Seller nor (to Seller's Knowledge) any ESA Customer has received written notice of an alleged violation of or of potential liability under Environmental Law from any Governmental Authority or holder of rights or interests in real property with respect to any Facility or Site (or part thereof). All wastewater from the Facility is discharged from the Site into a public sanitary sewer system in accordance with Legal Requirements, and no Hazardous Materials are discharged in connection with the Facility, directly or indirectly, into any body of surface water or groundwater by Seller or any other party. Seller has no outstanding obligations pursuant to any orders, judgments or agreements with respect to Environmental Requirements. No claim pursuant to Environmental Law is pending or threatened in writing against Seller.

cviii.As of the First Agreement Date with respect to any Facilities comprising a portion of the Scheduled Portfolio on the First Agreement Date, the Site is not within an area determined to be flood-prone under the Federal Flood Protection Act of 1973. With respect to any Facilities that are (or have been) added to the Scheduled Portfolio after the First Agreement Date, as of the date the applicable ESA is executed and delivered and as of the Facility's Delivery Date, the Site is not within an area determined to be flood-prone under the Federal Flood Protection Act of 1973 or such Facility is elevated in accordance with the issued for construction set delivered in connection with Section 2.3(5) with Buyer's consent.

(xxv)Anti-Corruption Laws, Sanctions, Anti-Money Laundering Laws and Related Matters.

cix.(A) Seller and its officers, employees, directors and agents, are in compliance with any applicable Anti-Corruption Laws, Anti-Money Laundering Laws, Sanctions and applicable Sanctions and (B) the Seller (x) has not violated, been found in violation of, or been charged or convicted under, any Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws or (y) is not under any investigation, including administrative, civil or criminal investigation by any Governmental Authority for an alleged or possible violation of, or received notice from or made a voluntary disclosure to any Governmental Authority regarding a possible violation of, any Sanctions, Anti-Money Laundering Laws or Anti-Corruption Laws;

cx.Neither Seller nor its officers, employees, directors nor, to Seller's knowledge, agents, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) is controlled by or is acting on behalf of a Sanctioned Person, (C) has its assets located in a Sanctioned Country, (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, or (E) has been notified that its name appears or may in the future appear on a State Sanctions List;

cxi.Seller has implemented and maintain in effect policies and procedures designed to ensure compliance by Seller and its directors, officers, employees and agents with all Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws;

cxii.Neither Seller nor any of its directors, officers, employees, nor, to Seller's knowledge, agents, is a Sanctioned Person;

cxiii.No transaction contemplated by any Transaction Document will violate any Anti-Money Laundering Laws, Anti-Corruption Law or Sanctions;

cxiv.No part of the proceeds from the Purchase Price: (A) constitutes or will constitute funds obtained on behalf of any Sanctioned Person or will otherwise be used directly or indirectly, (x) in connection with any investment in, or any transactions or dealings with, any Sanctioned Person, (y) for any purpose that would cause any party hereto to be in violation of Sanctions or (z) otherwise in violation of any U.S. Sanctions; (B) will be used, directly or indirectly, in violation of, or cause any party hereto to be in violation of, any applicable Anti-Money Laundering Laws; or (C) will be used, directly or indirectly, for the purpose of making any improper payments, including bribes, to any governmental official or commercial counterparty in order to obtain, retain or direct business or obtain any improper advantage, in each case which would be in violation of, or cause any party hereto to be in violation of, any applicable Anti-Corruption Laws.

Section av. Survival Period

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(i)All claims by Buyer hereunder relating to breaches of representations and warranties contained in ARTICLE VIII or in Section 11.6 with respect to a Facility shall be forever barred unless the Seller is notified in writing within eighteen (18) months following the date of achievement of Commencement of Operations for such Facility, except for representations and warranties contained in (a) Section 2.6(6), Section 8.1(1), Section 8.1(2), Section 8.1(3), and Section 8.1(7), which shall survive indefinitely, and (b) Section 4.2(3) (and any other Sections that require compliance with the requirements of Section 4.2(3)), Section 8.1(6) and Section 8.1(10), and the last sentence of Section 3.9, each of which will survive until six (6) months following the expiration of the applicable statute of limitations. All claims by Buyer under this Agreement relating to breaches of any covenant or agreement to be performed by Seller hereunder shall survive until the date that is ninety (90) days after the date by which performance is required by this Agreement, provided, however, that any claim by Buyer relating to the breach of any covenant or agreement to be performed by Seller hereunder in Section 4.2(3) (and any other Sections that require compliance with the requirements of Section 4.2(3)), Section 6.1 and the last sentence of Section 3.9 shall survive until six (6) months following the expiration of the applicable statute of limitations. Notwithstanding the foregoing, any claim timely brought by Buyer hereunder shall survive until the date of its final resolution or final disposition. For the avoidance of doubt, the Parties hereby agree and acknowledge that, except as set forth herein, the foregoing survival periods are a contractual statute of limitations and any claims based upon any breach or inaccuracy listed above must be brought or filed prior to the expiration of such survival period.

(ii)Notwithstanding anything to the contrary in the preceding Section 8.2(1), survival periods with respect to Indemnifiable Losses asserted against or suffered by any Buyer Indemnitee pursuant to Section 13.3(1)(2)(i) and arising under the MIPA shall be as set forth in the MIPA.

(iii)The Parties acknowledge, ratify and confirm in all respects the making of any representations and warranties by Seller under the Original PUMA or any of the Transaction Documents (as defined therein) as of the date such representations and warranties were made, prior to the Agreement Date. The execution and delivery of this Agreement shall in no way limit the rights or remedies of Buyer arising out of any breaches of Seller of its obligations under the Original PUMA or any other Transaction Document (as defined therein) before the Agreement Date, or of the failure of any representations and warranties made under the Original PUMA or any other Transaction Document (as defined therein) to be true and accurate as of the date made. For the avoidance of doubt, any limitations that were applicable to claims in respect of such representations and warranties at the time of their making shall remain applicable to such claims.

ARTICLE IX.

REPRESENTATIONS AND WARRANTIES OF BUYER

Section aw. Representations and Warranties of Buyer

. Buyer represents and warrants to Seller as of each Purchase Date, as follows.

(i)Organization. Buyer is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease, and operate its business as currently conducted.

(ii)Authority. Buyer has full limited liability company power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. Any execution and delivery after the First Agreement Date by Buyer of the Transaction Documents to which it is a party, and the consummation after the First Agreement Date by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary limited liability company action required on the part of Buyer, and any Transaction Documents to which Buyer became a party after the First Agreement Date have been duly and validly executed and delivered by Buyer. Each of the Transaction Documents to which Buyer is a party constitutes the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(iii)Consents and Approvals; No Violation. Neither the execution, delivery and performance, in each case after the First Agreement Date, of any Transaction Documents to which Buyer is a party nor the consummation, after the First Agreement Date, by Buyer of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the articles of formation of Buyer nor Buyer's limited liability company agreement, (ii) with or without the giving of notice of lapse of time or both, result in the creation of a Lien (other than immaterial Liens or Permitted Liens) on Buyer's assets or materially conflict with, result in any material violation or material breach of, constitute a default under, result in any right to accelerate, or create any right of termination under the material conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Buyer is a party or by which it (or any material part of its assets) is bound or (iii) constitute material violations of any law, regulation, order, judgment or decree applicable to Buyer.

(iv)Legal Proceedings. There are no pending or, to Buyer's Knowledge, threatened claims, disputes, governmental investigations, suits, actions, arbitrations, legal, administrative or other proceedings, domestic or foreign, criminal or civil, at law or in equity, by or against Buyer that challenge the enforceability of the Transaction Documents to which Buyer is a party or the ability of Buyer to consummate the transactions contemplated hereby or thereby, in each case, that could reasonably be expected to result in a material adverse effect on Buyer or its ability to perform its obligations hereunder, except, in any such case, as were in existence on or before the First Agreement Date.

Section ax. Survival Period

. All claims by Seller hereunder relating to breaches of representations and warranties contained in ARTICLE IX with respect to a Facility shall be forever barred unless the Buyer is notified in

writing within eighteen (18) months following the date of achievement of Commencement of Operations for such Facility, except for breaches and warranties contained in Section 9.1(1), Section 9.1(2), Section 9.1(3), which shall survive indefinitely. All claims by Seller under this Agreement relating to breaches of any covenant or agreement to be performed by Buyer hereunder shall survive until the date that is ninety (90) days after the date by which performance is required by this Agreement. Notwithstanding the foregoing, any claim timely brought by Seller hereunder shall survive until the date of its final resolution or final disposition. For the avoidance of doubt, the Parties hereby agree and acknowledge that the foregoing survival periods are a contractual statute of limitations and any claims based upon a breach of representations and warranties in ARTICLE IX must be brought or filed prior to the expiration of such survival period.

ARTICLE X.

CONFIDENTIALITY

Section ay. Confidential Information

. Subject to the other terms of this ARTICLE X each Party shall, and shall cause its Affiliates and its respective stockholders, members, subsidiaries and Representatives to, hold confidential the terms of this Agreement and all information it has obtained or obtains from the other Party in connection with this Agreement concerning Seller and Buyer and their respective assets, business, operations or prospects (the "Confidential Information"), including all materials and information furnished by Seller in performance of this Agreement, regardless of form conveyed or whether financial or technical in nature, including any trade secrets and proprietary know how and proprietary Software whether such information bears a marking indicating that they are proprietary or confidential or not; provided, however, that Confidential Information shall not include information that (x) is or becomes generally available to the public other than as a result of any fault, act or omission by a Party or any of its Representatives, (y) is or becomes available to a Party or any of its Representatives on a non-confidential basis from a source other than the other Party or its Representatives, provided that such source was not and is not bound by any contractual, legal or fiduciary obligation of confidentiality with respect to such information or (z) was or is independently developed or conceived by a Party or its Representatives without use of or reliance upon the Confidential Information of the other Party, as evidenced by sufficient written record. Notwithstanding anything to the contrary, the foregoing obligations shall not apply to the tax treatment or tax structure of any transaction contemplated by this Agreement (the "Transaction") and each Party (and any employee, representative, or agent of any Party) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all other materials of any kind (including opinions or other tax analyses) that are provided to any Party to the extent relating to such tax treatment and tax structure. This Section 10.1 is intended to prevent the Transaction from being treated as a "reportable transaction" as a result of it being a transaction offered to a taxpayer under conditions of confidentiality within the meaning of Sections 6011, 6111 and 6112 of the Code (or any successor provision) and the regulations thereunder (as clarified by Notice 2004-80 and Notice 2005-22) and shall be construed in a manner consistent with such purpose.

Section az. Restricted Access.

(i)Buyer agrees that the Facilities, to the extent they are fabricated and manufactured by Seller and/or use Seller's Intellectual Property, themselves contain Seller's valuable trade secrets. Buyer agrees (i) to restrict the use of such information to matters relating to the Facilities, and such other purposes, if any, expressly provided herein, and (ii) to restrict access to such information as provided in this Section 10.2.

(ii)Seller's Confidential Information will not be reproduced without Seller's prior written consent, except to the extent necessary for Buyer to exercise its rights as permitted under this Agreement, and following expiration or termination of this Agreement other than in connection with a Seller Default, all copies of such written information will be returned to Seller upon written request (not to be made while materials are still of use to the operation and maintenance of a Facility that remains subject to this Agreement or to the exercise of other rights of ownership by Buyer pursuant to any Transaction Document) or shall be certified by Buyer as having been destroyed, unless otherwise agreed by the Parties. Buyer's Confidential Information will not be reproduced by Seller without Buyer's prior written consent, and following termination of this Agreement all copies of such written information will be returned to Buyer upon written request or shall be certified by Seller as having been destroyed. Notwithstanding the foregoing, each Party and its Representatives may each retain archival copies of any Confidential Information to the extent required by law, regulation or professional standards or copies of Confidential Information created pursuant to the automatic backing-up of electronic files where the delivery or destruction of such files would cause undue hardship to the receiving Party, so long as any such archival or electronic file back-up copies are accessible only to legal or information technology personnel, provided that such Confidential Information will continue to be subject to the terms of this Agreement.

(iii)Subject to the Long-Term Agreement and Sections 10.2(1) and (2) and Article XI, the Facilities are offered for sale and are sold by Seller subject to the condition that such sale does not convey any license, expressly or by implication, under any Seller Intellectual Property, to manufacture, reverse engineer, duplicate or otherwise copy or reproduce any part of the Facilities, documentation or Software without Seller's express advance written permission. Subject to the Long-Term Agreement and Article XI, Buyer agrees not to intentionally remove the covering of any Bloom System, not to intentionally access the interior or to reverse engineer, or cause or knowingly allow its Affiliates, subsidiaries and Representatives, or any third party under its control (not including Seller or any Service Provider) to open, access the interior or reverse engineer any Facility or Software provided by Seller. Subject to the Long-Term Agreement and Article XI, and anything contemplated pursuant to this Agreement, only Seller or its authorized representatives may open or access the interior of a Facility. Actions taken by applicable authorities, including police and fire personnel, by Service Providers, by ESA Customers or their respective representatives (if without Buyer's Knowledge or if in breach of an applicable ESA) or by Kaiser (or a third party on its behalf) pursuant to Section 5 of Exhibit B of any Kaiser ESA shall not be deemed to be a breach of this Section 10.2(3).

(iv)Third Parties.

cxv.Notwithstanding the foregoing or anything else herein to the contrary, and without limitation of the rights set forth in Article XI hereof, if any Facility is no longer covered by this Agreement or another agreement between Buyer and Seller (or any Affiliate of Seller) regarding the operation and maintenance of such Facility as a result of the termination or expiration of this Agreement with respect to such Facility, regardless of the cause of such termination, Buyer shall be entitled to operate and maintain, or cause another Person to operate and maintain, such Facility, including replacing Components as needed or desired. To the extent Buyer requires any maintenance services for such Facility following such expiration or termination (except if such expiration or termination is in connection with a Seller Default), Buyer shall notify Seller of such requirements in writing.

cxvi.If Seller desires to perform such maintenance services, Seller shall provide within five (5) Business Days to Buyer the material terms and conditions (including, the scope of services offered, the price(s) quoted for such services (which prices shall be no greater than the average rate billed by Seller for providing such maintenance services to its most recently deployed 10 MWs of similar fuel cell energy servers and related equipment), and the terms of any performance warranties to be provided in connection with such services, which terms shall be substantially similar to those set forth herein, pursuant to which it is willing to provide such maintenance services for such Facility, which shall be no less favorable to Buyer than Seller's standard rates, terms and warranties as of such date.

cxvii.If Buyer declines to engage Seller to perform such services, or the Parties are unable to execute, within ten (10) Business Days after Seller has provided its material terms and conditions pursuant to Section 10.2(4)(ii), appropriate documentation to reflect such services, Buyer may engage the applicable third party.

Section ba. Permitted Disclosures.

(i)Legally Compelled Disclosure. Confidential Information may be disclosed (i) as required or requested to be disclosed by a Party or any of its Affiliates or their respective stockholders, members, subsidiaries, Representatives, lenders or tax equity investors, as a result of any applicable Legal Requirement or rule or regulation of any stock exchange, the Financial Industry Regulatory Authority, Inc. or other regulatory authority or self-regulatory authority having jurisdiction over such Party, (ii) as required or requested by the IRS, the Department of Justice or the Office of the Inspector General in connection with a Facility, cash grant, or tax credits relating thereto, including in connection with a request for any private letter ruling, any determination letter or any audit or (iii) as required under any Interconnection Agreement. If a Party becomes compelled by legal or administrative process to disclose any Confidential Information, such Party shall, to the extent permitted by Legal Requirements, provide the other Party with prompt notice so that the other Party may seek a protective order or other appropriate remedy or waive compliance with the non-disclosure provisions of this Section 10.3 with respect

to the information required to be disclosed. If such protective order or other remedy is not obtained, or such other Party waives compliance with the non-disclosure provisions of this Section 10.3 with respect to the information required to be disclosed, the first Party shall furnish only that portion of such information that it is advised by counsel is legally required to be furnished and shall exercise reasonable efforts, at the expense of the Party whose Confidential Information is being disclosed, to obtain reliable assurance that confidential treatment will be accorded such information, including, in the case of disclosures to the IRS described in clause (ii) above, to obtain reliable assurance that, to the maximum extent permitted by applicable Legal Requirements, such information will not be made available for public inspection pursuant to Section 6110 of the Code.

(ii)Disclosure to Representatives. Notwithstanding the foregoing, and subject always to the restrictions in Section 10.2, a Party may disclose Confidential Information received by it to its and its Affiliates' actual or potential investors or financing parties and its and their employees, consultants, legal counsel or agents who have a need to know such information; provided that such Party informs each such Person who has access to the Confidential Information of the confidential nature of such Confidential Information, the terms of this Agreement, and that such terms apply to them. The Parties shall use commercially reasonable efforts to ensure that each such Person complies with the terms of this Agreement and that any Confidential Information received by such Person is kept confidential.

(iii)Securities Filings. A Party may file this Agreement as an exhibit to any relevant filing with the Securities Exchange Commission (or equivalent foreign agency) in accordance with Legal Requirements only after complying with the procedure set forth in this Section 10.3(3). In such event, the Party seeking such disclosure shall prepare a draft confidential treatment request and proposed redacted version of this Agreement to request confidential treatment for this Agreement, and the other Party agrees to promptly (and in any event, no less than fourteen (14) days after receipt of such confidential treatment request and proposed redactions) give its input in a reasonable manner in order to allow the Party seeking disclosure to file its request within the time lines prescribed by Legal Requirements. The Party seeking such disclosure shall exercise commercially reasonable efforts to obtain confidential treatment of the Agreement from the Securities Exchange Commission (or equivalent foreign agency) as represented by the redacted version reviewed by the other Party. Each Party shall bear its own costs in connection with such efforts. If Seller is the Party seeking such disclosure, then Seller shall bear responsibility for any liability or obligation that Buyer owes to any ESA Customer pursuant to its ESA in respect of filings and related disclosures contemplated by this Section 10.3(3).

(iv)Permitted Disclosures. Nothing herein shall be construed as prohibiting a Party hereunder from using such Confidential Information in connection with (i) any claim against the other Party, (ii) any exercise by a Party hereunder of any of its rights hereunder, (iii) a financing or proposed financing by Seller or Buyer or their respective Affiliates, (iv) a disposition or proposed disposition by any direct or indirect Affiliate of Buyer of all or a portion of such Person's equity interests in Buyer, (v) a disposition or proposed disposition by Buyer of any Bloom System or Facility, or (vi) any disclosure required to be made to an ESA Customer (or

otherwise) under an ESA or a Site License, provided that, in the case of items (iii), (iv) and (v), the potential financing party or purchaser has entered into a confidentiality agreement with respect to Confidential Information on customary terms used in confidentiality agreements in connection with corporate financings or acquisitions before any such information may be disclosed; provided, further, that Buyer shall have no liability to Seller hereunder in respect of disclosures made to ESA Customers pursuant to the foregoing clause (vi), or for any breach by an ESA Customer of the confidentiality obligations to which it is bound in the applicable ESA, as long as Buyer uses its commercially reasonable efforts to enforce such confidentiality obligations (and Buyer shall have no liability to Seller hereunder for disclosures made by Seller to any Persons).

(v)Tax Records. If an IRS audit, investigation or similar proceeding shall be commenced by the IRS with respect to Buyer and any Tax matter in connection with this Agreement (*e.g.*, a potential change in adjusted tax basis of a purchased Facility) (a "Tax Proceeding"), Buyer shall provide Seller with written notice of the Tax Proceeding within ten days after its commencement; *provided, however*, that the failure to provide written notice of the Tax Proceeding within such 10-day period shall not relieve Buyer from its obligations with respect to the subject of the Tax Proceeding. Notwithstanding any other provisions herein and solely in connection with a Tax Proceeding, Seller will provide and disclose the Tax Records to Buyer or directly to the IRS in cases of highly confidential information, as required. Seller (or its legal and accounting advisors) may fully participate, at its sole expense, in the Tax Proceeding. Buyer shall not settle a Tax Proceeding relating to an issue for which Seller will be obligated to indemnify Buyer under Section 13.4 without the prior written consent of Seller (which consent shall not be unreasonably withheld, conditioned or delayed). Buyer shall keep Seller reasonably informed of the commencement, status and nature of the Tax Proceeding and, at the request of Buyer and without any further consideration, shall provide or cause to be provided all assistance reasonably requested by Buyer with respect to the conduct of the Tax Proceeding.

(vi)Press Releases. Subject to this Section 10.3, any public announcement, press release or similar publicity, with respect to this Agreement and the transactions contemplated hereby will be issued at the time and in the manner mutually agreed in writing by the Buyer and the Seller.

Section bb. Communication with ESA Customers

. Neither Seller nor any of its Affiliates, employees, agents or other Representatives shall, directly or indirectly, for itself or on behalf of another, from the First Agreement Date until, with respect to each Facility and its related Site in the Scheduled Portfolio, the date that is two (2) years after the expiration of the applicable Warranty Period (or earlier termination of this Agreement), induce, influence or encourage, any ESA Customer, directly or indirectly, including through the negotiation of possible terms and conditions of similar or related contracts or extensions, to:

(i)alter, terminate or breach its contractual or other business relationship with Buyer,

(ii)enter into a contractual or business relationship with Seller (or an Affiliate or other related Person on Seller's behalf) in substantial replacement of the supplies and services provided with respect to such Facility under the applicable ESA or

(iii)exercise any purchase option under any ESA.

ARTICLE XI.

LICENSE AND OWNERSHIP; SOFTWARE

Section bc. IP License to Use

. Subject to Section 11.2, Seller grants to Buyer a limited (as described herein), non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable (except as described in Section 12.4 hereof), non-transferable (except as described herein) license to use the Intellectual Property, including Seller's proprietary Software, to the extent contained in the Documentation, the Components and the Facilities purchased hereunder (collectively, "Seller's Intellectual Property") in conjunction with the purchase, use, operation, maintenance, repair and, subject to Section 3.6(2), sale of the Facilities (the "IP License"); provided, that (a) such license may be transferred or sub-licensed upon a transfer of a Facility to any Person who acquires such Facility, subject to Buyer's compliance with Section 3.6(2), (b) such license may be (and shall automatically be) transferred or sub-licensed by Buyer to any third party Buyer is entitled to engage to maintain any Facility pursuant to Section 10.2(4), (c) such license may be (and shall automatically be) transferred by Buyer to any successor or assign of Buyer permitted pursuant to Section 14.4, and (d) in the event of a voluntary or involuntary Bankruptcy of Buyer, Seller hereby expressly consents to the assumption and assignment of the IP License by Buyer as necessary to allow Buyer's continued use of each Bloom System, any item of Ancillary Equipment and/or Facility in accordance with the terms hereof and, as applicable, each ESA, Interconnection Agreement and other applicable Facility Contracts. Seller shall retain all right, title and ownership of any and all Intellectual Property licensed by Seller hereunder. No right, title or interest in any such Intellectual Property is granted, transferred or otherwise conveyed to Buyer under this Agreement except as otherwise expressly set forth herein. Buyer shall not, in violation of the rights granted to or obligations imposed on Buyer hereunder, modify, network, rent, lease, loan, sell, distribute or create derivative works based upon Seller's Intellectual Property in whole or part, or cause or knowingly allow any third party to do so.

Section bd. Grant of Third Party Software License

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(i)Seller grants to Buyer a limited (as described herein), non-exclusive, royalty-free, fully paid-up, irrevocable (except as described in ARTICLE XII hereof), non-transferable (except as described herein) license to use the third party Software (the "Software License"); provided, that (i) such license may be transferred or sub-licensed upon a transfer of a Facility to any Person who acquires such Facility, (ii) such license may be (and shall automatically be) transferred or sub-licensed by Buyer to any third party Buyer is entitled to engage, and does engage, to

maintain any Facility pursuant to Section 10.2(4), and (iii) such license may be (and shall automatically be) transferred by Buyer to any successor or assign of Buyer permitted pursuant to Section 14.4. No right, title or interest in any Software provided to Buyer (including all copyrights, patents, trade secrets or other intellectual or intangible property rights of any kind contained therein) is granted, transferred, or otherwise conveyed to Buyer under this Agreement except as expressly set forth herein. Buyer agrees not to reverse engineer or decompile the Software or otherwise use the Software for any purpose other than in connection with the use of the Facilities.

(ii)Subject to any confidentiality restrictions contained in the ESAs, all data collected on the Facilities by Seller using the Software, and data collected on the Facilities using Seller's internal proprietary Software are the sole property of Seller to be used by Seller in accordance with Legal Requirements, and Seller hereby grants to Buyer a limited, non-exclusive, irrevocable (except as set forth in ARTICLE XII hereof), royalty-free license to use the data collected on the Facilities using such Software or Seller's internal proprietary software only for purposes of using such Facilities and administering the Transaction Documents or as required pursuant to the terms of any ESA, Site License, Interconnection Agreement or other Facility Contract to which Buyer is a party, provided the provisions of ARTICLE X on confidentiality are maintained.

Section be. No Software Warranty

. The Software and related documentation are provided "AS IS" and without any warranty of any kind and Seller EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section bf. Effect on Licenses

. All rights and licenses granted under or pursuant to this Agreement by Seller are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code and of any similar provisions of applicable laws under any other jurisdiction (collectively, the "Bankruptcy Laws"), licenses of rights to "intellectual property" as defined under the Bankruptcy Laws. If a case is commenced by or against Seller under the Bankruptcy Laws, Seller (in any capacity, including debtor-in-possession) and its successors and assigns (including a trustee under the Bankruptcy Laws) shall, as Buyer may elect in a written request, immediately upon such request:

(i)perform all of the obligations provided in this Agreement to be performed by Seller including, where applicable, providing to Buyer such Intellectual Property (including embodiments thereof) held by Seller and such successors and assigns or otherwise available to them and to which Buyer is entitled to have access under this Agreement, including the Documentation; and

(ii)not interfere with the rights of Buyer under this Agreement, or the Transaction Documents, to such Intellectual Property (including such embodiments), including any right to

obtain such Intellectual Property (or such embodiments) from Seller or from another entity, to the extent provided in the Bankruptcy Laws or in this Agreement.

Section bg. IP Related Covenants

. If Seller grants, bargains, sells, conveys, mortgages, assigns, pledges, warrants or transfers any Intellectual Property or Software that is required (a) for Seller or its Affiliates to perform their respective obligations under the Transaction Documents or (b) for the continued maintenance and operation of the Facilities without a material decrease in performance of the Facilities, such act or transaction shall be, and for the avoidance of doubt Seller shall cause such act or transaction to be, subject to (i) the grant of the IP License and Software License under this Agreement and (ii) the Long-Term Agreement.

Section bh. Representations and Warranties

. Seller represents and warrants to Buyer as of the Agreement Date and as of each Purchase Date as follows with respect to all Intellectual Property that is required (i) for Seller or its Affiliates to perform their respective obligations under the Transaction Documents, and (ii) for the continued operation of the Facilities in accordance with the Transaction Documents, the ESAs and the Interconnection Agreements:

(i)Seller owns or has the right to use and to authorize Buyer to use all such Intellectual Property and Software; and

(ii)Seller and its Affiliates are not infringing, misappropriating or otherwise violating any Intellectual Property rights of any third party with respect to the actions described in subsection (i) and (ii) of Section 11.6 and the sale, manufacture or use of the Facilities do not (and the sale, manufacture and use of the Facilities as contemplated in this Agreement will not) infringe, misappropriate or otherwise violate any Intellectual Property rights of any third party.

ARTICLE XII.

EVENTS OF DEFAULT AND TERMINATION

Section bi. Seller Default

. The occurrence at any time of any of the following events shall constitute a "Seller Default":

(i)Failure to Pay. The failure of Seller to pay any undisputed amounts owing to Buyer on or before the day following the date on which such amounts are due and payable under the terms of this Agreement and Seller's failure to cure each such failure within ten (10) Business Days after Seller receives written notice from Buyer of each such failure;

(ii)Failure to Perform Other Obligations. Unless due to a Force Majeure Event, and except for a Seller Default pursuant to Section 12.1(6), the failure of Seller to perform or cause to be performed any other material obligation required to be performed by Seller under this

Agreement, the Administrative Services Agreement or the MIPA, or the failure of any representation and warranty set forth herein or therein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Seller shall have a period of thirty (30) days after obtaining Knowledge of such failure to cure the same and a Seller Default shall not be deemed to exist during such period; provided, further, that if Seller commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days; provided, further, that notwithstanding the foregoing, the cure periods set forth above shall in no event exceed (and will be deemed modified as necessary to match) the cure period applicable to any particular or breach pursuant to an ESA;

(iii)Failure to Remedy Injunction. The failure of Seller to remedy any injunction that prohibits Buyer's use of any Facility as contemplated by Section 13.1 within sixty (60) days of Seller's receipt of written notice of Buyer being enjoined therefrom;

(iv)Bankruptcy. If Seller (i) admits in writing its inability to pay its debts generally as they become due; (ii) files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Legal Requirements of the United States of America or any State, district or territory thereof or any similar proceeding outside of the United States of America; (iii) makes an assignment for the benefit of creditors; (iv) consents to the appointment of a receiver of the whole or any substantial part of its assets; (v) has a petition in bankruptcy filed against it, and such petition is not dismissed within sixty (60) days after the filing thereof; or if (vi) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver or similar Person of the whole or any substantial part of Seller's assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or (vii) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any material part of Seller's assets, and such custody or control is not terminated or stayed within sixty (60) days from the date of assumption of such custody or control;

(v)Maximum Liability. Seller's aggregate incurred liability under this Agreement and the other Transaction Documents equals or exceeds the Maximum Liability;

(vi)Failure to Perform Certain Obligations. Unless due to a Force Majeure Event, the failure of Seller to perform or cause to be performed its obligations pursuant to Section 2.8 or pursuant to the Side Letter Agreement, in each case subject to any applicable cure and grace periods set forth in such Sections; or

(vii)Other Transaction Documents. (i) Any MIPA Representation or any representation or warranty made in the Long-Term Agreement, in either case, was not true and correct as and when made or (ii) Seller fails to perform or cause to be performed any obligation required to be performed by Seller under the Long-Term Agreement.

Section bj. Buyer Default

. The occurrence at any time of the following events with respect to Buyer shall constitute a "Buyer Default":

(i)Failure to Pay. The failure of Buyer to pay any undisputed amounts owing to Seller on or before the day following the date on which such amounts are due and payable under the terms of this Agreement and Buyer's failure to cure each such failure within ten (10) Business Days after Buyer receives written notice of each such failure;

(ii)Failure to Perform Other Obligations. Unless due to a Force Majeure Event, the failure of Buyer to perform or cause to be performed any material obligation required to be performed by Buyer under this Agreement or the failure of any representation and warranty set forth herein to be true and correct as and when made; provided, however, that if such failure by its nature can be cured, then Buyer shall have a period of thirty (30) days after receipt of written notice of such failure to cure the same and a Buyer Default shall not be deemed to exist during such period; provided, further, that if Buyer commences to cure such failure during such period and is diligently and in good faith attempting to effect such cure, said period shall be extended for sixty (60) additional days; or

(iii)Bankruptcy. If Buyer (i) admits in writing its inability to pay its debts generally as they become due; (ii) files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Legal Requirements of the United States of America or any State, district or territory thereof; (iii) makes an assignment for the benefit of creditors; (iv) consents to the appointment of a receiver of the whole or any substantial part of its assets; (v) has a petition in bankruptcy filed against it, and such petition is not dismissed within sixty (60) days after the filing thereof; or if (vi) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Buyer's assets, and such order, judgment or decree is not vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or (vii) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Buyer's assets and such custody or control is not terminated or stayed within sixty (60) days from the date of assumption of such custody or control.

Section bk. Buyer's Remedies upon Occurrence of a Seller Default

. If a Seller Default has occurred under Section 12.1(4), Section 12.1(6) or Section 12.1(7), Buyer may terminate this Agreement with respect to all Facilities by written notice, and assert all rights and remedies available to Buyer under Legal Requirements subject to the limitations of liability set forth in Section 13.6. If a Seller Default has occurred with respect to a Facility under Section 12.1(1), Section 12.1(2), Section 12.1(3), or Section 12.1(5), Buyer may terminate this Agreement only with respect to such Facility for which such Seller Default has occurred by written notice, and assert all rights and remedies available to Buyer under Legal Requirements subject to the limitations of liability set forth in Section 13.6. If a Seller Default has occurred under Section 12.1(1), Section 12.1(2), Section 12.1(3), Section 12.1(5), Section 12.1(6) or Section 12.1(7), Buyer may require Seller and, if so required, Seller shall repurchase the relevant

Facility or Facilities in respect of which this Agreement is being terminated from Buyer on an AS IS basis by paying the Repurchase Value of any such Facility, calculated as of the date of such payment, in which case Seller shall take title to such Facility upon paying the Repurchase Value, and such Facility shall no longer constitute a portion of the Portfolio or the Scheduled Portfolio (provided, that if such Seller Default has occurred under Section 12.1(5), Seller shall not be obligated to make a payment to Buyer in excess of the Maximum Liability except as otherwise set forth in Section 13.6). If a Facility will be removed pursuant to this Section 12.3, Seller shall at its sole cost and expense remove the Facility in accordance with Section 4.10(1).

Section bl. Seller's Remedies Upon Occurrence of a Buyer Default

. If a Buyer Default has occurred Seller may terminate this Agreement only with respect to those Facilities for which a Buyer Default has occurred and remains uncured by written notice, and assert all rights and remedies available to Seller under Legal Requirements with respect to those Facilities for which a Buyer Default has occurred, subject to the limitations of liability set forth in Section 13.6, including without limitation retaining any prior payments with respect to such Facilities and, to the extent Seller has title to and possession of such Facilities, selling such Facilities to another buyer.

Section bm. Preservation of Rights

. Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise, including, without limitation, ARTICLE X, ARTICLE XI (including the IP License and right to retain copies of the documentation and other embodiments of Intellectual Property in Section 11.1), and ARTICLE XIII.

Section bn. Force Majeure

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(i)If either Party is rendered wholly or partially unable to perform any of its obligations under this Agreement by reason of a Force Majeure Event, then except as otherwise explicitly specified in this Agreement, that Party (the "Claiming Party") will be excused from whatever performance is prevented by the Force Majeure Event to the extent so prevented; provided, however, that (a) the Claiming Party, promptly upon (and in no event later than three (3) days after) the occurrence of such Force Majeure Event, gives the other Party (the "Affected Party") notice in writing describing the particulars of the occurrence, including the anticipated duration of the Force Majeure Event; (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event; (c) no liability of either Party for an event that arose before the occurrence of the Force Majeure Event shall be excused as a result of the Force Majeure Event; (d) the Claiming Party shall exercise commercially reasonable efforts to correct or cure (and at all times minimize) the event or condition excusing performance and resume performance of all its obligations; and (e) when the

Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall promptly give the Affected Party notice in writing to that effect and shall promptly resume performance. Except as set forth in Section 4.3(7), an event of Force Majeure shall not excuse the obligation to pay money under this Agreement. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller (or any of its Service Providers) be required to risk the lives or health of any human Persons during the pendency of a Force Majeure Event, it being understood that Seller or its Service Providers, as applicable, shall return to the affected Site as soon as reasonably safe, as is required by clauses (b), (d) and (e) of this Section 12.6.

(ii)If, as a result of a Force Majeure Event, a Facility in the Portfolio, in whole or in part, is damaged or destroyed such that the repair of such Facility or part thereof is likely to exceed $[***] (a "**Casualty**"), Seller shall give prompt notice of such damage to Buyer and shall promptly provide an estimate of the costs required to either restore or remove such Facility. After receiving such notice and estimate, Buyer may either (a) instruct Seller to repair, rebuild or replace (as applicable) such Facility or part thereof to effect the restoration of such Facility as nearly as possible to the condition it was in immediately prior to such Casualty, with such alterations and upgrades as may be reasonably requested and approved by Buyer (a "**Restoration**"), or (b) upon Buyer's determination that the Facility or part thereof cannot be repaired, rebuilt or replaced to Buyer's satisfaction, terminate this Agreement with respect such Facility subject to such Casualty, after which Seller shall remove such Facility in accordance with Section 4.10(2) (a "**Casualty Removal**"). Upon a termination of this Agreement with respect to a Casualty Removal, Buyer and Seller shall be fully released of any and all obligations hereunder with respect to the Facility subject to the Casualty, except for those provisions which expressly survive a termination.

(iii)Buyer shall reimburse Seller for all costs reasonably incurred by Seller of Restoration or Casualty Removal, whether or not such costs are covered by insurance. At Buyer's request, Seller shall, using commercially reasonable efforts and in good faith, participate in any discussions with, and facilitate Buyer's exchange of information with, any insurance companies with respect to any Casualty, Restoration or Casualty Removal. For the avoidance of doubt, any insurance proceeds in respect of a Casualty, Restoration or Casualty Removal shall be entirely for the benefit of Buyer, except to the extent Buyer has failed to reimburse Seller as set forth in the first sentence of this Section 12.6(3), and other than to such extent, any such insurance proceeds received by Seller shall be held in trust for the benefit of Buyer and promptly remitted to Buyer. Any Restoration shall be conducted in compliance with Sections 4.2(3) and 4.10(2).

Section bo. Termination of ESAs Following Placed in Service Date; ESA Customer Purchase Options.

(i)In the event that an ESA is terminated (or if an ESA Customer exercises its purchase option pursuant to its ESA) with respect to a Facility on or following the date such Facility achieves any of the events described in clauses (2) through (4) of the definition of "Placed in Service", then, notwithstanding anything to the contrary set forth in Section 4.1(2), Buyer may

terminate this Agreement with respect to that Facility by written notice, such termination to be effective as of the final day of the calendar month in which such notice is delivered. Following the effectiveness of such termination, Buyer shall owe Seller no further Services Fees in respect of such Facility. For clarity, nothing in this Section 12.7(1) shall limit in any manner any other rights or remedies that may be available to Buyer or Seller under this Agreement. If an ESA Customer exercises its purchase option pursuant to its ESA, Seller shall use commercially reasonable efforts to facilitate the consummation of such purchase and related matters, including by executing and delivering reasonable documentation in a timely manner at Buyer's request. If Buyer owns a Facility or any Component thereof following termination of the applicable ESA (or, if prior to termination of an ESA, it is reasonably likely that the applicable ESA Customer will not agree to renew, or otherwise cause to be renewed, the initial term or any renewal term of such ESA), Seller shall, at Buyer's request, use its commercially reasonable efforts to remarket the applicable Facility or Component thereof pursuant to Section 4.10(3).

In the event that the termination of an ESA with respect to any Facility pursuant to Section 12.7(1) results from a Seller Default as described in Section 12.1(1), Section 12.1(2), Section 12.1(3), Section 12.1(5), Section 12.1(6) or Section 12.1(7), Seller shall, at Buyer's option, repurchase and remove the relevant Facilities in accordance with Section 4.10(1) and (2). Solely with respect to the termination of a [***] ESA pursuant to Section 12.7(1) (regardless whether there is a Seller Default), Seller shall pay for any remaining payments of unpaid "Rent" (as such term is defined in the [***] ESA) in accordance with Section 6.1(f) and Schedule 3.4 of the [***] ESA that accrue in respect of such termination. Notwithstanding the foregoing or anything else in this Agreement, any payment by the ESA Customer under either of the [***] or the [***] of any termination value or reimbursement of costs under such ESA, under any circumstances, shall be subject in all respects to, as applicable, (x) the last sentence of Section 11.2(b)(i) of the [***].

(ii)In the event of a Compliance Law Violation (as defined in the Equinix ESA), the Parties will cooperate in good faith to cure such Compliance Law Violation in accordance with the terms of Section 7.1(h)(i) of the Equinix ESA including by ensuring that any individual(s), Seller Affiliate, Service Provider and/or Seller or Seller Affiliate agent, representative or subcontractor at any tier directly involved in the Compliance Law Violation are no longer in any way performing under the Equinix ESA. In the event that, notwithstanding such efforts, such Compliance Law Violation either (i) can only be cured by the termination of Seller's performance in connection with the Equinix ESA, or (ii) results in the termination of the Equinix ESA, then, in either case, Buyer may terminate this Agreement with respect to any Facilities installed pursuant to the Equinix ESA and affected by such termination of the Equinix ESA, and Buyer shall owe Seller no further Service Fees in respect of such Facility(ies) for any period from and after the date of termination. For clarity, nothing in this Section 12.7(3) shall limit in any manner any other remedies that may be available to Buyer under this Agreement.

(iii)In the event [***] is terminated by the applicable ESA Customer due to a "Supplier Default" (as defined in [***]) under Section 11.1(a)(iii) of [***], Seller shall, at Buyer's option, repurchase and remove the relevant Facilities in accordance with Section 4.10(1) and (2). Without limiting the foregoing sentence, Seller shall promptly notify Buyer if Seller acquires Knowledge of any reduction in or failure to deliver output that, taken by itself or together with other such reductions or failures, is reasonably likely to result in such a "Supplier Default" (as defined in [***]), and after so notifying Buyer, Seller shall, if requested by Buyer (and without limiting Seller's obligations hereunder), cooperate with Buyer to develop and implement plans to mitigate the risk of such a "Supplier Default".

Section bp. Termination of ESAs Prior to Placed in Service Date

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(i)If an ESA is terminated with respect to one or more Facilities prior to the date such Facility achieves any of the events described in clauses (2) through (4) of the definition of "Placed in Service", then Seller shall, at Buyer's sole discretion and as part of the Installation Service (without in any way limiting Buyer's rights and remedies under, and subject to, Section 2.4(7), Section 2.9, Section 2.11, Section 3.4(1)(xii)(B), Section 12.8(2), Section 12.8(3), Section 12.8(4) and Section 12.8(5)), (i) remove such Facility in accordance with Section 4.10(2) and (ii) relocate and install such Bloom System and applicable Ancillary Equipment and BOF at a substitute Site. The costs of such removal and relocation shall be at Seller's sole cost and expense; *provided, however* to the extent the applicable ESA Customer reimburses Buyer for (or otherwise pays Buyer in respect of) such costs pursuant to the terms of the applicable ESA, then Buyer shall remit such payments to Seller to the extent of Seller's bearing costs under this sentence.

(ii)If a [***] ESA is terminated under this Section 12.8 pursuant to Sections 2.3(c) or (d) of such [***] ESA and [***] elects to take title to any materials (or other assets, properties or rights) in accordance with such sections under the [***] ESA, all payments made by [***] as "Host" pursuant to such Sections 2.3(c) or (d) of such [***] ESA will be remitted to Seller when received by Buyer and Seller shall convey the applicable title (or other assets, properties or rights) in accordance with the terms therein; provided, that the foregoing receipts shall be remitted to Seller only to the extent in excess of (i) any payments made by Buyer under or in connection with the Facility described in such [***] ESA and (ii) any amounts then due and owing to Buyer by Seller in respect of the Facility or Facilities described in such [***] ESA.

(iii)If [***] is terminated under this Section 12.8 and Buyer, as "Supplier" thereunder, owes the ESA Customer [***] of the deposit made in connection with the Connecticut Low and Zero Emissions Energy Credit Program under Section 5.2(a)(i) of the [***], then Seller will make such payment on Buyer's behalf.

(iv)If an ESA is terminated under this Section 12.8, and a cash deposit Credit Support required in connection with a System Attribute has been posted by Buyer, or reimbursed to Seller

pursuant to Section 4.3(5), then, in either case, (i) Buyer shall use commercially reasonable efforts to obtain a return of such cash deposit Credit Support from the Person holding it and (ii) Seller shall reimburse Buyer for the amount of such cash deposit Credit Support. Seller's obligation to reimburse Buyer will not be delayed or limited by (A) Buyer having not received such cash deposit Credit Support from the Person holding it or (B) the degree of Buyer's use of commercially reasonable efforts to obtain the return of such cash deposit Credit Support from the Person holding it. If Buyer receives such cash deposit Credit Support from such Person after Seller has reimbursed Buyer pursuant to this Section 12.8(4), Buyer shall remit such receipts to Seller to the extent of Seller's reimbursements made under this Section 12.8(4).

(v)If a Preexisting Seller Agreement provides an ESA Customer (or its Affiliate or predecessor) with any rights or interests, the exercise of which results in installation of the related Facility under the applicable ESA being suspended or canceled, and such ESA Customer (or Affiliate or predecessor) exercises such rights or interests, and thereafter the applicable ESA is terminated under this Section 12.8, Seller shall remove any relevant Facilities or portions thereof in accordance with Section 4.10(1); provided, that if such ESA Customer (or Affiliate or predecessor) exercises such rights or interests and such suspension or cancelation is reasonably likely, then Buyer may terminate such ESA and Seller shall remove any relevant Facilities or portions thereof in accordance with Section 4.10(1).

Section bq. Change in Law

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(i)If, due to any change in Legal Requirements subsequent to the date of this Agreement (a "Change in Law"), performance of any provision of this Agreement or any transaction contemplated hereby shall become impracticable, impossible or unduly burdensome, the Parties hereto shall use commercially reasonable efforts to find and employ an alternative means, including renegotiation of economics of the Agreement, to achieve the same or substantially the same result as that was contemplated by this Agreement; provided, however, that (a) the Party claiming impairment of performance under this Section 12.9 (the "Claiming Party") shall, promptly upon (and in no event later than three (3) Business Days after) the occurrence of such Change in Law, give the other Party (the "Affected Party") notice in writing describing the particulars of the occurrence, including the anticipated duration of the Change in Law; (b) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Change in Law; (c) no liability of either Party for an event that arose before the occurrence of the Change in Law shall be excused as a result of the Change in Law; (d) the Claiming Party shall exercise commercially reasonable efforts to correct or cure (and at all times minimize) the effect of Change in Law and resume performance of all its obligations; and (e) when the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall promptly give the Affected Party notice in writing to that effect and shall promptly resume performance. Except as set forth in Section 4.3(7), a Change in Law shall not excuse the obligation to pay money under this Agreement. If an event or circumstance gives rise to a Change in Law as defined herein under this Agreement, but such

event or circumstance does not also constitute a 'Change in Law' (or similar term) as defined under the applicable ESA or Site License (depending on which Facilities are affected), then for the purposes of any rights and obligations of the parties under this Agreement that relate to corresponding rights or obligations under such ESA or Site License such event or circumstance will not constitute a Change in Law under this Agreement.

(ii)Notwithstanding Section 12.9(a) above, if [***] terminates any [***] ESA in accordance with Section 5.1(b), Section 8.2 or Section 19.15 therein, Seller will pay to Buyer an amount equal to the "Early Termination Fee" (as defined in the applicable [***] ESA) and remove, at Seller's cost and expense, any and all "Systems" and "System" infrastructure in accordance with Section 2.6 of the [***] ESAs. Seller will not take any action described in Sections 5.1(b), 8.2 or 19.15 of any [***] ESA that would cause [***] to be deemed an electric utility, public utility or similar entity under Legal Requirements.

ARTICLE XIII.

INDEMNIFICATION

Section br. IP Indemnity

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(i)Except as expressly limited below, Seller agrees to indemnify, defend and hold Buyer, its direct and indirect members, and their Affiliates and their respective managers, officers, directors, employees and agents harmless from and against any and all Third Party Claims and Indemnifiable Losses (including in connection with obtaining any Intellectual Property necessary for continuation of completion, operation and maintenance of Facilities purchased by Buyer from Seller), arising from or in connection with any alleged infringement, misappropriation, conflict, violation or misuse of any patents, copyrights, trade secrets or other third party Intellectual Property rights by Facilities or Components thereof purchased by Buyer pursuant to this Agreement (or the sale, use, operation or maintenance thereof, provided that such sale, use, operation or maintenance is as contemplated by this Agreement or the Long-Term Agreement) or the exercise of the IP License or the Software License granted pursuant to Section 11.1 and Section 11.2 hereunder, or the license granted under the Long-Term Agreement, or the exercise by any ESA Customer of any of its rights and interests with respect to Customer Equipment, if applicable, or any exercise by an ESA Customer of any of its rights and interests with respect to a Non-Scheduled Facility. Buyer shall give Seller prompt notice of any such claims (provided, that the failure to so notify shall not relieve Seller's obligations under this Section 13.1 except to the extent Seller is materially prejudiced thereby). Seller shall be entitled to participate in, and, unless in the opinion of counsel for Seller a conflict of interest between the Parties may exist with respect to such claim, assume control of the defense of such claim with counsel reasonably acceptable to Buyer. Seller shall ensure that the terms and conditions set forth in Section 23.2 of the Kaiser ESA, as applicable to any Facilities thereunder, are satisfied and that there does not arise at any time an "Event of Default" (as defined in the Kaiser ESA) pursuant to Section 16.1(f) of the Kaiser ESA (and, for the avoidance of doubt, Seller shall promptly and at

its own expense procure, provide and maintain any performance assurance, credit support and other assurance requested by the counterparty to such Kaiser ESA), and Seller shall comply in all respects with any similar obligations in any transaction confirmations under the Kaiser ESA entered into after the First Agreement Date. Buyer authorizes Seller to settle or defend such claims in its sole discretion on Buyer's behalf, without imposing any monetary or other obligation, restriction, admission or liability on Buyer and subject to Buyer's participation rights set forth in this Section 13.1. Buyer shall assist Seller upon reasonable request by Seller and, at Seller's reasonable expense, in defending any such claim. If Seller does not assume the defense of such claim, or if a conflict precludes Seller from assuming the defense, then Seller shall reimburse Buyer on a monthly basis for Buyer's reasonable and documented defense expenses of such claim through separate counsel of Buyer's choice reasonably acceptable to Seller. If Seller assumes the defense of such claim, Seller shall keep Buyer reasonably informed as to the status of such defense (including prompt updates with respect to any material developments). Should Buyer be enjoined from selling or using any Facility or Component thereof as a result of such claim, Seller will, at its sole option and discretion (and at its own expense), either (i) procure or otherwise obtain for Buyer the right to use or sell the Facility or Component thereof; (ii) modify the Facility or Component thereof so that it becomes non-infringing but still substantially meets the original functional specifications of the Facility or Component thereof (in which event, for the avoidance of doubt, all warranties hereunder shall continue to apply unmodified); (iii) upon return of the Facility or Component thereof to Seller, as directed by Seller, provide to Buyer a non-infringing Facility or Component thereof meeting the functional specifications of Facility or Component thereof, or (iv) when and if none of the first three options is reasonably available to Seller, authorize the return of the Facility to Seller and, upon receipt thereof, return to Buyer all monies paid by Buyer to Seller for the Repurchase Value, net of any monies paid by Seller to Buyer for any performance guaranties or other warranty claims; provided that Seller shall not elect the options in the preceding clauses (i), (ii) or (iii) without Buyer's written consent (such consent not to be unreasonably withheld) if such election could reasonably be expected to materially decrease Buyer's revenues or materially increase Buyer's operating expenses.

(ii)THIS INDEMNITY SHALL NOT COVER ANY CLAIM:

cxviii.for Intellectual Property infringement, conflict, violation, misappropriation, or misuse resulting from any combination made by Buyer of any Bloom System with any other product or products (except any other Component of the Facility) or modifications made by or on behalf of Buyer to any part of the Bloom System, unless (A) such combination or modification is in accordance with Seller's specifications for the Bloom System, (B) such combination or modification is made by or on behalf of or at the written request of Seller where Seller has requested the combination or modification giving rise to the claim by Buyer, (C) such combination is reasonably necessary for the use of the Facility as permitted in this Agreement or (D) such other product or products would not infringe the Intellectual Property rights of a third party but for the combination with any part of the Bloom System; or

cxix.for infringement of any Intellectual Property rights where such infringement results from a modification to the Bloom System which was requested in writing by Buyer on a custom basis; provided, that before performing or agreeing to perform any such modification, Seller shall notify Buyer in writing, with specific reference to this Section 13.1(2)(ii), that such modification if performed will result in claims being excluded from indemnification pursuant to this Section 13.1(2) and the extent of such exclusions; and provided, further, that none of the following shall constitute a modification to the Bloom System which was or is requested by Buyer on a custom basis: (a) the integration of the Battery Solution or other Ancillary Equipment or BOF into any Facility, (b) specifications, plans, designs or drawings comprising a part of, or delivered pursuant to, any ESA or Site License, (c) performance of an ESA or Site License by the parties thereto pursuant to the terms and conditions thereof or (d) any change or amendment to any of the agreements, documents or information set forth in the foregoing clauses (b) or (c) to the extent approved in writing by Seller.

Section bs. General Indemnification of Seller by Buyer

. Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Seller Indemnitee") from and against any and all Indemnifiable Losses (other than Indemnifiable Losses addressed in Section 13.1) asserted against or suffered by any Seller Indemnitee arising out of a Third Party Claim (other than a claim for such Seller Indemnitee's breach of any contract to which such Seller Indemnitee is a party) to the extent arising out of or in connection with (a) the negligent or intentional acts or omissions of Buyer or its subcontractors, agents or employees or others under Buyer's control (excluding Seller and any Seller Affiliate) after the First Agreement Date, or (b) except in accordance with this Agreement or the Transaction Documents, operation of a Facility or any part thereof by any party other than Seller or an Affiliate or subcontractor of Seller after such Facility has been purchased by Buyer pursuant to this Agreement (but subject to Seller's warranties, covenants and indemnities under this Agreement and any other Transaction Document to which Seller is a party); provided that Buyer shall have no obligation to indemnify Seller to the extent caused by or arising out of (i) any gross negligence, fraud or willful misconduct of any Seller Indemnitee or the breach by Seller or any Seller Indemnitee of its covenants, representations and warranties under this Agreement or in any Payment Certificate or (ii) any operation of any Facility (or any part thereof) by a Person outside of Buyer's control or direction or by a Person taking such action despite Buyer's reasonable efforts to prevent the same.

Section bt. General Indemnification of Buyer by Seller.

(i)Seller shall indemnify, defend and hold harmless Buyer, its direct and indirect members, managers, officers, directors, employees, Affiliates and agents (each, a "Buyer Indemnitee") from and against any and all Indemnifiable Losses (other than, but without limiting, Indemnifiable Losses addressed in Section 3.4(4), Section 3.7, Section 5.7, Section 5.8, Section 13.1 or Section 13.4) asserted against or suffered by any Buyer Indemnitee arising out of

(1) any Third Party Claim to the extent arising out of or in connection with the negligent or intentional acts or omissions of Seller, its Service Providers, its agents, its employees or others under Seller's control arising out of or in connection with a breach, violation or default of the obligations of the foregoing Persons under the Transaction Documents (other than matters addressed separately in Section 3.4(4), Section 3.7, Section 5.3, Section 5.7, Section 5.8, Section 13.1, this Section 13.3 or Section 13.4, which shall be governed by the terms thereof), (2) the breach of an obligation or inaccuracy of a representation or warranty when made, in each case, (i) by Seller under any Transaction Document (it being the intention of Buyer and Seller that Seller's obligations in this Section 13.3 shall include any Indemnifiable Losses asserted against or suffered by Buyer Parent under the MIPA, and Buyer may make claims hereunder on behalf of Buyer Parent) or (ii)(x) by Buyer or any Affiliate of Seller prior to the First Agreement Date under a Site License or ESA or (y) by Buyer, Seller, any Project Company or any Affiliate of Seller, solely with respect to the Approved Facilities, (I) prior to the Agreement Date (except with respect to each Standby Facility, prior to the applicable Representations Date) under any Site License, ESA or related parent guarantee, or (II) under an Interconnection Agreement for any Approved Facility or related document to which a Transmitting Utility is a party on or prior to the date such Interconnection Agreement (or interconnection application, as applicable) is assigned to Buyer, (3) any injury, death, or damage to property caused by a defect in a Facility, (4)(i) any breach or any payment obligation that becomes due, in each case under an ESA or other Facility Contract arising in connection with (x) the Customer Equipment subject to such ESA, (y)(I) whether before, on or after the Commencement of Operations Date Deadline, any Non Scheduled Facility (until such Non Scheduled Facility is approved by Buyer to be part of the Scheduled Portfolio in accordance with Section 2.9), (II) on and after the date of consummation of any applicable 2020 Facilities Assignment, any Facility that is the subject of such 2020 Facilities Assignment, or (III) after the Commencement of Operations Date Deadline, any Facility for which none of the events described in clauses (2) through (4) of the definition of "Placed in Service" has been achieved as of such date or (z)(I) any payment or indemnity obligation of "Supplier" under Section 2.5 of the [***] Amendment or (II) any payment or indemnity obligation of "Supplier" under the Section 2.5(c) of the [***] ESA, or (ii) the breach of an obligation or inaccuracy of a representation or warranty when made, in each case, by Seller under Section 3.2(3)(ii) or Section 8.1(14)(ii), which breach or inaccuracy results in a loss or reduction of payments in respect of "Deemed Delivered Energy" (or similar payments) otherwise payable to Buyer pursuant to the applicable ESA (it being understood that Seller's obligations with respect to this Section 13.3(1)(4)(ii) shall include reimbursing Buyer for such lost or reduced payments), or (5) Seller Attributes; provided that, in all cases Seller shall have no obligation to indemnify Buyer to the extent caused by or arising out of any gross negligence, fraud or willful misconduct of a Buyer Indemnitee, the breach by Buyer or any Buyer Indemnitee of its covenants, representations and warranties under this Agreement or the inability of Buyer to ultimately utilize any tax benefits.

(ii)Except as otherwise set forth in this Agreement, in the event that Buyer incurs any liability, cost, loss or expense to an ESA Customer or licensor under a Site License (including relating to a breach of an ESA or Site License) arising out of Seller's breach of its obligations

herein, Seller shall indemnify and hold Buyer harmless for any such liability, cost, loss or expense incurred by Buyer.

Section bu. Tax Indemnification of Buyer by Seller.

(i)Seller agrees to indemnify, defend and hold harmless each Buyer Indemnitee from and against any Tax Loss arising out of (i) the inaccuracy of any representation made by Seller in Section 8.1(6) or Section 8.1(10) as of the date such representation was made, (ii) the breach of or failure to perform any obligation, covenant or obligation of Seller under this Agreement, including the last sentence of Section 3.9, Section 4.2(3) (and any other Sections that require compliance with the requirements of Section 4.2(3)) and Section 6.1, or (iii) the gross negligence, willful misconduct or fraud of Seller in performing its obligations under this Agreement; *provided*, Seller shall have no obligation to indemnify Buyer to the extent such inaccuracy or breach was caused solely by Buyer or Buyer's inability to ultimately utilize any such tax benefits. The parties agree to treat any indemnity under this Section 13.4(1) as a return of the purchase price. If, pursuant to a final determination, it is determined that payment of an indemnity under this Section 13.4(1) is taxable, Seller shall promptly pay to Buyer the After Tax Basis gross-up amount. To the extent any such payment is includable as income of a Buyer Indemnitee as determined by agreement of the Parties or, if there is no agreement, by an opinion of a nationally-recognized Tax counsel selected by the Buyer Indemnitee and reasonably acceptable to Seller that such amount "should" be included as income of the Buyer Indemnitee, the amount of the payment shall be increased by the After Tax Basis gross-up amount upon the receipt or accrual of the payment.

Section bv. Indemnity Claims Procedure.

(i)Except as otherwise provided in Section 13.1, if any indemnifiable Third Party Claim is brought against a Party (the "Indemnified Party") under Section 13.2 or Section 13.3, then the other Party (the "Indemnifying Party") shall be entitled to participate in, and, unless in the reasonable opinion of counsel for the Indemnifying Party a conflict of interest between the Parties may exist with respect to such claim, assume the sole and exclusive control over the defense of such claim, with counsel reasonably acceptable to the Indemnifying Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's reasonable and documented defense expenses through separate counsel of the Indemnified Party's choice. If the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, subject to the Indemnifying Party's exclusive control of the defense, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. The Indemnifying Party may settle the defense without the consent of the Indemnified Party, so long as such defense only includes the payment of money and such settlement does not admit to any fault or actions of the Indemnified Party or infringe on the rights of the Indemnified Party hereunder.

(ii)Notwithstanding anything to the contrary in this ARTICLE XIII, it is express intention of the Parties that the indemnifications provided for in this ARTICLE XIII shall apply to direct demands, claims, actions, investigations, arbitrations or other proceedings (whether at law or in equity) between the Parties for a breach of this Agreement or any other Transaction Document, regardless of whether a Third Party Claim is involved.

(iii)For Tax reporting purposes, to the maximum extent permitted by the Code, each party will agree to treat all amounts paid pursuant to this Section 13.5 as a non-taxable reimbursement of purchase price. If, pursuant to a final determination, it is determined that payment of an indemnity under this Section 13.5 is taxable, Seller shall promptly pay to Buyer the After-Tax Basis gross-up amount. To the extent any such payment is includable as income of Buyer as determined by the agreement of the Parties or, if there is no agreement, by an opinion of a nationally-recognized Tax counsel selected by Buyer and reasonably acceptable to Seller that such amount "should" be included in income of Buyer, the amount of such payment shall be increased by the After-Tax Basis gross-up amount upon the receipt or accrual of the payment. Notwithstanding anything to the contrary in this ARTICLE XIII, if a Third Party Claim is brought against Buyer by an ESA Customer and the indemnification procedure set forth or required in the applicable ESA mandates any specific dates by which defenses must be assumed or other actions taken, or reserves consent or other rights to such ESA Customer, then Seller as the Indemnifying Party shall perform its obligations under this ARTICLE XIII in accordance with, at a minimum, such indemnification procedures in such ESA.

(iv)In determining the amount of any liability incurred by a Party under this Article XIII, if any of the Indemnifiable Losses are deemed to be federally taxable income, any calculation of Indemnifiable Losses shall be grossed up on an After-Tax Basis.

Section bw. Limitation of Liability.

(i)Notwithstanding anything to the contrary in this Agreement, in no event shall a Party be liable to the other Party for an amount in excess of the Maximum Liability; provided, that the foregoing limitation shall not apply to liability arising out of (A) the fraud, willful misconduct, or gross negligence of a Party or that Party's employees, agents, subcontractors (except that for the purposes of this provision, Seller and its employees, agents and subcontractors will not be deemed to be employees, agents or subcontractors of Buyer), (B)(i) a Third Party Claim, (ii) an Indemnifiable Loss asserted by [***] as a third-party beneficiary pursuant to this Agreement or (iii) pursuant to Section 12.7(2), any remaining payments of unpaid "Rent" (as such term is defined in the [***] ESA) in accordance with Section 6.1(f) and Schedule 3.4 of the [***] ESA, (C) any Indemnifiable Loss for which an Indemnified Party received insurance proceeds under Section 13.9, (D) Customer Equipment, (E) the Side Letter Agreement, (F) Seller Attributes, (G) liability for any ESA Warranty Reimbursement Payments that Seller has incurred pursuant to Section 5.8 or (H) any Tax Loss; and in any of the foregoing clauses (A) through (H), any amounts so received will not be included when calculating Seller's Maximum Liability.

(ii)Except for liquidated damages specifically provided for in this Agreement, and amounts due in respect of any Third Party Claim, damages hereunder are limited to direct damages, and in no event shall a Party be liable to the other Party, and the Parties hereby waive claims for indirect, punitive, special or consequential damages or loss of profits; *provided, however*, the following shall not be characterized as indirect, punitive, special or consequential damages or loss of profits: (i) Tax Loss, (ii) lost profits that were the reasonably foreseeable consequence of an indemnifiable breach or inaccuracy at the time of such breach or inaccuracy, (iii) payments of the Repurchase Value or any Aggregate Purchase Price refunds or other payments required under any of Section 2.4(7), Section 2.6(4), Section 2.11, or Section 3.4(1)(xii)(B), (iv) Performance Guaranty payments, (v) Indemnifiable Losses in respect of Seller Attributes, (vi) Indemnifiable Losses in respect of Customer Equipment, (vii) Indemnifiable Losses in respect of the Side Letter Agreement or (viii) liability for any ESA Warranty Reimbursement Payments that Seller has incurred pursuant to Section 5.8.

(iii)Subject to Section 3.2(3)(i), each Party hereby waives any claim under this ARTICLE XIII irrespective of the legal theory under which it is brought to the extent such claim is covered by the insurance of the claiming Party.

Section bx. Liquidated Damages; Estoppel

. The Parties acknowledge and agree that it would be impracticable or impossible to determine with precision the amount of damages that would or may be incurred by Buyer as a result of (x) the Portfolio's failure to satisfy any Capacity Warranty or (y) the existence of any of the circumstances described in this Agreement that gives rise to an obligation of Seller to pay to Buyer the Repurchase Value. It is therefore understood and agreed by the Parties that: (a) Buyer may be damaged by Seller's failure to satisfy either Capacity Warranty or to avoid such circumstances from occurring; (b) it would be impractical or impossible to fix the actual damages to Buyer resulting therefrom; and (c) any cash payments in respect of a claim under the Performance Guaranty payable to Buyer under Section 5.7 or any Repurchase Value for failure to meet such obligations are in the nature of liquidated damages, and not a penalty, and are fair and reasonable estimate of compensation for the losses that Buyer may reasonably be anticipated to incur by any such failure. Seller hereby (i) waives any argument that its failure to comply with such obligations would not cause Buyer irreparable harm, (ii) agrees that it shall be estopped from arguing the invalidity, or otherwise questioning the reasonableness, of the liquidated damages provided for herein, and (iii) agrees that it will consent to the entry of judgment ordering payment of such liquidated damages in any court of competent jurisdiction. Seller and Buyer each agree that Buyer shall be under no obligation to submit any dispute regarding the payment of any Repurchase Value when due to the dispute resolution mechanism set forth in Section 14.5, but may rather immediately pursue whatever rights it has available under this Agreement, at law or in equity in accordance with Section 14.6 herein.

Section by. Duplication of Recovery

. Any Indemnifiable Loss for which any Indemnified Party hereto is entitled to indemnification under this Article XIII shall be determined without duplication of recovery by reason of the state of facts giving rise to such Indemnifiable Loss constituting a breach of more than one representation, warranty, covenant or agreement; provided, however, that the right to indemnification shall not be limited to the extent that the amount of Indemnifiable Losses for such state of facts has not previously been recovered.

Section bz. Indemnification Obligations Net of Insurance Proceeds

. The Parties intend that any liability subject to indemnification pursuant to this Article XIII will be net of insurance proceeds actually received, realized or recovered by an Indemnified Party. Accordingly, the Indemnifiable Loss which an Indemnifying Party is required to pay to an Indemnified Party will be reduced or offset by any insurance proceeds actually received, realized or recovered by or on behalf of the Indemnified Party in reduction of the related liability.

Section ca. Survival

. The Parties' respective rights and obligations under this ARTICLE XIII shall survive any total or partial termination of this Agreement.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

Section cb. Amendment and Modification

. This Agreement may be amended, modified or supplemented only by written agreement of Buyer and Seller.

Section cc. Waiver of Compliance; Consents

. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but any such waiver of such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

Section cd. Notices

. All notices, provisions of documentation, reports, certifications, or other documentation, and other communications hereunder shall be in writing and shall be deemed given when (A) uploaded to the Data Room (provided, that Buyer is the only Party hereunder that may receive notice by upload to the Data Room, and such notice shall not be deemed given until Buyer has been notified thereof by an email update or telephone conversation), (B) received, if delivered personally, by facsimile transmission with completed transmission acknowledgment or by electronic mail, or (C) delivered, if mailed by overnight delivery via a nationally recognized

courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its below address; provided, however, that the Parties may notify one another in writing of changes to the addresses and other recipient information below this paragraph in this Section 14.3, and such notices of changes of address and other recipient information shall be effective only upon receipt thereof:

To Seller: Bloom Energy Corporation

4353 North 1st Street, 4th Floor
San Jose, CA 95134
Attention: [***]
email: [***]
and to:

Bloom Energy Corporation
4353 N. First Street
San Jose, CA 95134
Attention: General Counsel
email: [***]

To Buyer: c/o Duke Energy One

Attention: [***]
Deputy General Counsel
550 S. Tryon Street
Mail code: DEC45A
Charlotte, NC 28202
Tel: [***]
email: [***]
and to:

c/o Duke Energy One
Attention: [***]
Strategic Development Initiatives
400 S. Tryon Street
Mailcode: ST2690
Charlotte, NC 28202
Tel: [***]
email: [***]
and to:[***]
Hunton Andrews Kurth LLP

200 Park Avenue
52nd Floor
New York, NY 10166
Tel: [***]
email: [***]

Section ce. Assignment

.

(i)This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns (including by operation of law), but neither this Agreement nor any of the rights, interests or obligations hereunder, nor the equity interests that own the Buyer, directly and indirectly, shall be assigned, transferred or conveyed by any Party, without the prior written consent of the other Party (to be granted in the other Party's sole discretion); *provided, however* that:

cxx.So long as Buyer does not make any assignment pursuant to this clause (i) to a Competitor of Seller, Buyer may make such an assignment without Seller's consent to a successor to substantially all of Buyer's business, whether in a merger, sale of stock or other equity interests or rights, sale of assets or other transaction, or in any sale of stock or other equity interests or rights in Buyer representing less than all or substantially all of Buyer's business, including a direct or indirect (x) acquisition or disposition of tax equity investment interests or (y) collateral assignment for the benefit of a secured lender; provided, Buyer may make a collateral assignment for the benefit of a secured lender without consent to a Competitor of Seller, so long as such Person is not listed on Schedule 14.4(a); provided, further, if there is publicly announced a change in control, merger or sale of all or substantially all of the assets of Duke Energy Corporation to a Competitor of Seller, Seller shall have the right for thirty (30) calendar days after such announcement (after which date, Seller's right shall automatically expire) to elect, immediately upon written notice, to purchase the Portfolio in full by performing the following actions: (A) promptly refund any payments of the Aggregate Purchase Price for Facilities for which none of the events in clauses (2) through (4) of the definition of Placed in Service have occurred, (B) pay to Buyer (or its successor or beneficiary) the sum of the aggregate Repurchase Value (using the method of determining the Repurchase Value specified in clause (a) or (b) of the definition thereof that can be determined more quickly, with a post-purchase true-up to follow promptly to ensure that the actual amount described in this clause (B) is paid) for all Facilities or the net present value of expected remaining project cash flows at a discount rate equivalent to the investor return in the Base Case Model and including ESA renewals (reflected in the Base Case Model, adjusted to reflect a ten (10) year renewal term for each ESA in the Portfolio), whichever is greater, *plus* all amounts necessary for any holder of tax equity interests to achieve the rate of return contemplated in the tax equity financing documentation as of the consummation of such acquisition by Seller; (C) procure written releases of Buyer from any and all liabilities, obligations and duties in respect of this Agreement, the other

Transaction Documents, the Facility Contracts, the Governmental Approvals and the Portfolio; (D) assume all of Buyer's liabilities under any Facility Contracts and Governmental Approvals; and (E) execute and deliver to Buyer a Bill of Sale and other assignment agreements and other documentation as may be necessary to effect such purchase and related transfer of title to all Facilities;

cxxi.Buyer may make such an assignment without Seller's consent to an ESA Customer in connection with its exercise of a purchase option pursuant to an ESA;

cxxii.Seller shall be entitled to subcontract any of its obligations under this Agreement without consent (provided, that Seller shall not subcontract to any Person other than a Service Provider pursuant to Section 14.14) or to assign its obligations under this Agreement to an Affiliate under common ownership with Seller, provided, further, that (X) such assignment or subcontracting shall not excuse Seller from the obligation to competently perform any subcontracted or assigned obligations or any of its other obligations under the Agreement and (Y) Seller shall not assign any of Seller's obligations hereunder to an Affiliate unless Seller shall have executed and delivered to Buyer, on or prior to the effectiveness of such Assignment, a guarantee by Seller of all payment and performance obligations so assigned, to Buyer's reasonable satisfaction;

cxxiii.nothing in this Agreement shall be deemed to require the consent of any Party with respect to any change in control, merger or sale of all or substantially all of the assets of Seller; and

cxxiv.nothing in this Agreement shall be deemed to require the consent of any Party with respect to any acquisition or disposition of any direct or indirect tax equity interests in Buyer.

Any purported assignment or delegation in violation of this Section 14.4(1) shall be null and void. The Parties acknowledge and agree that any and all provisions applicable to a Facility Transfer are set forth in Section 3.6.

(ii)Upon the occurrence of any assignment or other disposition by Buyer permitted under Section 14.4(1), Buyer shall automatically be deemed to have obtained as of the date of such assignment or other disposition, without further action, any other consents that may be required from Seller pursuant to this Agreement or the other Transaction Documents, including those set forth in Sections 3.3(3) and Section 5.5(3) such that the assignee receives the benefit of all rights, benefits and interests of Buyer pursuant to this Agreement, including the Pre-COO Equipment Warranty (as applicable) and the Portfolio Warranty, and the Seller shall use commercially reasonable efforts to enter into an agreement with such assignee or transferee that is substantially similar to the Long-Term Agreement.

(iii)In the event of an assignment or transaction prohibited by Section 14.4(1), the assigning Party shall notify the other Party of the identity of the proposed assignee or successor in writing. Such other Party shall have the right to consent to such assignment or transaction. Such other

Party shall notify such assigning Party of its determination within ten (10) Business Days of receipt of notice from such assigning Party hereunder (and if such other Party does not so timely notify, then such other Party's consent to such assignment or transaction shall be deemed provided). If such other Party notifies such assigning Party that such other Party is electing to withhold consent, then such assigning Party shall be prohibited from consummating the proposed transaction.

(iv)In connection with any assignment allowed under this Section 14.4, the Parties shall use their commercially reasonable efforts to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform such assignment or transaction so as to maintain the economic and other benefits of the parties thereto, including the assignment of contracts and Governmental Approvals (or application in respect of Governmental Approvals) in respect of any applicable Facility.

(v)From time to time, either Party may, in its reasonable judgement, request an amendment to Schedule 14.4(a) or Schedule 14.4(b) to reflect that any Person thereon has become a "Competitor of Seller" or has ceased to be a "Competitor of Seller". If the other Party, in its reasonable discretion and upon receipt of sufficient evidence thereof, consents, the Parties will effect such amendment promptly.

Section cf. Dispute Resolution; Service of Process.

(i)Except as provided in Section 13.5 and Section 13.7, in the event a dispute, controversy or claim arises hereunder, including any claim whether in contract, tort (including negligence), strict product liability or otherwise, the aggrieved Party will promptly provide written notification of the dispute to the other Party within ten (10) days after such dispute arises. Thereafter, a meeting shall be held promptly between the Parties, attended by representatives of the Parties with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If the Parties are not successful in resolving a dispute within twenty-one (21) days of such meeting, then, subject to the limitations on remedies set forth in Section 4.10(2), Section 5.6, Section 5.7(6), Section 12.3 and Section 12.4 and ARTICLE XIII, either Party may pursue whatever rights it has available under this Agreement, at law or in equity in accordance with Section 14.6 herein.

(ii)In the event of any dispute arising out of or relating to this Agreement, each Party hereby consents to service of process made to the addressees set forth in Section 14.3 herein either by overnight delivery by a nationally recognized courier or by certified first class mail, return receipt requested, and hereby acknowledges that service by such means shall constitute valid and lawful service of process against the Party being served.

Section cg. Governing Law, Jurisdiction, Venue

. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING

EFFECT TO ANY CONFLICTS OF LAW OR OTHER PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW). THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO ANY SUCH DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

Section ch. Counterparts

. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile, portable document format or other electronic means (including, without limitation, services such as DocuSign) will be considered original signatures.

Section ci. Interpretation

. The article, section and schedule headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

Section cj. Entire Agreement; Ratification

.

(i)The Transaction Documents and the exhibits, schedules, documents, certificates and instruments referred to therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. Each Party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those in this Agreement, any Transaction Document or any other agreement entered into on the date of this Agreement between the Parties) made by or on behalf of any other Party at any time before the signature of this Agreement. Each Party waives all rights and remedies which, but for the preceding sentence, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance. Without limiting the foregoing, this Agreement supersedes, amends and restates the Original PUMA in its entirety and, upon and after the Agreement Date, the rights and obligations of the Parties with respect to the transactions contemplated in the Original PUMA shall be governed by this Agreement rather than the Original PUMA (and any references to the Original PUMA in any other document, instrument or agreement shall mean and be a reference to the Original PUMA, as amended and restated hereby); provided, however, that notwithstanding anything to the contrary in this Section 14.9 or elsewhere in this Agreement, neither of the Parties waives (and this Agreement will not discharge or constitute a novation of) any claims, rights, remedies or

defenses (i) existing or in respect of events occurring (in each case, whether or not known) prior to the Agreement Date arising under or in connection with the Original PUMA or the Transaction Documents (as such term is defined in the Original PUMA) or (ii) arising under or in connection with any of Sections 5(e) or 5(f) of the First Amendment to Purchase, Use and Maintenance Agreement, dated as of November 22, 2019, between Seller and Buyer, or any of Sections 5(b), 6(q) or 6(t) of the Third Amendment to Purchase, Use and Maintenance Agreement, dated as of March 23, 2020, between Seller and Buyer (and such sections of such amendments are hereby acknowledged, ratified and confirmed in all respects).

(ii)Except as expressly amended hereby or otherwise provided herein, all of the terms and conditions of the Transaction Documents remain in full force and effect, and none of such terms and conditions are, or shall be construed as, otherwise amended or modified (except for the Original PUMA, which shall be subject to Section 14.9(1)).

Section ck. Construction of Agreement

. The terms and provisions of this Agreement represent the results of negotiations between Buyer and Seller, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Buyer and Seller hereby waive the application in connection with the interpretation and construction of this Agreement of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement.

Section cl. Severability

. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party.

Section cm. Further Assurances

. Each Party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

Section cn. Independent Contractor; Subcontracting

. Seller shall perform the Installation Services and the Facility Services and act at all times as an independent contractor, and Seller shall be solely responsible for the means, methods,

techniques, sequences, and procedures employed for execution and completion of the Installation Services and the Facility Services. Nothing in this Agreement shall be interpreted or applied so as to make the relationship of any of the Parties that of partners, joint ventures or anything other than the relationship of customer and independent contractor. Notwithstanding anything to the contrary herein, including Seller's obligation to perform on behalf of Buyer certain of Buyer's obligations under ESAs and Site Licenses, neither Seller nor any of its employees, agents, subcontractors or representatives shall be considered an employee, agent, subcontractor or representative of, nor under the control of, Buyer under this Agreement. Seller shall at all times maintain supervision, direction and control over its employees, agents, subcontractors and representatives as is consistent with and necessary to preserve its independent contractor status, and Seller shall be responsible to Buyer for the acts and omissions of each such employee, agent, subcontractor and representative.

Section co. Service Providers

.

(i)Subject to the other requirements in this Agreement concerning Seller's subcontractors, agents and other representatives, Seller may contract with one or more unrelated third parties, who are reputable, appropriately qualified (including having an established record of successful performance in their trades), licensed, and financially responsible, to perform Installation Services and/or Facility Services throughout the Term (each, a "Service Provider"); provided, that (i) Seller shall be responsible for each Service Provider's performance of any Installation Service and/or Facility Service as if it had been performed by Seller, (ii) contracting with a Service Provider shall not relieve Seller of any liability, obligation, or responsibility pursuant to this Agreement, and (iii) to the extent that any ESA Customer has rights or privileges pursuant to its applicable ESA to be notified of, review or consent (or withhold its consent) to the retention of any Service Provider, such Service Provider shall not be contracted with, retained or otherwise perform any Installation Services or Facility Services hereunder unless in accordance with such ESA Customer's rights, to Buyer's reasonable satisfaction.

(ii)All Service Providers shall obtain and maintain such insurance coverages (i) having such terms as set forth in Annex B as are applicable to part of the Installation Services or Facility Services, as the case may be, that such Service Providers are performing, (ii) in accordance with Prudent Electrical Practices and (iii) in accordance with any requirements in any applicable ESA or Site License.

(iii)No Service Provider is intended to be or will be deemed a third-party beneficiary of this Agreement. Nothing contained herein shall create any contractual relationship between any Service Provider and Buyer or obligate Buyer to pay or cause the payment of any amounts to any Service Provider, including any payment due to any third party. None of Seller's employees, Service Providers or any such Service Provider's employees will be or will be considered to be employees of Buyer. Seller shall be fully responsible to Buyer for the acts and omissions of each such employee or Service Provider. To the extent that any ESA Customer has the right to request

removal of any Seller or Service Provider personnel under an ESA or Site License, Seller shall cooperate with Buyer in complying with the terms and conditions of such ESA or Site License including by, upon written notification by Buyer that the performance, conduct or behavior of any Person employed by Seller or one of its Service Providers is unacceptable to the applicable ESA Customer, promptly stopping such Person from performing any obligations hereunder and/or removing such Person from the applicable Site. Additionally, Buyer may bring to Seller's attention any concerns regarding the performance, conduct or behavior of any Person employed by Seller or one of its Service Providers, which concerns Seller shall consider in good faith and thereafter take such action as Seller deems appropriate under the circumstances. Seller shall be fully responsible for the payment of all wages, salaries, benefits and other compensation to its employees and for payment of any Taxes due because of the Installation Services or Facility Services.

(iv)Seller shall not be permitted to subcontract or otherwise delegate its duties or obligations hereunder except to Service Providers pursuant to this Section 14.14.

(v)Notwithstanding anything to the contrary herein, to the extent any ESA requires Buyer or any of its subcontractors (including Seller or any Service Providers) to satisfy any bonding or reserve requirements, including the provision of riders, Seller shall satisfy such requirements on Buyer's behalf and shall cause any Service Providers to do the same.

Section cp. Rights to Deliverables

. Buyer agrees that Seller shall, except as expressly set forth herein, retain all rights, title and interest, including Intellectual Property rights, in any Training Materials provided to Buyer in connection with the services performed hereunder; provided, for the avoidance of doubt, that the Intellectual Property licenses granted to Buyer under this Agreement shall include corresponding license rights in the Intellectual Property rights contained within such Training Materials. "Training Materials" means any and all materials, documentation, notebooks, forms, diagrams, manuals and other written materials and tangible objects, describing how to operate and maintain the Facilities, including any corrections, improvements and enhancements which are delivered by Seller to Buyer, but excluding any Documentation or other data and reports delivered to Buyer in respect of any Facilities. Subject to Article X, Buyer shall have the right to make copies of all Training Materials.

Section cq. Limitation on Export

. Buyer agrees that it will not export, re-export, resell, ship or divert directly or indirectly any Facility or any part thereof in any form or technical data or Software furnished hereunder to any country prohibited by the United States Government or any other Governmental Authority, or for which an export license or other Governmental Approval is required, without first obtaining such license or approval.

Section cr. Time of Essence

. Time is of the essence with respect to all matters contained in this Agreement

Section cs. No Rights in Third Parties

i. .

(i)Except as otherwise specified in Section 14.18(2) below and otherwise herein, (i) nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person that is not a Party, (ii) no Person that is not a Party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder and (iii) this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder (except that Buyer Indemnitees and Seller Indemnitees are made express third party beneficiaries with respect to applicable indemnities hereunder).

(ii)Pursuant to each [***] ESA, [***] is a third-party beneficiary to Buyer's indemnification rights in this Agreement and may exercise such rights, subject to the applicable limits in connection therewith. For the avoidance of doubt, any claims [***] makes under this Agreement as a third-party beneficiary shall be otherwise subject to the terms and conditions of the applicable [***] ESA, including Section 13 thereof. Any claim by [***] under an indemnity in this Agreement and in connection therewith, any claim by Buyer under Section 5.8 with respect to a claim by [***] under a [***] ESA is subject to Section 13.8. Seller shall correspond and work with [***] to ensure satisfaction of the conditions set forth in Section 2.8(k) of each [***] ESA, and if at any time [***] asserts or claims that such condition is not satisfied or waived, Seller shall promptly notify Buyer and use its commercially reasonable efforts to amend, modify or supplement this Agreement (subject to Section 14.1) so that such conditions in such [***] ESA are satisfied or waived.

Section ct. Non-Recourse

. No Representative or Affiliate of either of the Parties, nor any of their officers, directors, employees, agents, consultants, owners, shareholders, members or partners, shall have any personal liability to any Party under this Agreement or the other Transaction Documents as a result of the terms of this Agreement or the other Transaction Documents; provided, that this Section 14.19 shall not limit any claims by Seller against Buyer Parent pursuant to the MIPA, by Buyer (on behalf of Buyer Parent) against Seller pursuant to the MIPA or by Buyer against any ESA Customer pursuant to the ESAs or Site Licenses; provided, further, that Seller and Buyer shall not be considered to be or have been Affiliates of one another for purposes of this Section 14.19. Seller shall not initiate or pursue any claims, including in the nature of indemnity, against any ESA Customer pursuant to the terms of any ESA.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Buyer and Seller have caused this Amended and Restated Purchase, Use and Maintenance Agreement to be signed by their respective duly authorized officers as of the Agreement Date.

BUYER:
2018 ESA PROJECT COMPANY, LLC

a Delaware limited liability company

By: /s/ Melisa Johns
Name: Melisa Johns
Title: Vice President

SELLER:
BLOOM ENERGY CORPORATION
a Delaware corporation

By: /s/ Deon Boles
Name: Deon Boles
Title: VP, Corporate Controller

ANNEXES

Annex A
Minimum Power Product and Minimum kWh Example Calculations

Performance Warranty Example Calculations

Assumptions

1. Aggregate System Capacity of Facilities in Portfolio: 15,000 kW

• Hours in applicable Calendar Quarter: (90 days) * (24 hours/day) = 2,160 hours

• Hours subject to Exclusion under Section 5.6: 100

Calculations

• *Minimum Power Product* = (15,000kW) * ([***]%) = [***]kW

• *Minimum kWh* = ([***]kW) * (2,160 - 100) = [***] kWh

Annex B
Insurance

1. Insurance. At all times during the Term, without cost to Buyer, Seller shall maintain in force and effect the following insurance, which insurance shall not be subject to cancellation, termination or other material adverse changes unless the insurer delivers to Buyer written notice of the cancellation, termination or change at least thirty (30) days in advance of the effective date of the cancellation, termination or material adverse change or if notice from the insurer to Buyer of material adverse change is not available on commercially reasonable terms then Seller shall provide Buyer with such notice as soon as reasonably possible after becoming aware of such change; *provided,* that following the Commencement of Operations Date with respect to a Facility, the insurance required hereunder shall only pertain to Seller's Facility Services (including, for clarity, any removal, restoration or reinstallation services provided by Seller), except that this proviso shall not apply in respect of any [***] insurance policies required hereunder or under any ESA or Site License, all of which such policies shall be maintained by Seller at Seller's cost during the entire Term; and *provided*, *further*, that the insurance required hereunder shall pertain to the Installation Services for any Delayed Ancillary Equipment until the Commencement of Operations Date of such Delayed Ancillary Equipment:

(a) Worker's Compensation Insurance as required by the laws of the state in which Seller's employees are performing EPC Services or Facility Services;

(b) Employer's liability insurance with limits at policy inception not less than One Million Dollars ($1,000,000.00) per occurrence;

(c) Commercial General Liability Insurance, including bodily injury and property damage liability (arising from premises, operations, contractual liability endorsements, products liability, or completed operations) with limits not less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) annual aggregate limit at policy inception;

(d) If there is exposure, automobile liability insurance in accordance with prudent industry practice with a limit of not less than One Million Dollars ($1,000,000.00), combined single limit per occurrence;

(e) Umbrella liability insurance acting in excess of underlying employer's liability, commercial general liability and automobile liability policies with limits not less than Fifteen Million Dollars ($15,000,000.00) per occurrence, except that any subcontractors shall be required to maintain such insurance with limits of not less than Three Million Dollars ($3,000,000.00);

(f) Professional errors and omission insurance with a limit of not less than One Million Dollars ($1,000,000.00) per occurrence;

(g) Environmental/pollution liability insurance with a limit of not less than One Million Dollars ($1,000,000.00) per claim;

(h) Builder's Risk/Installation Coverage for each Facility, with replacement costs and a delay in startup component (for avoidance of doubt, this requirement is only applicable, with respect to each Facility, until such Facility's Commencement of Operations Date (and until, if applicable, the Commencement of Operations Date for any Delayed Ancillary Equipment)); and

(i) Marine Cargo - Transit coverage (including air, land and ocean cargo, as applicable) on an "all-risk" basis and a "warehouse to warehouse" basis with a per occurrence limit equal to not less than 110% of the value including transit and insurance of such shipment involving the Facility at all times for which the Seller bears or has accepted risk of loss or has responsibility for providing insurance. Coverage shall include loading, unloading and temporary storage (as applicable). Coverage shall be maintained in accordance with prudent industry practice in all regards with per occurrence deductibles of not more than $50,000 for physical damage and other terms and conditions acceptable to the Buyer. For avoidance of doubt, (i) this requirement is only applicable during installation and is not required to be maintained with respect to any Facility after such Facility's Commencement of Operations Date (except, with respect to any Delayed Ancillary Equipment, until the Commencement of Operations Date for such Delayed Ancillary Equipment), and (ii) this requirement shall not apply to any subcontractor except those engaged to transport materials owned by Seller during such transit.

2. Seller shall cause Buyer, the Investor and any of its other investors and/or financing partners to be included as additional insured to all insurance policies required in accordance with the provisions of this Agreement except for worker's compensation. The required insurance must be written as a primary policy not contributing to or in excess of any policies carried by Buyer, and each must contain a waiver of subrogation, in form and substance reasonably satisfactory to Buyer, in favor of Buyer, the Investor and any of its other investors and/or financing partners.

3. The insurances contemplated in this clause are primary. The Parties acknowledge that, if a claim is made under any of the insurances contemplated in this Agreement, it is their intention that the insurer cannot require the Party first to exhaust indemnities referred to in this Agreement before the insurer's obligation to perform is mature, subject to the insurer's later pursuing subrogation, in which event any recovery will be credited by such insurer *pro tanto* in favor of the policyholder. The general liability and umbrella liability insurances required by this Agreement shall provide blanket contractual coverage to the full policy limit. Where applicable, each of these insurances will:

(a) be effected with an insurer reasonably acceptable to Buyer;

(b) contain a waiver of subrogation in favor of Buyer, the tax equity investor indirectly owning tax equity membership interests in Buyer and any of Buyer's other investors and/or financing partners;

(c) contain deductibles in accordance with prudent industry practice and approved by Buyer acting reasonably; and

(d) include a provision that such insurance is primary insurance with respect to the interests of Buyer and Seller and that any other insurance maintained by Buyer, the Investor or any of its other investors and/or financing partners is excess and not contributory insurance with the insurances required under this Agreement.

Seller shall provide Buyer with evidence of compliance with these insurance requirements when requested by Buyer from time to time on a reasonable basis.

EXHIBITS

Exhibit A
Form of Purchase Order
[***]

Exhibit B
Form of Tranche Notice

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Tranche Notice, dated _____, 201_, is given pursuant to Section 2.2 of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Tranche Notice.

Seller hereby notifies Buyer that Seller reasonably expects that Facilities with aggregate System Capacity of __kW will be included in a Tranche that Seller reasonably expects will satisfy the applicable Deposit Milestones in such the [1st / 2nd / 3rd / 4th] Calendar Quarter of 201_.

Seller hereby certifies that, as of the date of this Tranche Notice, no Seller Default has occurred and is continuing under the PUMA.

Attached to this Tranche Notice is a draft Purchase Order.

This Tranche Notice may be relied upon by Buyer.

Signed for and on behalf of BLOOM ENERGY CORPORATION

By: _____

Name: _____

Title: _____

Exhibit C
Form of Project Information Spreadsheet[1]

Funding Date	Deposit $/kW	$ [***]	
[DD/MM/YYY]	Delivery $/kW	$ [***]	Plus Purchase Price Adders
	COO $/kW	$[___]	Remainder of the Aggregate Purchase Price + Taxes
	Purchase Price Adder	$[__]	

*

Milestone	Site ID	Address	City	State	Facility Size kW	Adder	Deposit Shipment		COO (w/ Tax)	% Sales Tax		Deposit Payment	Delivery Payment	Forecast/Actual Delivery Date	Forecast/Actual PiS	Deposit Pay Date	Delivery Pay Date	COO Pay Date	
Deposit					[__] kW	-	$ -							[DD/MM/YYYY]	[DD/MM/YYYY]	[DD/MM/YYYY]			
Delivery					[__] kW	-		$ -				$ -		[DD/MM/YYYY]	[DD/MM/YYYY]	[DD/MM/YYYY]			
COO					[__] kW	-			$ -	[_] %	$ -	$ -	$ -	[DD/MM/YYYY]	[DD/MM/YYYY]	[DD/MM/YYYY]	[DD/MM/YYYY]	[DD/MM/YYYY]	
							$ -	**$ -**	**$ -**										

Total Payment due Invoice Due Date	**$ -**

[1] Note: To include any information required by PUMA § 2.3(5)(ii)(G).

Exhibit D
Form of Certificate of Deposit Milestone Completion

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Certificate of Deposit Milestone Completion, dated _____, 201_, (this "**Certificate**") is given pursuant to Section 2.4(1)(i) of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Certificate.

This Certificate is provided in respect of a Tranche with aggregate System capacity of _____ kW (the "**Subject Tranche**").

Seller hereby certifies that in respect of the Subject Tranche:

i. Seller has received (on behalf of Buyer or itself, as applicable) approval of Site plans and single-line drawings from one or more ESA Customers for Facilities with aggregate System Capacity equal to or greater than the aggregate System Capacity of Facilities included in such Tranche (and all other Tranches for which Seller previously delivered a Certificate of Deposit Milestone Completion to Buyer); provided, that if any Third Party Consents (including the issuance of notices to proceed, if applicable) are required from an ESA Customer or a Site License grantor (or either of their Affiliates), or if the satisfaction of any other conditions precedent is required (including the construction of separate buildings and other facilities), as a condition to Buyer or its subcontractors (including Seller) commencing installation pursuant to the applicable ESA or Site License, then such Third Party Consents have been received or achieved, and such other conditions precedent have been satisfied, as applicable;

ii. Seller has received all materials required for the commencement of fabrication of Bloom Systems with aggregate System Capacity equal to or greater than the aggregate System Capacity of Facilities included in such Tranche, and all materials required as of such time to allow for completion of such fabrication in order to achieve Commencement of Operations of such Facilities (and all Facilities included in all other Tranches for which Seller previously delivered a Certificate of Deposit Milestone Completion to Buyer) within ninety (90) days; and;

iii. Seller has performed and successfully completed all obligations required to be completed on or before such date under the Transaction Documents and the applicable Facility Contracts (including, for the avoidance of doubt, obtaining all Permits if required as a condition to the Deposit Milestone under any Facility Contract); and

iv. Each of the representations and warranties of Seller in Section 8.1 of the PUMA (excluding Sections 8.1(5)(ii), (7)(ii), (10)(ii), (12), 10(v), 10(xii), (12), (14) (except for

14(i)) and (23)(ii)) is true and correct in all respects as of the date of this Seller's Deposit Milestone Certificate.

Signed for and on behalf of BLOOM ENERGY CORPORATION

……
By: ……

Name:……..

Title:…….

Exhibit E
Form of Certificate of Delivery Milestone Completion

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Certificate of Delivery Milestone Completion, dated _____, 201_, (the "**Certificate**") is given pursuant to Section 2.4(1)(ii) of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Certificate.

This Certificate is provided in respect of the Facility or Facilities, as the case may be, set forth on Attachment A to this Certificate, with aggregate System Capacity of _____ kW (each, a "**Subject Facility**"). Seller hereby certifies that in respect of each Subject Facility, on or before December 11, 2020:

i. the Bloom Systems and all Ancillary Equipment (if any) comprising such Facility have been Delivered;

ii. BOF for such Bloom Systems necessary to place such Bloom Systems on the concrete pad for such Bloom Systems has been Delivered and installed;

iii. Such Bloom Systems have been placed upon such concrete pad and are available for installation, startup, and commissioning;

iv. Seller has obtained, on behalf of itself, Buyer or the applicable ESA Customer (as applicable), in respect of such specific Facility, any approvals, drawings and notices described in clause (a) of the definition of "Deposit Milestone" that (i) are required to be obtained before Delivery pursuant to such ESA or such Site License and (ii) were not obtained in connection with the Deposit Milestone for such Facility's Tranche;

v. Seller has performed and successfully completed (i) all obligations required to be completed on or before such date under this Agreement and the applicable Facility Contracts, Permits and Legal Requirements and (ii) at its sole cost and expense all upgrades required to be performed in respect of the applicable Facility pursuant to an Interconnection Agreement (whether or not executed) or as otherwise required by a Transmitting Utility;

vi. No portion of such Facility has been Placed in Service;

vii. Seller has received each of the Delivery Milestone Deliverables set forth on Schedule 2.5 of the PUMA; and

viii. Each of the representations and warranties of Seller in Section 8.1 (excluding Sections 8.1(5)(ii) and 7(ii)) of the PUMA is true and correct in all respects as of the date of this Certificate of Delivery Milestone Completion.

Signed for and on behalf of BLOOM ENERGY CORPORATION

……

By: ……

Name:……..

Title:…….

ATTACHMENT A TO CERTIFICATE OF DELIVERY MILESTONE COMPLETION

ESA Customer	Location of Facility	Aggregate System Capacity (kW-AC)

Exhibit F
Form of Certificate of COO

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Certificate of COO, dated as of [_____] (this "**Certificate**") is given pursuant to Section 2.4(1)(iii) of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Certificate.

This Certificate is provided in respect of the Facility or Facilities, as the case may be, set forth on Attachment A to this Certificate. Seller hereby certifies that in respect of each Facility [(except with respect to any Delayed Ancillary Equipment)][2]:

i. all Bloom Systems, Ancillary Equipment and related BOF comprising such Facility has been Delivered;

ii. such Facility has been installed at the location specified in the applicable Site License and Placed in Service;

iii. (i) such Facility (A) has been attached to the load at the applicable Site, (B) is producing power at one hundred percent (100%) of the aggregate System Capacity of all Bloom Systems included in such Facility, and (C) is operating at or above the Minimum Efficiency Level, and (ii) Seller has provided Buyer with evidence reasonably satisfactory to Buyer of each of the foregoing;

iv. All Pre-COO Equipment Warranty Claims raised by Buyer in respect of such Facility have been addressed by Seller in accordance with Section 3.3(2) of the PUMA;

v. Seller has (i) performed and successfully completed all necessary acts under the applicable Interconnection Agreement (including performance testing) and (ii) obtained PTO from the applicable Person;

vi. Seller has performed and successfully completed all obligations required to be completed on or before such date under the Transaction Documents and the applicable ESA, Site License, Incentive Agreements and any other applicable contract or agreement by which Buyer is bound or to which such Facility or the components thereof are subject (including, for the avoidance of doubt, obtaining all Permits, PTO and valid, binding and enforceable Interconnection Agreements and successfully completing all items that would, if not so completed, materially impact the operational capability, durability or reliability of the Facility);

[2] Note to Form: Do not include for certificate delivered with respect to Delayed Ancillary Equipment.

vii. Seller has received each of the COO Milestone Deliverables set forth on Schedule 2.5 of the PUMA; and

viii. Excluding Sections 8.1(5)(ii), (7)(i), (10)(v) and (ix) and (12)(i), each of the representations and warranties of Seller in Section 8.1 of PUMA is true and correct in all respects as of the date of this Certificate of COO.

Signed for and on behalf of BLOOM ENERGY CORPORATION

……

By: ……

Name:……..

Title:…….

ATTACHMENT A TO CERTIFICATE OF COO

ESA Customer	Location of Facility	Aggregate System Capacity (kW-AC)

Exhibit G
Form of Bill of Sale



BILL OF SALE

This Bill of Sale, dated as of _____ __, 201_ is made by BLOOM ENERGY CORPORATION, a Delaware corporation ("Seller"), to 2018 ESA PROJECT COMPANY, LLC, a Delaware limited liability company ("Buyer"), and is delivered pursuant to the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Buyer and Seller, dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**, in connection with the transfer of the assets described on Exhibit A attached hereto (collectively, the "Purchased Facility").

Seller hereby assigns, conveys, sells, delivers, sets over and transfers to Buyer, for the consideration, and on the terms and conditions, set forth in the PUMA, all of Seller's rights, title and interest in, under and to the Purchased Facility, and Buyer hereby accepts such assignment.

This Bill of Sale shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This Bill of Sale shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to any conflicts of law or other principles thereof that would result in the application of the laws of another jurisdiction, other than Section 5-1401 of the New York General Obligations Law).

[Signature Page Follows]

[**Note to Draft: To be revised as appropriate when used in connection with return of assets to Bloom]**

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale to be signed by their respective duly authorized officers as of the date first written above.

SELLER:

BLOOM ENERGY CORPORATION

By: _____
Name:
Title:

BUYER:

2018 ESA PROJECT COMPANY, LLC

By: _____
Name:
Title:

Exhibit A to the Bill of Sale

Customer	Site	System Size

Exhibit H
Form of Payment Notice

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Payment Notice, dated _____, 201_, is given pursuant to Section 2.4(3) of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Payment Notice.

Seller hereby notifies Buyer that, in connection with the Invoice Due Date or Additional Invoice Due Date occurring on _____, 20__, Buyer shall be obligated to make Purchase Price payments to Seller in the aggregate amount of $_____.

The portions of the Aggregate Purchase Price to be paid by Buyer on the above-mentioned Invoice Due Date is comprised of the following amounts:

1) [$_____ of Purchase Price payments in connection with achievement of the Deposit Milestone for a Tranche composed of Facilities with aggregate System Capacity __kW, which amount equals $[***]/kW of the aggregate Purchase Price for the Facilities included in such Tranche.]

2) $_____ of Purchase Price payments in connection with achievement of the Delivery Milestone for Facilities including Bloom Systems with aggregate System Capacity of __kW, which amount represents $[***]/kW of the Purchase Price for those Facilities that have achieved such Milestone and were included in a Tranche for which Buyer has previously made a Purchase Price payment, plus [***] percent [***]% of the Purchase Price Adder(s) applicable to such Facilities (excluding the Purchase Price Adder for any Delayed Ancillary Equipment), if any.

3) $_____ of Purchase Price payments in connection with the achievement of the Delivery Milestone for Facilities including Bloom Systems with aggregate System Capacity of __kW, which amount represents $[***]/kW of the Purchase Price for those Facilities that have achieved such Milestone and were not included in a Tranche for which Buyer has previously made a Purchase Price payment, plus [***] percent [***]% of the Purchase Price Adder(s) applicable to such Facilities (excluding the Purchase Price Adder for any Delayed Ancillary Equipment), if any.

4) $_____ of Aggregate Purchase Price payments in connection with the Commencement of Operations of Facilities including Bloom Systems with aggregate

System Capacity of ___kW, which amount represents the remainder of the Purchase Price for such Facilities not previously paid by Buyer, plus one hundred percent (100%) of the Taxes to be paid by Buyer pursuant to Section 2.3(7)**.** for such Facilities (except for Taxes with respect to any Delayed Ancillary Equipment).

Included with this Payment Notice are the applicable Payment Certificates evidencing the achievement of all applicable Milestones achieved by the Tranche and/or Facilities referenced above, together with all invoices and accompanying materials and lien waivers in respect of such Tranche and/or Facilities, in each case pursuant to Section 2.3(5) or Section 2.3(6), as applicable.

Seller hereby certifies that each of the representations and warranties of Seller in the PUMA is true and correct in all respects as of the date of this Payment Notice.

This Payment Notice may be relied upon by Buyer.

Signed for and on behalf of BLOOM ENERGY CORPORATION

By: _____

Name: _____

Title: _____

Exhibit I
Form of Event Log

Reporting Criteria and Event Description

Reporting Criteria:

(i) Site with Capacity Factor < [***]% for [***]
(ii) Site with Capacity Factor drops > [***]% within a [***]
(iii) Any site with Capacity Factor < [***]% in a [***]
(iv) Significant part replacement

Event Type	Description
Part Replacements	Servicing and replacement of components within the system. This includes blowers, power electronics (inverters, DC-DC converters), valves, etc. Part replacements usually affect one fuel cell module while the remainder of the site maintains power output. Usually the component can be repaired in the field, although a few failure modes exist that require the fuel cell module to be repaired at our factory.
Remote Maintenance	Major remote adjustments made by RMCC to troubleshoot issues and improve overall performance: - Ramp the systems down until part replacement - Adjust control parameters to optimize output and extend fuel cell life
Gas Quality (Fuel/Water Related Issues)	Unexpected gas composition detected from the system and requires early filter replacements. Typically there is no impact to power output or efficiency, but systems will occasionally be ramped down to protect the fuel cell modules until the filters are replaced.
Grid Quality/ Power Outage	Voltage or frequency is detected outside of the IEEE spec and requires BE to disconnect the grid parallel connection. UPM critical loads are unaffected. This can be an intermittent “flicker” which our systems detect and automatically reconnect, or an extended outage that requires the utility provider to restore power to the customer.
Customer Maintenance	Customer test (e.g., backup generator testing), customer planned or unplanned work, utility driven customer-owned decision or customer requested power reduction.
Site Electrical Issue	Breaker trips and signal oscillations.
Other	Unique situations such as site access delays, communication issues, cleaning system doors.

*

System(s)	Date	Event(s)	Comments:
Site A	4/11/2019	Remote Maintenance	
Site B	4/28/2019	Grid Quality/ Power Outage	
Site A	5/13/2019	Customer Maintenance	
Site C	5/31/2019	Part Replacements	
Site A	6/1/2019	Gas Quality (Fuel/Water Related Issues)	
Site D	6/18/2019	Site Electrical Issue	
Site E	6/30/2019	Other	

Exhibit J
Form of an IE Certificate

[Letterhead of Independent Engineer, [***]]
[Date]
To: [Clients – TE Investor & Lenders]
Re: [Name of Portfolio] ("2018 ESA Project Company LLC")

Ladies and Gentlemen:

This Independent Engineer's Certificate ("Certificate") is delivered to you by [***] (the "Independent Engineer") pursuant to the Master Purchase Use and Maintenance Agreement ("PUMA"). All capitalized terms used herein shall have the respective meanings specified in the PUMA dated (TBD), as applicable, unless otherwise defined herein or unless the context requires otherwise.

The Independent Engineer's review and observations were performed in accordance with generally accepted technical consulting practice and included such general investigations, observations and review as the Independent Engineer, in its professional opinion, deemed necessary under the circumstances within the scope of its services as Independent Engineer pursuant to and in accordance with the standard of care in that certain [Professional Services Agreement], dated as of [TBD] by and between [Seller] and Independent Engineer (["PSA"]). The Independent Engineer makes no representations or warranties to [Bloom Energy] regarding compliance with any other standard except as expressly set forth in the [PSA] or herein.

The statements contained herein are made on the understanding and assumption that the information provided to the Independent Engineer as to the matters covered by this Certificate is true, correct, and complete, provided, however, that the Independent Engineer is not aware of any inaccuracies, misstatements or errors in the information provided. We have visited the Facilities as indicated in the Exhibit A to verify achievement of Commencement of Operations Milestone (COO Milestone). Where the Facility was not visited, we have relied upon photographic and other evidence, including testing documentation and discussions with [**Bloom Energy],** provided by others, to confirm status of those Facilities.

Based upon the foregoing review and review of the information provided to us, as of the date of this Certificate, the undersigned additionally hereby certifies, to the best of our knowledge, the Facilities indicated in the Exhibit A attached have reached Commencement of Operations ("COO"), as follows:

1. Each Facility has achieved the Commencement of Operations Milestones per the PUMA.
2. As of the COO date shown in Exhibit A, each Facility has achieved initial synchronization to the grid, daily operation has begun, is producing power at one hundred percent (100%) of the aggregate System Capacity of all Bloom Systems included in such

Facility, is operating at or above the Minimum Efficiency Level, and the Facilities have been constructed in accordance with the Applicable ESA and the Site License, if applicable, and in accordance with prudent industry practices.

3. Each Facility has obtained the required permits and approvals issued by the relevant Governmental Authority as defined by the list provided by Bloom Energy for each Facility and attached hereto as Exhibit B, and Bloom Energy confirms to the best of their knowledge, the required permits and approvals are in full force and effect (other than permits which, by their nature, need not to be obtained until a future date but which are reasonably expected to be obtained in a timely manner).
4. For each Facility, Permission to Operate (PTO) has been received from the applicable Transmitting Utility, interconnection and parallel operation with the applicable Transmitting Utility distribution system has occurred.
5. The Facility Meter has recorded electric energy received by the ESA Customer from each Facility, and daily operation of each Facility has begun.
6. To the best of our knowledge, no unrepaired defect exists with respect to any Facility material to the construction, operation, or expected performance (inclusive of the generation of electricity by any Facility), including physical damage as a result of transportation, installation errors or accidents, vandalism or other causes.

This Certificate is solely for the information of, and assistance to, the **[signatories to the PSA and/or Use of Work Products Agreement]** in conducting and documenting its investigation of the matters in connection with the Facility and is not to be used, circulated, quoted, or otherwise referred to for any other purpose. The Independent Engineer disclaims any obligation to update this Certificate. This Certificate is not intended to, and may not, be relied upon by any party other than the **[signatories to the PSA and/or Use of Work Products Agreement]**.

IN WITNESS WHEREOF, the undersigned, a duly qualified representative of the Independent Engineer, has caused this Independent Engineer's Certificate to be duly executed as of the date first above written.

By:___

Name:____

Title:____

Exhibit A to the IE Certification
List of Facilities

Facility ID	Customer	Address	Commencement of Operations Date	IE Site Visit Date (if applicable)	Date of Addition of Facility to this Certificate

Exhibit B to the IE Certificate
List of Permits

Exhibit K
Form of Standby Facility Assignment Agreement

[*See attached*]

Exhibit L
Form of Late Facility Payments Calculation

See filename "*[***]*.

Note: Sample calculation is provided for illustrative purposes only and shall be subject in all respects to Section 2.11(8) of this Agreement.

Exhibit M
Form of Liquidity Certificate

To: **2018 ESA PROJECT COMPANY, LLC (Buyer)**

This Certification, dated _____, __, 2020, is given pursuant to Section 2.11(8) of the Amended and Restated Purchase, Use and Maintenance Agreement, by and between Bloom Energy Corporation, a Delaware corporation (the "**Seller"**) and 2018 ESA Project Company, LLC, a Delaware limited liability company (the "**Buyer**"), dated as of June 30, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "**PUMA")**. Terms defined in the PUMA have the same meaning where used in this Certification.

I, Greg Cameron, solely in my capacity as Executive Vice President and Chief Financial Officers of the Seller, hereby certifies that as of [*Insert Date*] ("**Monthly Date**")[3]:

[***]

Signed for and on behalf of:

BLOOM ENERGY CORPORATION

By: _____
Name: Greg Cameron
Title: EVP and CFO

[3] Insert the last day of the month.

SCHEDULES

Schedule 1
Master Project Schedule

See filename "*[***]*" as uploaded to the Data Room and last modified June 27, 2020, at 6:27PM Eastern time.

Schedule 1.1
Tax Equity Items

Satisfactory evidence of interconnection rights for Intel Sites located within Silicon Valley Power territory.

[***]

[***]

[***]

[***]

[***]

[***]

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[***]

[***]

[***]

Schedule 2.1
Example Calculation of the Repurchase Value

Repurchase Value - Sample Calculation

ESA Term 15

Renewal Period 10

Straight-line Term Calculation ESA Term+ Renewal Term- 1

Straight-Line Term [***]

Annual Decease % [***]%

Initial Repurchase Value (Example Only) $ 1,000.00

Year		Annual Decrease %	Repurchase Value For Year (%)	Repurchase Value For Year ($)
1	[***]%		[***]% $[***]	
2	[***]%		[***]% $[***]	
3	[***]%		[***]% $[***]	
4	[***]%		[***]% $[***]	
5	[***]%		[***]% $[***]	
6	[***]%		[***]% $[***]	
7	[***]%		[***]% $[***]	
8	[***]%		[***]% $[***]	
9	[***]%		[***]% $[***]	
10	[***]%		[***]% $[***]	
11	[***]%		[***]% $[***]	
12	[***]%		[***]% $[***]	
13	[***]%		[***]% $[***]	
14	[***]%		[***]% $[***]	
15	[***]%		[***]% $[***]	
16	[***]%		[***]% $[***]	
17	[***]%		[***]% $[***]	
18	[***]%		[***]% $[***]	
19	[***]%		[***]% $[***]	
20	[***]%		[***]% $[***]	
21	[***]%		[***]% $[***]	
22	[***]%		[***]% $[***]	
23	[***]%		[***]% $[***]	
24	[***]%		[***]% $[***]	
25	[***]%		[***]% $[***]	

Schedule 2.1

Schedule 2.3
Purchase Price Adders

Item	Price	Unit
Battery Solution - Whole Cabinet	$[***]	For each kWh of rated capacity of the Battery Solution
Battery Solution - Partial Cabinet	$[***]	For each kWh of rated capacity of the Battery Solution
DC/DC Convertor	$[***]	For each DC/DC Convertor
AC5	$[***]	For each AC5
DC5	$[***]	For each DC5
MI5	$[***]	For each MI5
SL5	$[***]	For each SL5
Low-Pressure Gas Booster	$[***]	For each kW of the aggregate System Capacity of the Bloom Systems comprising such Facility

Schedule 2.5
Seller Milestone Deliverables

Delivery Milestone Deliverables:

Seller shall submit the items listed below in connection with each invoice issued pursuant to Section 2.3(2):

1. Pictures of delivered and installed fuel cell servers, including front, back and side views sufficient to check for visual damage and pictures of gas and water connection points;
2. Certificate of completed factory acceptance test for each system or other proof that each system passed the factory acceptance test;
3. All applicable interconnection documents, including written approval of the application by the Transmitting Utility, such as technical approval, and the completed interconnection application; and
4. Seller conditional lien waivers.

COO Milestone Deliverables:

Seller shall submit the items listed below in connection with each invoice issued pursuant to Section 2.3(3):

1. Pictures of completed and interconnected server;
2. Access to the Facility's Raw Data;
3. Seller final lien waivers

Post-COO Deliverables:

Seller shall submit the items listed below pursuant to Section 3.4(1)(xv):

1. Punch list items of remaining work to be performed which shall not include anything that materially impacts the operational capability, durability, or reliability of the Facility;
2. Signed PTO letter;
3. All applicable Permits (to the extent not previously delivered); and
4. Signed Interconnection Agreements.

Schedule 2.10
Approved Facilities

Part I

[***]

Part II
Approved Facility Material Project Documents

IIA - Material Project Documents

Energy Services Agreements

The [***].

Energy Services Agreement by and between BE Development, Inc. and [***], dated December 20, 2019, (as amended, assigned, modified or supplemented, "the [***] ESA").

The Home Depot ESA.

The [***].

Energy Services Agreement by and between 2019 ESA Project Company, LLC and [***], dated September 30, 2019, (as amended, assigned, modified or supplemented, "the [***] ESA").

The [***].

The [***].

ESA Customer Consents

Acknowledgement and Consent Regarding Assignment by and among 2017 Fuel Cell Operating Company I, LLC, the [***], and 2018 ESA Project Company, LLC, dated as of June 30, 2020 (the "[***] Consent").

Acknowledgement and Consent Regarding Assignment by and among BE Development, Inc., [***], and 2018 ESA Project Company, LLC, dated as of June 30, 2020 (the "[***] Consent").

Acknowledgement and Consent Regarding Assignment by and among BE Development, Inc., Home Depot U.S.A, Inc., and 2018 ESA Project Company, LLC, with a date to be determined and in respect of the Home Depot ESA (the "Home Depot Consent").

Acknowledgement and Consent Regarding Assignment by and among BE Development, Inc., [***] and 2018 ESA Project Company, LLC, with a date to be determined and in respect of the [***] (the "[***] Consent").

Acknowledgement and Consent Regarding Assignment by and among 2019 ESA Project Company, LLC, [***], and 2018 ESA Project Company, LLC, with a date to be determined and in respect of the [***] (the "[***] Consent").

Acknowledgement and Consent Regarding Assignment by and among 2019 ESA Project Company, LLC, [***], and 2018 ESA Project Company, LLC, with a date to be determined and in respect of the [***] (the "[***] Consent").

Acknowledgement and Consent Regarding Assignment by and among 2017 Fuel Cell Operating Company I, LLC (as assignee of 2015 ESA Project Company, LLC), [***], and 2018 ESA Project Company, LLC, with a date to be determined and in respect of the [***] (the "[***] Consent").

Assignments and Assumptions

Assignment and Assumption Agreement between 2018 ESA Project Company, LLC and 2017 Fuel Cell Operating Co. I, LLC dated as of the Agreement Date.

Assignment and Assumption Agreement by and among 2018 ESA Project Company, LLC, BE Development Inc. and Bloom Energy Corporation dated as of the Agreement Date.

Each Standby Facility Assignment Agreement.

IIB - Disclosures

None.

Part III
Documents that are not Standby Facility Conditions

None.

Part IV
Representations

With respect to each Approved Facility as of the applicable Representations Date, Seller hereby represents and warrants to Buyer as follows:

i.All of the Material Project Documents in respect of such Approved Facility are listed in Part IIA of this Schedule 2.10.

ii.To the Seller's Knowledge, there is no dispute, action or proceeding pending or threatened against any counterparty to any Material Project Document in respect of such Approved Facility that would reasonably be expected to impair such counterparty's ability to perform its obligations under any Material Project Document.

iii.No Material Project Document in respect of such Approved Facility has been amended, assigned, revised, terminated or otherwise modified except as described in Part II of this Schedule 2.10. Each such Material Project Document (i) has been duly authorized and executed by and is a legal, valid and binding obligation of (as applicable) Seller, the applicable Project Company and, to the Knowledge of Seller, any other Person party thereto; (ii) is in full force and effect; and (iii) is enforceable against (as applicable) Seller, the applicable Project Company and, to the Knowledge of Seller, any other Person party thereto, in each case in accordance with its respective terms, subject to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors' rights and remedies generally and to general principles of equity.

iv.To the Knowledge of the Seller, the obligations of Buyer, after it becomes a party to the Material Project Documents in respect of such Approved Facility to which (as applicable) any of Seller or the applicable Project Company is a party, are not, nor are claimed to be, subject to any Claims, defenses, counterclaims or setoffs against Buyer. To the Knowledge of Seller, there are no outstanding indemnification Claims against the "Supplier" or "Provider" (or similarly situated party) under any ESA in respect of such Approved Facility, or against the Buyer as successor in interest to the applicable Site License in respect of such Approved Facility. To the Knowledge of Seller, no Person is in breach of, or default under (or, given the passage of time or delivery of notice, will be in breach of or default under) the terms and conditions of any Material Project Document in respect of such Approved Facility to which such Person is a party.

v.Except as set forth in Part IIB to this Schedule 2.10, no Person other than the Buyer owns or has any interest in, or option or other right (contingent or otherwise), including a right of first refusal or a right of first offer, or has any Lien (other than a Permitted Lien) on any Material Project Document in respect of such Approved Facility.

vi. Seller has provided to Buyer true, complete and correct copies of all of the Material Project Documents in respect of such Approved Facility.

vii. The representations and warranties set forth in this Part IV to Schedule 2.10 shall survive the applicable Representations Date until 18 months from the date thereof.

For purposes of this Part IV to Schedule 2.10:

"Claim" means any demand, claim, action, investigation, inquiry, proceeding (whether at law or in equity) or arbitration.

"Material Project Documents" has the meaning set forth in the MIPA (except for the "Organizational Documents" (as defined in the MIPA)) and shall, for the avoidance of doubt, include the documents listed in Part IIA to Schedule 2.10, each Standby Facility Assignment Agreement, the relevant Site Licenses associated with the Approved Facilities, the Interconnection Agreements for the Approved Facilities, and any other Contract to which the Buyer is a party (solely relating to the Approved Facilities) that would otherwise be described by such definition in the MIPA (except for the "Organizational Documents" (as defined in the MIPA)), in each case notwithstanding the proviso in the definition of "Material Project Documents" set forth in the MIPA.

Schedule 3.3(1)
Specifications for Bloom Systems and Battery Solutions

Energy Server 5			
Nameplate Power Output (AC)	**300 kW**	**250 kW**	**200kW**
Outputs			
Load output (net AC)	300 kW	250 kW	200kW
Electrical connection	480v, 3-phase, 60 Hz	480v, 3-phase, 60 Hz	480v, 3-phase, 60 Hz
Inputs			
Fuels	Natural Gas, directed biogas	Natural Gas, directed biogas	Natural Gas, directed biogas
Input Fuel Pressure	10-18 psig (15 psig nominal)	10-18 psig (15 psig nominal)	10-18 psig (15 psig nominal)
Water	None during normal operation	None during normal operation	None during normal operation
Efficiency			
Cumulative electric efficiency (LHV net AC)	65-53%	65-53%	65-53%
Heat rate (HHV)	5,811-7,127 Btu/kWh	5,811-7,127 Btu/kWh	5,811-7,127 Btu/kWh
Emissions			
NOX	0.0017 lbs/MWh	0.0017 lbs/MWh	0.0017 lbs/MWh
SOX	Negligible	Negligible	Negligible
CO	0.034 lbs/MWh	0.034 lbs/MWh	0.034 lbs/MWh
VOCs	0.0159 lbs/MWh	0.0159 lbs/MWh	0.0159 lbs/MWh
CO2 @ stated efficiency	679-833 lbs/MWh on natural gas; carbon neutral on directed biogas	679-833 lbs/MWh on natural gas; carbon neutral on directed biogas	679-833 lbs/MWh on natural gas; carbon neutral on directed biogas
Physical Attributes and Environment			
Weight	15.8 tons	13.6 tons	12.2 tons
Dimensions (variable layouts)	17'11" x 8'8" x 6'9" or 32'3" x 4'4" x7'2"	14'4" x 8'8" x 6'9" or 28'8" x 4'4" x 7'2"	14'4" x 8'8" x 6'9" or 25'1" x 4'4" x 7'2"
temperature range	-20 degrees to 45 degrees C	-20 degrees to 45 degrees C	-20 degrees to 45 degrees C
humidity	0%-100%	0%-100%	0%-100%
Seismic vibration	IBC site class D	IBC site Class D	IBC site Class D
Location	Outdoor	Outdoor	Outdoor
Noise	< 70 dBA @ 6 feet	< 70 dBA @ 6 feet	< 70 dBA @ 6 feet
Codes and Standards			

Complies with	Rule 21 interconnection; IEEE1547 standards; CARB 2007 emissions standards	Rule 21 interconnection; IEEE1547 standards; CARB 2007 emissions standards	Rule 21 interconnection; IEEE1547 standards; CARB 2007 emissions standards
Exempt from	CA Air District permitting	CA Air District permitting	CA Air District permitting
Underwriters Laboratories			
Listed	Stationary Fuel Cell Power System	Stationary Fuel Cell Power System	Stationary Fuel Cell Power System
Reference	ANSI/CSA FC1-2014	ANSI/CSA FC1-2014	ANSI/CSA FC1-2014
UL Category	IRGZ	IRGZ	IRGZ
UL File Number	MH45102	MH45102	MH45102

Battery Solution

Technical Highlights (1ABS-306 FC)	
Outputs	
Nameplate power output (Discharge)	[***] kW
Electrical connection	[***]VDC
Inputs	
Nameplate power output (Charge)	[***] kW
Capacity	
Nominal electrical storage capacity	[***] kWh
Emissions	
None	
Physical Attributes and Environment	
ABS Battery Enclosure Weight (without batteries)	[***]lbs
ABS Battery Enclosure Weight (with batteries)	[***]lbs
ABS PCS Enclosure Weight	[***]lbs
ABS Battery Enclosure Dimensions	97" (H) x 86" (L) x 45" (D)
ABS PCS Enclosure Dimensions	97" (H) x 43" (L) x 45" (D)
Temperature range	[***]° C
Humidity	[***]%
Seismic vibration	[***]
Location	Outdoor
Noise	[***]
Codes and Standards	
ABS is designed as a Storage Battery System to ANSI/UL 1973-2013	
Additional Notes	
• • Interconnect achieved through fuel cell system • • Access to a secure website to monitor system performance & benefits • • Remotely managed • • Multiple ABSs can work together to achieve the optimal capacity for each application	

i.Specifications for UPMs

ii.Bloom Energy Step Load Module (SL5)

Output Power	
Peak grid independent load support	[***]kW
Voltage & Frequency	
Nominal output voltage	[***]
Phase, Sequence	[***]
Configuration	[***]
Adjustable output voltage range	[***]
Waveform	[***]
Accuracy to voltage set point	[***]
Static (steady state) voltage regulation	[***]
Transient (dynamic) voltage regulation	[***]
Voltage THD with 100% linear load	[***]
Frequency setting	[***]
Nominal output frequency - ‘Fixed’	[***]
Sync reference voltage input	[***]
Step load capability	
Maximum grid independent step load	[***]
Duration between max grid independent load step	[***]

Schedule 3.4(1)(iii)
Design and Installations Procedures

Seller will perform the following activities in connection with the design and installation of each Facility, to the extent necessary to cause such Facility to achieve Commencement of Operations:

- Initial site visits and studies to assess site suitability, including but not limited to due diligence research with local Authorities Having Jurisdiction (AHJs) and utilities, site load validation, and utility locates. When necessary, title reports may be pulled, gas composition may be tested, and geotechnical studies may also be done.
- Produce a complete set of construction drawings, either internally or in conjunction with an external design firm, in accordance with: local, state, and national codes; local electric and gas utility requirements; and site-specific or host customer requirements.
- Procure all necessary permits and/or approvals as required by the local AHJs, including but not limited to Planning, Building, and Fire Departments.
- Secure technical approval to interconnect with the local electric utility, and coordinate the electric interconnection agreement between the host customer and the local utility.
- Engage the local gas utility to design the gas interconnection approach, and coordinate the gas contract for gas delivery to the Bloom system between the host customer and the local utility.
- Secure a general contractor to build the site as designed, obtain final building department sign-off, and pass any other required inspections. Provide Bloom Energy-trained site supervision at key milestones during the construction process to ensure smooth inspections and a positive host customer experience.
- Perform system commissioning once construction is complete and inspections are passed, ensuring the systems operate as intended and reach full power. Remedy any issues preventing full power prior to turning operation over to Bloom's Service team.
- Act as the interface with the host customer, securing all necessary design approvals and site access permissions, as well as coordinating construction schedules. Ensure primary personnel responsible for interfacing with Bloom's system are educated in safety procedures. Deliver customer manuals and emergency procedures to the customer upon project completion, as well as any other close-out documentation required by the contract

Schedule 3.4(1)(v)
Commissioning Procedures

Seller will perform the following activities in connection with the commissioning of each Facility, to the extent necessary to cause such Facility to achieve Commencement of Operations:

1. [***]

- [***]
- [***]
- [***]
- [***]
- [***]
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- [***]

- [***]
- [***]
- [***]
- [***]

Schedule 3.4(1)(xv)
Seller Deliverables

Seller shall submit the items listed below prior to or at the Commencement of Operations:

1. Issued for Construction Drawing Set (aka Final IFC Set or Conformed Set), comprised of some or all of the below, as applicable and necessary given site design:

    a. Cover sheet

    b. Work site plan (work site and general arrangement drawings)

    c. Grading and drainage plan

    d. Soil erosion and sediment control

    e. Foundation plans and details

    f. Structural plans, details and elevation

    g. [***]

    h. Single-line electrical diagrams

    i. Electrical schematic diagrams

    j. [***]

    k. Network Architecture Drawings

    l. Power and control wiring

    m. Grounding plans

    n. Lightning and surge protection drawings

    o. Wiring Diagrams

    p. Bloom Equipment Specifications

    q. Electrical schematic diagrams

    r. [***]

    s. I/O list

2. Example screenshot to be delivered by Seller, with details on sample shown below:

[***]

Seller shall submit the items listed below on or before ninety (90) days following the Commencement of Operations Date:

1. Third party vendor drawings

2. Quality Documentation for Construction activities (if applicable)
3. As-built drawings (aka Approved Plans)
4. Permitting documentation
5. Inspection cards (if applicable)

Schedule 3.9
Seller Corporate Safety Plan

At all times during the Term, Seller shall maintain at Seller's corporate headquarters and adhere to Seller's written corporate safety programs, which shall include without limitation the following programs:

- Contractor Environmental Health & Safety Program
- Injury and Illness Prevention Program
- Heat Illness Prevention Program
- Emergency Action and Fire Prevention Plan
- Hazard Communication Program
- Corporate Electrical Standard – Specific Electrical Safe Work Practices
- Electrical Safety Awareness
- Lockout/Tagout
- Fall Protection Program (Working at Heights)
- Ladder Safety Program
- Powered Industrial Trucks (PIT)
- Hoist Safety Program
- Personal Protective Equipment (PPE)
- Respiratory Protection Program
- Hearing Conservation Program
- Hand and/or Powered Tools Safety Program
- Hot Work Process
- First Aid / CPR Program

(the foregoing, collectively, the "Seller Corporate Safety Plan")

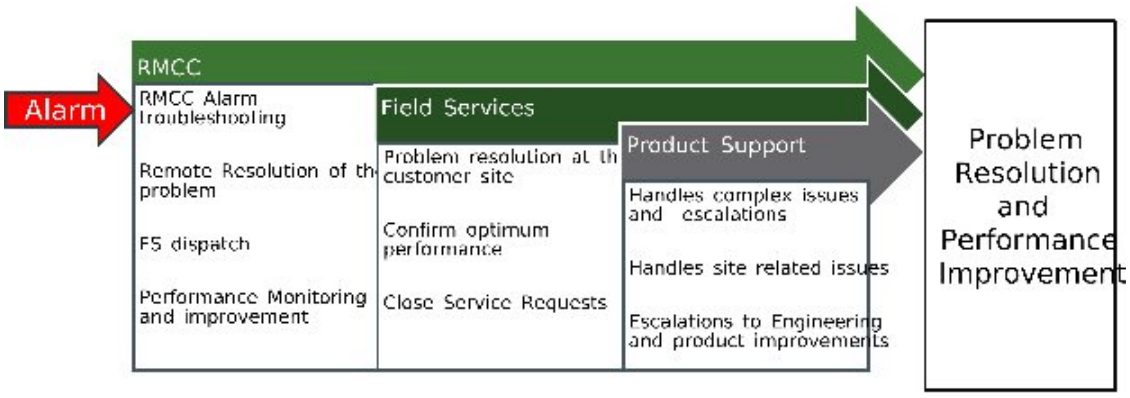
Schedule 4.2
Operations and Maintenance Procedures

Seller will perform the following operation and maintenance activities for each Facility, to the extent necessary to cause such Facility to perform in accordance with the Warranty Specifications:

- Annual maintenance activities:
  - Check Surge Protection Device and replace as necessary
  - Replace main blower filter element
  - Replace AC unit filter element if applicable
  - Replace auxiliary blower filter element
  - Remove any debris and vacuum inside of each cabinet
  - Remove any debris from the exterior of cabinets
  - Check all FCM hotbox enclosures for any leaking or cracks
  - Replace door filters
  - NG conditioning canister replacement
- Site obligations:
  - An e-mail announcement of a service appointment will be sent to address(es) specified by the client informing of a service visit in advance of a service visit
  - Field Service personnel will sign in at a security office as required by client
  - Field Service personnel will safely and securely maintain and repair the systems as needed in accordance with our established and released procedures
  - Bloom HR and EH&S will work with clients to fulfill requirements for certification of drug testing, training, and other Environmental Health & Safety (EH&S) procedures
- Site visit protocols:
  - Works with customers and Product Development to resolve issues
  - Provides detailed documentation for each maintenance element performed
  - Inspection of installed equipment to ensure peak performance
  - Inspection of all components to ensure proper operation within product and environmental specifications
  - Clearly and professionally interact with customer regarding status of site visits, performance of their systems and general fuel cell education
- Spare Parts

- Bloom Energy Product Support maintains a list of all spare parts including field replaceable units (FRUs) and consumables for each of its commercial products
- Spare parts are stocked in localized third party logistics depots in each service zone
- The most common and most critical parts are stocked in each local depot and replenished on a weekly schedule
- Parts not stocked in localized depots are dispatched from our Milpitas, CA warehouse via FedEx or other carriers and couriers

- Failure Response Protocol:



- Emergency Response Protocol:
  - Contact lists of BE personnel to be contacted during normal business hours and during off hours (24-7-365 emergency escalation path) are provided for each region where Energy Servers are located in order to remedy situations posing a risk to persons or property
  - Remote shutdown from Bloom RMCC if required
  - Emergency power off button provided onsite
- Remote monitoring:
  - 24/7/365 performance monitoring and control of fleet
  - 1st level troubleshooting
  - Cross-functional interface with engineering, software, controls, quality
  - Optimize performance
  - Support customer site start-ups
  - Customer performance analysis – daily

- Standards Compliance:
  - Complies with Rule 21 interconnection
  - ANSI/CSA FC 1: Stationary Fuel Cell Power Systems – Safety
  - IEEE 1547 – Standard for Interconnecting Distributed Resources with Electric Power Systems
  - NFPA 853 – The Standard for Installation of Stationary Fuel Cell Power Systems
  - NFPA 70 – The National Electrical Code
  - NFPA 54 – The National Fuel Gas Code
- Subcontracted Services. The following may in some cases be performed by subcontractors:
  - Water DI system replenishment
  - STS and transfer switch maintenance and repair
  - Some annual maintenance and upgrade work
  - Filter delivery, replacement, removal
  - High Voltage transformer and switchgear maintenance
  - Circuit breaker and similar maintenance
  - Battery replacement
  - Some fuel cell module performance upgrades
  - NG conditioning canister replacement
- Management Staff:
  - Customer Installations Group (CIG) – Turnkey design, engineering, procurement, permitting and installation
  - Services – Commissioning, operations and monitoring of servers
  - Customer Experience – Interface with customer
  - ESA Operations – Certain administrative duties
- All Energy Servers are instrumented to securely record over 1000 data points per server and stored in a Data Historian that resides in a Secure Co-located Data Center and Backed Up for data recovery
- CIG and Service employees are subject to drug tests, background checks and other screening protocols based on customer site requirements
- Bloom Energy maintains a Code of Safe Practices and ensures that copies are provided to all applicable field service technicians and includes:
  - Injury and illness prevention program

- Required Personal Protection Equipment (PPE)
- Corporate EH&S Standard
- Proper use of Powered Industrial Trucks
- Contracted Crane Operations
- Ladder safety program
- Electrical Safety and Lock-Out Tag-Out (LOTO)
- Fall protection
- First Aid/CPR program
- Contractor EH&S program
- Bloom Energy Safety Commitment

Schedule 4.3(1)
Service Fees and Service Fee Adders

Service Fees	
Calendar Months since Commencement of Operations for the applicable Facility	**Rate ($/kW)**
1 through 12	$[***]
13 through 24	$[***]
25 through 36	$[***]
37 through 48	$[***]
49 through 60	$[***]
61 through 72	$[***]
73 through 84	$[***]
85 through 96	$[***]
97 through 108	$[***]
109 through 120	$[***]
121 through 132	$[***]
133 through 144	$[***]
145 through 156	$[***]
157 through 168	$[***]
169 through 180	$[***]
181 through 192	$[***]
193 through 204	$[***]
205 through 216	$[***]
217 through 228	$[***]
229 through 240	$[***]
241 through 252	$[***]
253 through 264	$[***]
265 through 276	$[***]
277 through 288	$[***]
289 through 300	$[***]
301 through 312	$[***]
313 through 324	$[***]
325 through 336	$[***]
337 through 348	$[***]
349 through 360	$[***]

Service Fee Adders		
Item	**Price**	**Unit and time period**
Battery Solution	$[***]	Per month for months 1 through 360 for each kWh of rated capacity of the Battery Solution
DC/DC Convertor	$[***]	Per month for months 13 through 360 for each DC/DC convertor
AC5	$[***]	Per month for months 13 through 360 for each AC5
DC5	$[***]	Per month for months 13 through 360 for each DC5
MI5 - Standard multi-server with DC5s	$[***]	Per month for months 13 through 360 for each MI5
MI5 - Standard single-server or Mission Critical	$[***]	Per month for months 13 through 360 for each MI5
SL5 - Standard multi-server with DC5s	$[***]	Per month for months 13 through 360 for each SL5
SL5 - Standard single-server or Mission Critical	$[***]	Per month for months 13 through 360 for each SL5
Low-Pressure Gas Booster	$[***]	Per month for months 13 through 360 for each kW of the aggregate System Capacity of the Bloom Systems comprising such Facility

Schedule 4.6
Parties' Managers

Seller's Manager	[***]
Buyer's Manager	[***]

Schedule 14.4(a)
"Competitors of Seller"

	Ticker	Company Name
1		[***]
2		[***]
3		[***]
4		[***]
5		[***]
6		[***]
7		[***]
8		[***]
9		[***]
10		[***]
11		[***]
12		[***]
13		[***]
14		[***]
15		[***]
16		[***]

Schedule 14.4(b)
"Competitor of Seller" Exclusions

	Ticker	Company Name
	Electrics - Primary	
1	[***]	[***]
2	[***]	[***]
3	[***]	[***]
4	[***]	[***]
5	[***]	[***]
6	[***]	[***]
7	[***]	[***]
8	[***]	[***]
9	[***]	[***]
10	[***]	[***]
11	[***]	[***]
12	[***]	[***]
13	[***]	[***]
14	[***]	[***]
15	[***]	[***]
16	[***]	[***]
17	[***]	[***]
18	[***]	[***]
19	[***]	[***]
20	[***]	[***]
21	[***]	[***]
	Electric/LDC/Int'l/E&P Hybrid	
22	[***]	[***]
23	[***]	[***]
24	[***]	[***]
25	[***]	[***]
26	[***]	[***]
27	[***]	[***]
28	[***]	[***]
29	[***]	[***]
30	[***]	[***]
31	[***]	[***]
32	[***]	[***]
33	[***]	[***]
34	[***]	[***]

35	[***]	[***]
	[***]	[***]
36	[***]	[***]
37	[***]	[***]
38	[***]	[***]
39	[***]	[***]
40	[***]	[***]
41	[***]	[***]
42	[***]	[***]
43	[***]	[***]
44	[***]	[***]

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A)

OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,

AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, KR Sridhar, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 of Bloom Energy Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2020

By: /s/ KR Sridhar

KR Sridhar

Founder, President, Chief Executive Officer and Director

(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A)
OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory Cameron, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 of Bloom Energy Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements and other financial information included in this report fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes, in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures, and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 4, 2020

By: /s/ Gregory Cameron
Gregory Cameron
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

In connection with the Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 of Bloom Energy Corporation (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, KR Sridhar, Chief Executive Officer 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 result of operations of the Company.

Date: August 4, 2020

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

In connection with the Quarterly Report on Form 10-Q for the quarter ended June 30, 2020 of Bloom Energy Corporation (the "Company") as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Gregory Cameron, Chief Financial Officer 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 result of operations of the Company.

Date: August 4, 2020

By: /s/ Gregory Cameron
Gregory Cameron
Chief Financial Officer
(Principal Financial Officer)