UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarter ended: March 31, 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 is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☑

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☑

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 April 30, 2020 was as follows:

Class A Common Stock $0.0001 par value 93,996,955 shares

Class B Common Stock $0.0001 par value 31,168,927 shares

Bloom Energy Corporation

Quarterly Report on Form 10-Q for the Three Months Ended March 31, 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 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 Consolidated Financial Statements*, in Item 1, *Condensed Consolidated Financial Statements*, for additional information related to the restatement of our condensed consolidated financial statements for the period ended March 31, 2019.

Part I

ITEM 1 - FINANCIAL STATEMENTS

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

	March 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents[1]	$ 180,307	$ 202,823
Restricted cash[1]	29,730	30,804
Accounts receivable[1]	35,691	37,828
Inventories	107,204	109,606
Deferred cost of revenue	79,799	58,470
Customer financing receivable[1]	5,170	5,108
Prepaid expenses and other current assets[1]	24,994	28,068
Total current assets	462,895	472,707
Property, plant and equipment, net[1]	606,850	607,059
Customer financing receivable, non-current[1]	49,446	50,747
Restricted cash, non-current[1]	143,882	143,761
Deferred cost of revenue, non-current	4,939	6,665
Other long-term assets[1]	44,596	41,652
Total assets	$ 1,312,608	$ 1,322,591
Liabilities, Redeemable Noncontrolling Interest, Stockholders' Deficit and Noncontrolling Interest		
Current liabilities:		
Accounts payable[1]	$ 60,401	$ 55,579
Accrued warranty	11,014	10,333
Accrued expenses and other current liabilities[1]	77,809	70,284
Deferred revenue and customer deposits[1]	99,046	89,192
Financing obligations	11,248	10,993
Current portion of recourse debt	15,117	304,627
Current portion of non-recourse debt[1]	8,670	8,273
Current portion of recourse debt from related parties	—	20,801
Current portion of non-recourse debt from related parties[1]	2,439	3,882
Total current liabilities	285,744	573,964
Derivative liabilities[1]	23,377	17,551
Deferred revenue and customer deposits, net of current portion[1]	120,927	125,529
Financing obligations, non-current	443,407	446,165
Long-term portion of recourse debt	396,097	75,962
Long-term portion of non-recourse debt[1]	190,295	192,180
Long-term portion of recourse debt from related parties	52,786	—
Long-term portion of non-recourse debt from related parties[1]	30,597	31,087
Other long-term liabilities[1]	28,543	28,013
Total liabilities	1,571,773	1,490,451
Commitments and contingencies (Note 14)		
Redeemable noncontrolling interest	67	443
Total stockholders' deficit	(333,099)	(259,594)
Noncontrolling interest	73,867	91,291
Total liabilities, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest	$ 1,312,608	$ 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 March 31,	
	2020	2019
		As Restated
Revenue:		
Product	$ 99,559	$ 90,926
Installation	16,618	12,219
Service	25,147	23,467
Electricity	15,375	20,389
Total revenue	156,699	147,001
Cost of revenue:		
Product	72,489	88,772
Installation	20,779	15,760
Service	30,970	27,921
Electricity	12,530	12,984
Total cost of revenue	136,768	145,437
Gross profit	19,931	1,564
Operating expenses:		
Research and development	23,279	28,859
Sales and marketing	13,949	20,373
General and administrative	29,098	39,074
Total operating expenses	66,326	88,306
Loss from operations	(46,395)	(86,742)
Interest income	819	1,885
Interest expense	(20,754)	(21,800)
Interest expense to related parties	(1,366)	(1,612)
Other income (expense), net	(8)	265
Loss on extinguishment of debt	(14,098)	—
Gain (loss) on revaluation of embedded derivatives	284	(540)
Loss before income taxes	(81,518)	(108,544)
Income tax provision	124	208
Net loss	(81,642)	(108,752)
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(5,693)	(3,832)
Net loss attributable to Class A and Class B common stockholders	$ (75,949)	$ (104,920)
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.61)	$ (0.94)
Weighted average shares used to compute net loss per share attributable to Class A and Class B common stockholders, basic and diluted	123,763	111,842

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

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

	Three Months Ended March 31,	
	2020	2019
		As Restated
Net loss	$ (81,642)	$ (108,752)
Other comprehensive income (loss), net of taxes:		
Unrealized gain on available-for-sale securities	—	17
Change in derivative instruments designated and qualifying in cash flow hedges	(8,214)	(2,191)
Other comprehensive loss, net of taxes	(8,214)	(2,174)
Comprehensive loss	(89,856)	(110,926)
Less: comprehensive loss attributable to noncontrolling interests and redeemable noncontrolling interests	(13,902)	(5,880)
Comprehensive loss attributable to Class A and Class B stockholders	$ (75,954)	$ (105,046)

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

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

	Three Months Ended March 31, 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
	Amount	Shares	Amount					
Balances at December 31, 2019	$ 443	121,036,289	$ 12	$ 2,686,759	$ 19	$ (2,946,384)	$ (259,594)	$ 91,291
Adjustment of embedded derivative related to debt extinguishment	—	—	—	(24,071)	—	—	(24,071)	—
Issuance of restricted stock awards	—	3,010,606	—	—	—	—	—	—
ESPP purchase	—	992,846	—	4,177	—	—	4,177	—
Exercise of stock options	—	110,949	—	667	—	—	667	—
Stock-based compensation expense	—	—	—	21,676	—	—	21,676	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(5)	—	(5)	(8,209)
Distributions to noncontrolling interests	(1)	—	—	—	—	—	—	(3,897)
Net loss	(375)	—	—	—	—	(75,949)	(75,949)	(5,318)
Balances at March 31, 2020	$ 67	125,150,690	$ 12	$ 2,689,208	$ 14	$ (3,022,333)	$ (333,099)	$ 73,867

	Three Months Ended March 31, 2019							
	Redeemable Noncontrolling Interest	Class A and Class B Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive Gain (Loss)	Accumulated Deficit	Stockholders' Deficit	Noncontrolling Interest
	Amount	Shares	Amount					
Balances at December 31, 2018	$ 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 (ASC 606)	—	—	—	—	—	(17,996)	(17,996)	—
Issuance of restricted stock awards	—	2,960,462	—	—	—	—	—	—
ESPP purchase	—	696,036	—	6,916	—	—	6,916	—
Exercise of stock options	—	136,382	—	577	—	—	577	—
Stock-based compensation expense	—	—	—	63,166	—	—	63,166	—
Unrealized loss on available for sale securities	—	—	—	—	17	—	17	—
Change in effective portion of interest rate swap agreement	—	—	—	—	(143)	—	(143)	(2,048)
Distributions to noncontrolling interests	(282)	—	—	—	—	—	—	(2,613)
Cumulative effect of hedge accounting standard adoption	—	—	—	—	—	130	130	(130)
Net income (loss) (as restated)	1,823	—	—	—	—	(104,920)	(104,920)	(5,655)
Balances at March 31, 2019 (as restated)	$ 58,802	113,214,063	$ 11	$ 2,552,011	$ 5	$ (2,746,890)	$ (194,863)	$ 114,664

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

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

	Three Months Ended March 31,	
	2020	2019
		As Restated
Cash flows from operating activities:		
Net loss	$ (81,642)	$ (108,752)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	13,034	14,225
Write-off of property, plant and equipment, net	1	1
Revaluation of derivative contracts	241	87
Stock-based compensation	23,019	67,822
Loss (gain) on long-term REC purchase contract	(4)	59
Loss on extinguishment of debt	14,098	—
Amortization of debt issuance cost	4,755	5,152
Changes in operating assets and liabilities:		
Accounts receivable	2,136	4,131
Inventories	2,083	11,087
Deferred cost of revenue	(19,494)	(11,084)
Customer financing receivable and other	1,240	1,339
Prepaid expenses and other current assets	3,060	6,628
Other long-term assets	(2,924)	(416)
Accounts payable	4,822	(2,464)
Accrued warranty	681	(2,697)
Accrued expenses and other current liabilities	509	(373)
Deferred revenue and customer deposits	5,253	1,244
Other long-term liabilities	1,184	4,166
Net cash used in operating activities	(27,948)	(9,845)
Cash flows from investing activities:		
Purchase of property, plant and equipment	(12,360)	(11,946)
Payments for acquisition of intangible assets	—	(848)
Proceeds from maturity of marketable securities	—	104,500
Net cash provided by (used in) investing activities	(12,360)	91,706
Cash flows from financing activities:		
Proceeds from issuance of debt to related parties	30,000	—
Repayment of debt	(9,128)	(5,016)
Repayment of debt to related parties	(2,105)	(778)
Proceeds from financing obligations	—	10,961
Repayment of financing obligations	(2,503)	(1,883)
Distributions to noncontrolling and redeemable noncontrolling interests	(4,270)	(3,189)
Proceeds from issuance of common stock	4,845	7,493
Net cash provided by financing activities	16,839	7,588
Net increase (decrease) in cash, cash equivalents, and restricted cash	(23,469)	89,449
Cash, cash equivalents, and restricted cash:		
Beginning of period	377,388	280,485
End of period	$ 353,919	$ 369,934
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest	$ 17,790	$ 20,383
Cash paid during the period for taxes	29	222
Non-cash investing and financing activities:		
Liabilities recorded for property, plant and equipment	$ 466	$ 2,067

Accrued distributions to Equity Investors	1	282
Accrued interest for notes	467	439
Accrued debt issuance costs	2,970	—
Adjustment of embedded derivative related to debt extinguishment	24,071	—

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

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 incurred operating losses and negative cash flows from operations since our inception. As of December 31, 2019, the current portion of our total debt was $337.6 million, which would have required cash payments of $353.5 million in 2020, the difference in these amounts primarily being due to a debt discount on the 6% Convertible Notes Due 2020, and at that time cash and cash equivalents and other liquidity was insufficient to satisfy the above current debt obligations as well as operating cash flow requirements as of December 31, 2019. On March 31, 2020, we extended the maturity for 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 debt was $26.2 million as of March 31, 2020. Notable elements of our debt extension are as follows:

- On March 31, 2020, we entered into an Amendment Support Agreement (the “Amendment Support Agreement”)with the beneficial owners (the “Noteholders”) of our outstanding 6% Convertible Notes due December 1, 2020 (the “10% Convertible Notes”) pursuant to which such Noteholders agreed to extend the maturity date of the outstanding 6% Convertible Notes to December 1, 2021, increase the interest rate from 6% to 10%, and reduce the strike price on the conversion feature from $11.25 to $8.00 per share. The Amendment Support Agreement required that we repay at least $70.0 million of the 10% Convertible Notes on or before September 1, 2020, which we satisfied through a cash payment in the amount of $70.0 million on May 1, 2020. The amended terms are reflected in the Amended and Restated Indenture between the Company 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 principle 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 (the “Note Purchase Agreement”) pursuant to which certain investors have agreed to purchase, and we have issued, $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.

Additionally, 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, the timing of receipt by us of distributions from our PPA Entities 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, the extension of the 10% Convertible Notes and 10% Constellation Note to December 2021, the proceeds from the 10% Convertible Note Purchase Agreement, the proceeds from the 10.25% Senior Secured Note 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.

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 consolidated balance sheets as of March 31, 2020 and December 31, 2019 (the latter has been derived from the audited consolidated financial statements included in the 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, stockholders' deficit and noncontrolling interest, and of cash flows for the three months ended March 31, 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 consolidated financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions that affect the amounts reported in the 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, our "Asia Pacific region"). In the quarters ended March 31, 2020 and 2019, total revenue in the Asia Pacific region was 37% and 33%, respectively, of our total revenue.

Credit Risk - At March 31, 2020, one customer, Costco Wholesale Corporation accounted for approximately 8% 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 March 31, 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 March 31, 2020, revenue from two customers, SK Engineering & Construction Co., Ltd. (SK E&C) and Duke Energy accounted for approximately 36% and 31%, respectively, of our total revenue. In the quarter ended March 31, 2019, revenue from three customers, SK E&C, The Southern Company, and Costco accounted for approximately 32%, 27%, and 12%, 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 three months ended March 31, 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 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 is effective for annual and interim periods beginning after December 15, 2019. Early adoption is 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. See Note 5, *Fair Value.*

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 is effective for us for interim and annual reporting periods beginning after December 15, 2019. Early adoption is 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 expect that the most significant impacts will be assessing 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 expect to adopt this guidance on a prospective basis on January 1, 2021.

Financial Instruments - In June 2016, the FASB issued ASU 2016-13, *Financial Instruments- Credit Losses (Topic 326)*. The pronouncement was issued to provide more decision-useful information about the expected credit losses on financial instruments and changes the loss impairment methodology. This pronouncement will be effective for us commencing January 1, 2021. A prospective transition approach is required for debt securities for which an 'other than temporary' impairment had been recognized before the effective date. 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. For all other entities, for fiscal years beginning after December 15, 2021, and interim periods within fiscal years beginning after December 15, 2022. We are evaluating the effect on our financial statements and related disclosures. We expect to adopt this guidance on a prospective basis on January 1, 2022.

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 Consolidated Financial Statements

We have restated herein our condensed consolidated financial statements as of and for the quarter ended March 31, 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 Bloom's previously issued consolidated financial statements as of and for the year ended December 31, 2018, as well as financial statements 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 the three-month period ended March 31, 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 Bloom 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 months ended March 31, 2019, the presentation of the Statement and other errors identified in the Statement have been corrected, which resulted in an additional $3.8 million increase to Comprehensive Loss, a change of $7.9 million in Comprehensive (Income) Loss Attributable to Noncontrolling Interest and Redeemable Noncontrolling Interests and an additional decrease of $4.1 million to Comprehensive Loss Attributable to Class A and Class B Stockholders. The Condensed Consolidated Statements of Comprehensive Loss for the three and six months ended June 30, 2019 and 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 will be corrected when those periods are next reported.

Finally, there were certain other immaterial misstatements identified or which had been previously identified which 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 quarter ended March 31, 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 Statement of Redeemable Noncontrolling Interest, Stockholders' Deficit and Noncontrolling Interest for the quarter ended March 31, 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, except share and per share data)

	March 31, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Assets					
Current assets:					
Cash and cash equivalents	$ 320,414	$ —		$ —	$ 320,414
Restricted cash	18,419	—		—	18,419
Accounts receivable	84,070	3,995	1	(2,418)	85,647
Inventories	116,544	3,327	2	—	119,871
Deferred cost of revenue	66,316	(13,405)	3	—	52,911
Customer financing receivable	5,717	—		—	5,717
Prepaid expenses and other current assets	28,362	1,582	4	129	30,073
Total current assets	639,842	(4,501)		(2,289)	633,052
Property, plant and equipment, net	475,385	236,246	5	—	711,631
Customer financing receivable, non-current	65,620	—		—	65,620
Restricted cash, non-current	31,101	—		—	31,101
Deferred cost of revenue, non-current	72,516	(70,583)	3	—	1,933
Other long-term assets	34,386	8,486	6	2,575	45,447
Total assets	$ 1,318,850	$ 169,648		$ 286	$ 1,488,784
Liabilities, Redeemable Noncontrolling Interest, Stockholders' Deficit and Noncontrolling Interests					
Current liabilities:					
Accounts payable	$ 64,425	$ —		—	64,425
Accrued warranty	16,736	(1,219)	7	(1,280)	14,237
Accrued expenses and other current liabilities	67,966	(3,893)	8	—	64,073
Financing obligations	—	8,819	9	—	8,819
Deferred revenue and customer deposits	89,557	(16,153)	10	1,665	75,069
Current portion of recourse debt	15,683	—		—	15,683
Current portion of non-recourse debt	19,486	—		—	19,486
Current portion of non-recourse debt from related parties	2,341	—		—	2,341
Total current liabilities	276,194	(12,446)		385	264,133
Derivative liabilities	11,166	4,556	11	—	15,722
Deferred revenue and customer deposits, net of current portion	201,863	(115,432)	10	17,320	103,751
Financing obligations, non-current	—	394,037	9	—	394,037
Long-term portion of recourse debt	357,876	—		—	357,876
Long-term portion of non-recourse debt	284,541	—		—	284,541
Long-term portion of recourse debt from related parties	27,734	—		—	27,734
Long-term portion of non-recourse debt from related parties	33,417	—		—	33,417
Other long-term liabilities	58,032	(29,062)	8	—	28,970
Total liabilities	1,250,823	241,653		17,705	1,510,181
Redeemable noncontrolling interest	58,802	—		—	58,802
Total stockholders' deficit	(105,439)	(72,005)	12	(17,419)	(194,863)
Noncontrolling interest	114,664	—		—	114,664
Total liabilities, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest	$ 1,318,850	$ 169,648		$ 286	$ 1,488,784

[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 $3.8 million and reclassification of inventories of $0.5 million held for shipments to customers under the Managed Services Program and similar arrangements to construction in progress within property, plant and equipment, net.

[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 $13.9 million (short-term) and $70.6 million (long-term), net capitalization of stock-based compensation costs of $2.1 million into current deferred cost of revenue, and the correction of certain other immaterial misstatements identified to relieve installation deferred cost of revenue of $1.7 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 costs of goods sold of $232.6 million 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. This includes a net capitalization of stock-based compensation cost for these assets of $3.6 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 $0.4 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 $0.8 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] Total stockholders' deficit — 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, together with the cumulative increase to accumulated deficit from the restatement of $72.8 million.

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

	Three Months Ended March 31, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Revenue:					
Product	$ 141,734	$ (48,171)	a	$ (2,637)	$ 90,926
Installation	22,258	(11,195)	a	1,156	12,219
Service	23,290	(574)	a	751	23,467
Electricity	13,425	6,964	a	—	20,389
Total revenue	200,707	(52,976)		(730)	147,001
Cost of revenue:					
Product	124,000	(34,980)	c, d	(248)	88,772
Installation	24,166	(8,406)	c	—	15,760
Service	27,557	1,331	b, d	(967)	27,921
Electricity	9,229	3,755	c	—	12,984
Total cost of revenue	184,952	(38,300)		(1,215)	145,437
Gross profit	15,755	(14,676)		485	1,564
Operating expenses:					
Research and development	28,859	—		—	28,859
Sales and marketing	20,463	2	e	(92)	20,373
General and administrative	39,074	—		—	39,074
Total operating expenses	88,396	2		(92)	88,306
Loss from operations	(72,641)	(14,678)		577	(86,742)
Interest income	1,885	—		—	1,885
Interest expense	(15,962)	(5,838)	f	—	(21,800)
Interest expense to related parties	(1,612)	—		—	(1,612)
Other expense, net	265	—		—	265
Loss on revaluation of warrant liabilities and embedded derivatives	—	(540)	g	—	(540)
Loss before income taxes	(88,065)	(21,056)		577	(108,544)
Income tax provision	208	—		—	208
Net loss	(88,273)	(21,056)		577	(108,752)
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	(3,832)	—		—	(3,832)
Net loss attributable to Class A and Class B common stockholders	$ (84,441)	$ (21,056)		$ 577	$ (104,920)

[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 $37.5 million and installation cost of revenue of $9.2 million, offset by an increase in electricity cost of revenue of $3.7 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 increase to product cost of revenue of $2.5 million, and an increase in service cost of revenue of $1.4 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 $0.5 million.

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

	Three Months Ended March 31, 2019				
	As Previously Reported	Restatement Impacts	Restatement Reference	ASC 606 Adoption Impacts	As Restated And Recast
Cash flows from operating activities:					
Net loss	$ (88,273)	$ (21,056)		$ 577	$ (108,752)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation and amortization	11,271	2,954	A	—	14,225
Write-off of property, plant and equipment, net	1	—		—	1
Revaluation of derivative contracts	(453)	540	B	—	87
Stock-based compensation	63,882	3,940	C	—	67,822
Loss on long-term REC purchase contract	59	—		—	59
Amortization of debt issuance cost	5,152	—		—	5,152
Changes in operating assets and liabilities:					
Accounts receivable	816	(98)	D	3,413	4,131
Inventories	15,932	(4,845)	E	—	11,087
Deferred cost of revenue	26,014	(37,098)	F	—	(11,084)
Customer financing receivable and other	1,339	—		—	1,339
Prepaid expenses and other current assets	5,194	1,423	G	11	6,628
Other long-term assets	83	(396)	H	(103)	(416)
Accounts payable	(2,464)	—		—	(2,464)
Accrued warranty	(2,500)	50	I	(247)	(2,697)
Accrued expense and other current liabilities	823	(1,196)	J	—	(373)
Deferred revenue and customer deposits	(44,533)	49,428	K	(3,651)	1,244
Other long-term liabilities	3,487	679	L	—	4,166
Net cash used in operating activities	(4,170)	(5,675)		—	(9,845)
Cash flows from investing activities:					
Purchase of property, plant and equipment	(8,543)	(3,403)	M	—	(11,946)
Payments for acquisition of intangible assets	(848)	—		—	(848)
Proceeds from maturity of marketable securities	104,500	—		—	104,500
Net cash used in investing activities	95,109	(3,403)		—	91,706
Cash flows from financing activities:					
Repayment of debt	(5,016)	—		—	(5,016)
Repayment of debt to related parties	(778)	—		—	(778)
Proceeds from financing obligations	—	10,961	N	—	10,961
Repayment of financing obligations	—	(1,883)	N	—	(1,883)
Distributions to noncontrolling and redeemable noncontrolling interests	(3,189)	—		—	(3,189)
Proceeds from issuance of common stock	7,493	—		—	7,493
Net cash (used in) provided by financing activities	(1,490)	9,078		—	7,588
Net increase in cash, cash equivalents, and restricted cash	89,449	—		—	89,449
Cash, cash equivalents, and restricted cash:					
Beginning of period	280,485	—		—	280,485
End of period	$ 369,934	$ —		$ —	$ 369,934
Supplemental disclosure of cash flow information:					
Cash paid during the period for interest	$ 14,545	$ 5,838	N	$ —	$ 20,383
Cash paid during the period for taxes	222	—		—	222

[A] Depreciation and amortization — The correction of these misstatements resulted from the change of accounting for Energy Servers under the 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 $4.4 million. The correction of this misstatement also resulted in the capitalization of $0.5 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 the 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 $37.2 million previously classified as deferred cost of revenue is now recorded as construction in progress within property, plant and equipment, net, and the net capitalization of stock-based compensation expenses of $0.1 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 on our Managed Services Agreements and similar arrangements.

[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 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 recorded as a reduction in product revenue and then any changes in the value adjusted through gain (loss) on revaluation of embedded derivatives, net each period thereafter.

[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 March 31, 2020 and December 31, 2019 consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Deferred revenue	$ 170,034	$ 168,223
Deferred incentive revenue	7,232	7,397
Customer deposits	42,707	39,101
Deferred revenue and customer deposits	$ 219,973	$ 214,721

Deferred revenue activity during the quarters ended March 31, 2020 and 2019 consisted of the following (in thousands):

	March 31, 2020	March 31, 2019
		As Restated
Beginning balance	$ 168,223	$ 140,130
Additions	138,113	118,359
Revenue recognized	(136,302)	(117,755)
Ending balance	$ 170,034	$ 140,734

Deferred revenue is equivalent to the total transaction price allocated to the performance obligations that are unsatisfied, or partially unsatisfied, as of March 31, 2020. The most 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 which 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 March 31,	
	2020	2019
		As Restated
Revenue from contracts with customers:		
Product revenue	$ 99,559	$ 90,926
Installation revenue	16,618	12,219
Services revenue	25,147	23,467
Electricity revenue	—	3,418
Total revenue from contract with customers	141,324	130,030
Revenue from contracts accounted for as leases:		
Electricity revenue	15,375	16,971
Total revenue	$ 156,699	$ 147,001

4. Financial Instruments

Cash, Cash Equivalents and Restricted Cash

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

	March 31, 2020	December 31, 2019
As Held:		
Cash	$ 82,484	$ 100,773
Money market funds	271,435	276,615
	$ 353,919	$ 377,388
As Reported:		
Cash and cash equivalents	$ 180,307	$ 202,823
Restricted cash	173,612	174,565
	$ 353,919	$ 377,388

Restricted cash consisted of the following (in thousands):

	March 31, 2020	December 31, 2019
Current:		
Restricted cash	$ 27,256	$ 28,494
Restricted cash related to PPA Entities [1]	2,474	2,310
Restricted cash, current	$ 29,730	$ 30,804
Non-current:		
Restricted cash	$ 10	$ 10
Restricted cash related to PPA Entities [1]	143,872	143,751
Restricted cash, non-current	143,882	143,761
	$ 173,612	$ 174,565

[1] We have variable interest entities which 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). This amount includes $108.7 million and $20.0 million of non-current restricted cash, held in PPA II and PPA IIIb entities, respectively, and as of December 31, 2019, these entities are no longer 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			
March 31, 2020	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets				
Cash equivalents:				
Money market funds	$ 271,435	$ —	$ —	$ 271,435
	$ 271,435	$ —	$ —	$ 271,435
Liabilities				
Accrued expenses and other current liabilities	$ 697	$ —	$ —	$ 697
Derivatives:				
Natural gas fixed price forward contracts	—	—	6,503	6,503
Embedded EPP derivatives	—	—	5,892	5,892
Interest rate swap agreements	—	17,415	—	17,415
	$ 697	$ 17,415	$ 12,395	$ 30,507

	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 consolidated balance sheets. As of March 31, 2020, $1.8 million of the gain on the interest rate swaps accumulated in other comprehensive income (loss) is expected to be reclassified into earnings in the next twelve 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 financial liabilities.

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

	March 31, 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)	1,699	$ 6,503	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 March 31, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contracts and recorded an unrealized loss of $0.6 million and an unrealized gain of $0.4 million, respectively, and recorded a realized gain of $1.0 million and a realized gain of $0.5 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 March 31, 2020 and 2019, we marked-to-market the fair value of our embedded EPP derivatives and recorded an unrealized gain of $0.3 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.

There were no transfers between fair value measurement classifications during the periods ended March 31, 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	(1,025)	—	(1,025)
Changes in fair value	560	(284)	276
Liabilities at March 31, 2020	$ 6,503	$ 5,892	$ 12,395

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

	For the Three Months Ended March 31, 2020					
Commodity Contracts	Derivative Liabilities	Valuation Technique	Unobservable Input	Units	Range	Weighted Average
	(in thousands)				($ per Units)	
Natural Gas	$ 6,503	Discounted Cash Flow	Forward basis price	MMBtu	$1.69 - $4.61	$ 2.88

	For the Three Months Ended December 31, 2019					
Commodity Contracts	Derivative Liabilities	Valuation Technique	Unobservable Input	Units	Range	Weighted 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 March 31, 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 $/kWh 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):

	March 31, 2020		December 31, 2019	
	Net Carrying Value	Fair Value	Net Carrying Value	Fair Value
Customer receivables				
Customer financing receivables	$ 54,616	$ 43,567	$ 55,855	$ 44,002
Debt instruments				
Recourse:				
LIBOR + 4% term loan due November 2020	1,117	1,116	1,536	1,590
10% convertible promissory Constellation note due December 2021	40,709	40,709	36,482	32,070
10% convertible promissory notes due December 2021	338,944	340,694	273,410	302,047
10% notes due July 2024	83,230	72,582	89,962	97,512
Non-recourse:				
7.5% term loan due September 2028	33,036	32,053	34,969	41,108
6.07% senior secured notes due March 2030	79,319	78,831	80,016	87,618
LIBOR + 2.5% term loan due December 2021	119,646	104,377	120,436	120,510

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 quarter ended March 31, 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 March 31, 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):

	March 31, 2020	December 31, 2019
Raw materials	$ 59,099	$ 67,829
Work-in-progress	18,564	21,207
Finished goods	29,541	20,570
	$ 107,204	$ 109,606

The inventory reserves were $14.9 million and $14.6 million as of March 31, 2020 and December 31, 2019, respectively.

Prepaid Expenses and Other Current Assets

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

	March 31, 2020	December 31, 2019
Government incentives receivable	$ 839	$ 893
Prepaid production insurance	3,961	3,763
Receivables from employees	6,653	6,130
Other prepaid expenses and other current assets	13,541	17,282
	$ 24,994	$ 28,068

Property, Plant and Equipment, Net

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

	March 31, 2020	December 31, 2019
Energy Servers	$ 648,273	$ 650,600
Computers, software and hardware	20,453	20,275
Machinery and equipment	102,837	101,650
Furniture and fixtures	8,309	8,339
Leasehold improvements	35,694	35,694
Building	40,512	40,512
Construction in progress	22,854	12,611
	878,932	869,681
Less: Accumulated depreciation	(272,082)	(262,622)
	$ 606,850	$ 607,059

Construction in progress increased $10.2 million from 2019, primarily due to an increase of $8.4 million of Energy Servers under our Managed Services sale-leaseback program pending acceptance, and increased $1.8 million primarily due to Delaware plant expansion.

Depreciation expense related to property, plant and equipment was $13.0 million and $13.9 million for the three months ended March 31, 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 March 31, 2020 and December 31, 2019, respectively. The accumulated depreciation for these assets was $98.3 million and

$95.5 million as of March 31, 2020 and December 31, 2019, respectively. Depreciation expense related to our property, plant and equipment under operating leases by the PPA Entities was $6.2 million and $6.4 million for the three months ended March 31, 2020 and 2019, respectively.

Customer Financing Receivable

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

	March 31, 2020	December 31, 2019
Total minimum lease payments to be received	$ 74,955	$ 76,886
Less: Amounts representing estimated executing costs	(19,344)	(19,931)
Net present value of minimum lease payments to be received	55,611	56,955
Estimated residual value of leased assets	890	890
Less: Unearned income	(1,885)	(1,990)
Net investment in sales-type financing leases	54,616	55,855
Less: Current portion	(5,170)	(5,108)
Non-current portion of investment in sales-type financing leases	$ 49,446	$ 50,747

The future scheduled customer payments from sales-type financing leases were as follows as of March 31, 2020 (in thousands):

	Remainder of 2020	2021	2022	2023	2024	Thereafter
Future minimum lease payments, less interest	$ 3,868	$ 5,428	$ 5,784	$ 6,155	$ 6,567	$ 25,923

Other Long-Term Assets

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

	March 31, 2020	December 31, 2019
Prepaid and other long-term assets	$ 31,134	$ 29,153
Deferred commissions	5,668	5,007
Equity-method investments	5,897	5,733
Long-term deposits	1,897	1,759
	$ 44,596	$ 41,652

Accrued Warranty

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

	March 31, 2020	December 31, 2019
Product warranty	$ 2,566	$ 2,345
Product performance	6,940	7,536
Maintenance services contracts	1,508	453
	$ 11,014	$ 10,334

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

Balances at December 31, 2019	$	9,881
Accrued warranty, net		514
Warranty expenditures during period		(889)
Balances at March 31, 2020	$	9,506

Accrued Expenses and Other Current Liabilities

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

	March 31, 2020	December 31, 2019
Compensation and benefits	$ 17,611	$ 17,173
Current portion of derivative liabilities	6,434	4,834
Sales related liabilities	391	416
Accrued installation	10,923	10,348
Sales tax liabilities	3,899	3,849
Interest payable	2,880	3,875
Accrued payables	24,860	18,650
Other	10,811	11,139
	$ 77,809	$ 70,284

Other Long-Term Liabilities

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

	March 31, 2020	December 31, 2019
Delaware grant	$ 10,469	$ 10,469
Other	18,074	17,544
	$ 28,543	$ 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 March 31, 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 March 31, 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	$ 1,143	$ 1,117	$ —	$ 1,117	$ —	LIBOR plus margin	November 2020	Company	Yes
10% convertible promissory Constellation note due December 2021	36,940	—	40,709	40,709	—	10.0%	December 2021	Company	Yes
10% convertible promissory notes due December 2021 *	319,299	—	338,944	338,944	—	10.0%	December 2021	Company	Yes
10% notes due July 2024	86,000	14,000	69,230	83,230	—	10.0%	July 2024	Company	Yes
Total recourse debt	443,382	15,117	448,883	464,000	—				
7.5% term loan due September 2028	36,232	2,439	30,597	33,036	—	7.5%	September 2028	PPA IIIa	No
6.07% senior secured notes due March 2030	80,255	3,330	75,989	79,319	—	6.1%	March 2030	PPA IV	No
LIBOR + 2.5% term loan due December 2021	120,818	5,340	114,306	119,646	—	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	237,305	11,109	220,892	232,001	1,220				
Total debt	$ 680,687	$ 26,226	$ 669,775	$ 696,001	$ 1,220				

* Note that $70.0 million of this amount was due on or before September 1, 2020, but as it was repaid on May 1, 2020 with the proceeds from long-term debt, as described below, this amount has also been classified as long-term in the condensed consolidated balance sheet as of March 31, 2020. See Note 17, *Subsequent Events* for additional information.

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 March 31, 2020 and December 31, 2019.

Recourse Debt Facilities

LIBOR + 4% Term Loan due November 2020 - In May 2013, we entered into a $5.0 million credit agreement and a $12.0 million financing agreement to help fund the building of a new facility in Newark, Delaware. The $5.0 million credit agreement expired in December 2016. The $12.0 million financing agreement has a term of 90 months, payable monthly at a variable rate equal to one month LIBOR plus the applicable margin. The weighted average interest rate as of March 31, 2020 and December 31, 2019 was 5.7% and 6.3%, respectively. The loan requires monthly payments and is secured by the manufacturing facility. In addition, the credit agreements also include a cross-default provision which provides that the remaining balance of borrowings under the agreements will be due and payable immediately if a lien is placed on the Newark facility in the event we default on any indebtedness in excess of $100,000 individually or $300,000 in the aggregate. Under the terms of these credit agreements, we are required to comply with various restrictive covenants. As of March 31, 2020 and December 31, 2019, the unpaid principal balance of debt outstanding was $1.1 million and $1.6 million, respectively.

10% Constellation Convertible Promissory Note due 2021 (originally 8% Convertible Promissory Notes) - Between December 2014 and June 2016, we issued $193.2 million of three-year convertible promissory notes ("8% Notes") to certain investors. The 8% Notes had a fixed interest rate of 8% compounded monthly, due at maturity or at the election of the investor with accrued interest due in December of each year.

On January 18, 2018, amendments were finalized to extend the maturity dates for all the 8% Notes to December 2019. At the same time, the portion of the notes that was held by Constellation NewEnergy, Inc. ("Constellation") was extended to December 2020 and the interest rate decreased from 8% to 5% ("5% Notes").

Investors held the right to convert the unpaid principal and accrued interest of both the 8% Notes and 5% Notes to Series G convertible preferred stock at any time at the price of $38.64 per share. In July 2018, upon our IPO, the $221.6 million of principal and accrued interest of outstanding 5% Notes automatically converted into additional paid-in capital, the conversion of which included all the related-party noteholders. The 5% Notes converted to shares of Series G convertible preferred stock and, concurrently, each such share of Series G convertible preferred stock converted automatically into one share of Class B

common stock. Upon our IPO, conversions of 5,734,440 shares of Class B common stock were issued and the 5% Notes were retired. Constellation, the holder of the 5% Notes ("5% Constellation Note"), has not elected to convert as of March 31, 2020.

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"). Additionally, the debt is convertible at the option of Constellation into common stock at any time through the maturity date. 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. If we fail to meet certain conditions under the Constellation Note Modification Agreement, including obtaining stockholder approval prior to September 1, 2020, the interest rate will be increased to 18% per year. At any time, we may redeem the 10% Constellation Note, at our option, at a redemption price equal to the principal amount of the 10% Constellation Note outstanding, plus accrued and unpaid interest as of the redemption date, 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 that shall be applied to all remaining scheduled interest payments shall be determined based on the Treasury Rate in effect as of the redemption date, plus 50 basis points, multiplied by the applicable percentage in effect as of the redemption date.

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*, 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, 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 has been recorded, as of March 31, 2020, as a loss on extinguishment of debt in the Condensed Consolidated Statement of Operations.

The new carrying amount of the 10% Constellation Note of $40.7 million, which consists of the $36.9 million principal amount of the 10% Constellation Note and a $3.8 million deemed premium paid for the 10% Constellation Note, was classified as non-current as of March 31, 2020. Furthermore, the $3.8 million deemed premium shall be amortized over the term of the 10% Constellation Note using the effective interest method.

10% Convertible Promissory Notes due December 2021 (Originally 5% Convertible Promissory Notes) - Between December 2015 and September 2016, we issued $260.0 million convertible promissory notes due December 2020, ("5% Convertible Notes") to certain investors (each a "Noteholder" and collectively, the "Noteholders"). The 5% Convertible Notes bore a 5.0% fixed interest rate, payable monthly either in cash or in kind, at our election. We amended the terms of the 5% Convertible Notes in June 2017 to increase the interest rate from 5% to 6% and to reduce the collateral securing the notes ("6% Convertible Notes"). In November 2019, one Noteholder exchanged a portion of their 6% Convertible Notes at the conversion price of $11.25 per share into 616,302 shares of common stock.

The 6% Convertible Notes contained a conversion feature in which the strike price was determined by applying a specified discount to the price of the Company's stock upon a qualified initial public offering. Until the occurrence of a qualified public offering, the number of shares required to settle this conversion feature could not be determined. Accordingly, this conversion feature was bifurcated from the 6% Convertible Notes and accounted for as a derivative liability in accordance with ASC 815, *Derivatives and Hedging*. Since the amendments to the 6% Convertible Notes were accounted for as a modification of terms, the derivative liability remained as a separate financial instrument from the 6% Convertible Notes that was separately accounted for with changes in fair value being recognized in earnings. Upon our initial public offering in July 2018, the conversion terms became fixed and met all of the requirements for equity classification. Accordingly, we reclassified the conversion feature from a derivative liability to additional paid in capital. The fair value of the embedded derivative was $178.0 million upon classification.

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 the10% 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 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 would be 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 (i) 100% of the principal amount of the 10% Convertible Notes, plus (ii) accrued and unpaid interest, plus (iii) 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 decreases, creating a redemption penalty, if redemption occurs after October 21, 2020. The Amended Convertible Notes and the $30.0 million new 10% Convertible Notes are all reflected in the Amended and Restated Indenture between the Company and US National Bank dated April 20, 2020.

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, $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 $338.9 million, which consists of the $319.3 million principal of the 10% Convertible Notes, a $21.4 million premium paid for the 10% Convertible Notes less $1.8 million debt issuance costs was classified as non-current as of March 31, 2020. Furthermore, the $21.4 million deemed premium shall be amortized over the term of the 10% Convertible Notes using the effective interest method.

10% Notes due July 2024 - In June 2017, we issued $100.0 million of senior secured notes ("10% Notes"). The 10% Notes mature in 2024 and bear a 10.0% fixed rate of interest and with principal amortization started July 2019, payable semi-annually. The 10% Notes have a continuing security interest in the cash flows payable to us as servicing, operations and maintenance fees and administrative fees from certain active power purchase agreements in our Bloom Electrons program. Under the terms of the indenture governing the notes, we are required to comply with various restrictive covenants including, among other things, to maintain certain financial ratios such as debt service coverage ratios, to incur additional debt, issue guarantees, incur liens, make loans or investments, make asset dispositions, issue or sell share capital of our subsidiaries and pay dividends, meet reporting requirements, including the preparation and delivery of audited consolidated financial statements, or maintain certain restrictions on investments and requirements in incurring new debt. In addition, we are required to maintain collateral which secures the 10% Notes based on debt ratio analyses. This minimum collateral test is not a negative covenant and does not result in a default if not met. However, the minimum debt service coverage ratio test does restrict our access to the excess cash escrowed in a collection account which would otherwise be released to us on a bi-annual basis after principal amortization and interest payment. The outstanding unpaid principal and accrued interest debt balance of the 10% Notes of $14.0 million and $14.0 million were classified as current as of March 31, 2020 and December 31, 2019, respectively and the outstanding unpaid principal and accrued interest debt balances of the 10% Notes of $69.2 million and $76.0 million were classified as non-current as of March 31, 2020 and December 31, 2019 respectively.

Non-recourse Debt Facilities

5.22% Senior Secured Term Notes - In March 2013, PPA Company II refinanced its existing debt by issuing 5.22% Senior Secured Notes due March 30, 2025. The total amount of the loan proceeds was $144.8 million, including $28.8 million to repay outstanding principal of existing debt, $21.7 million for debt service reserves and transaction costs and $94.3 million to fund the remaining system purchases. In June 2019, as part of the PPA II upgrade of Energy Servers, we paid off the outstanding debt and interest of these notes for the outstanding amount of $77.6 million. The Note Purchase Agreement debt service reserve balance of $11.2 million was written off in June 2019.

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 March 31, 2020 and December 31, 2019, respectively, and which was included as part of long-term restricted cash in the consolidated balance sheets. The loan is secured by all assets of PPA IIIa.

LIBOR + 5.25% Term Loan due October 2020 - In September 2013, PPA IIIb entered into a credit agreement to help fund the purchase and installation of our Energy Servers. In accordance with that agreement, PPA IIIb issued floating rate debt

based on LIBOR plus a margin of 5.2%, paid quarterly. The aggregate amount of the debt facility was $32.5 million. In December 2019, as part of the PPA IIIa upgrade of Energy Servers, we paid off the outstanding debt and interest of these notes for the outstanding amount of $24.2 million. The credit agreement required us to maintain a debt service reserve for all funded systems, the balance of which was $1.8 million which was written off in December 2019.

6.07% Senior Secured Notes due March 2025 - In July 2014, PPA IV issued senior secured notes amounting to $99.0 million to third parties to help fund the purchase and installation of our Energy Servers. The notes bear a fixed interest rate of 6.07% 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 $8.1 million as of March 31, 2020 and $8.0 million as of December 31, 2019, and which was included as part of long-term restricted cash in the consolidated balance sheets.

LIBOR + 2.5% Term Loan due December 2021 - 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 are a group of five financial institutions and the terms included commitments to a letter of credit ("LC") facility (see below). The loan was initially advanced as a construction loan during the development of the PPA V Project and converted into a term loan on February 28, 2017 (the "Term Conversion Date"). As part of the term loan's conversion, the LC facility commitments were adjusted.

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 the 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 March 31, 2020 and December 31, 2019 was $5.0 million. The unused capacity as of March 31, 2020 and December 31, 2019 was $1.2 million.

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 March 31, 2020 (in thousands):

Remainder of 2020 *	$	86,493
2021		425,609
2022		26,046
2023		29,450
2024		35,941
Thereafter		77,148
	$	680,687

*Note that $70.0 million of this amount was due on or before September 1, 2020, but as it was repaid on May 1, 2020 with the proceeds from long-term debt, as described below, this amount has also been classified as long-term in the condensed consolidated balance sheet as of March 31, 2020. See Note 17, *Subsequent Events* for additional information.

Interest expense of $22.1 million and $23.4 million for the three months ended March 31, 2020 and 2019, respectively, was recorded in interest expense on the 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 March 31, 2020 and December 31, 2019 on our consolidated balance sheets were as follows (in thousands):

	March 31, 2020	December 31, 2019
Assets		
Prepaid expenses and other current assets	$ —	$ 3
	$ —	$ 3
Liabilities		
Accrued expenses and other current liabilities	$ 1,943	$ 782
Derivative liabilities	15,472	8,459
	$ 17,415	$ 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 $183.7 million and $184.2 million as of March 31, 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 $36,000 and a loss of $24,000 attributable to the change in valuation during both of the quarters ended March 31, 2020 and 2019, respectively, and were included in other income (expense), net in the 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 March 31,	
	2020	2019
Beginning balance	$ 9,238	$ 3,548
Loss recognized in other comprehensive loss	8,356	2,130
Amounts reclassified from other comprehensive loss to earnings	(142)	61
Net loss recognized in other comprehensive loss	8,214	2,191
Gain recognized in earnings	(37)	(47)
Ending balance	$ 17,415	$ 5,692

Natural Gas Derivatives

On September 1, 2011, we entered into a natural gas fixed price forward contract with a gas supplier. This fuel forward contract is used as part of our program to manage the risk for controlling the overall cost of natural gas. PPA I is the only PPA Company for which natural gas was provided by us. This fuel forward contract meets the definition of a derivative under U.S. GAAP. We have not elected to designate this contract as a hedge and, accordingly, any changes in its fair value is recorded within cost of revenue in the statements of operations. The fair value of the contract is determined using a combination of factors including the counterparty's credit rate and estimates of future natural gas prices.

For the quarter ended March 31, 2020 and 2019, we marked-to-market the fair value of our natural gas fixed price forward contract and recorded an unrealized loss of $0.6 million and an unrealized gain of $0.4 million, respectively. For the

three months ended March 31, 2020 and 2019, we recorded a realized gain of $1.0 million and realized gain of $0.5 million, respectively, on the settlement of these contracts. Gains and losses are recorded in cost of revenue on the consolidated statement of operations.

Embedded EPP Derivatives in Sales Contracts

Embedded EPP Derivatives in Sales Contracts - We estimated the fair value of the embedded Escalation Protection Plan ("EPP") derivatives in certain sales contracts using a Monte Carlo simulation model which considers various potential electricity price 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 $0.3 million and an unrealized loss of $0.5 million attributable to the change in fair value for the three months ended March 31, 2020 and 2019, respectively. These gains and losses were included within loss on revaluation of embedded derivatives in the Consolidated Statements of Operations. The fair value of these derivatives was $5.9 million and $6.2 million as of March 31, 2020 and December 31, 2019, respectively.

9. Common Stock Warrants

Common Stock Warrants

During 2018, all of the preferred and common stock warrants we issued in connection with loan agreements and a dispute settlement converted to warrants to purchase shares of Class B common stock. As of March 31, 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. Income Taxes

For the three months ended March 31, 2020 and 2019, we recorded a provision for income taxes of $0.1 million on a pre-tax loss of $81.5 million for an effective tax rate of (0.2)%, and a provision for income taxes of $0.2 million on a pre-tax loss of $108.5 million for an effective tax rate of (0.2)%, respectively.

The effective tax impact for the three months ended March 31, 2020 and 2019 is lower than the statutory federal tax rate primarily due to a full valuation allowance against U.S. deferred tax assets.

11. Net Loss per Share Attributable to Common Stockholders

Net loss per share (basic) attributable to common stockholders is calculated by dividing net loss attributable to common stockholders by the weighted-average shares of common stock outstanding for the period. Net loss per share (diluted) is computed by using the "if-converted" method when calculating the potential dilutive effect, if any, of convertible shares whereby net loss attributable to common stockholders is adjusted by the effect of dilutive securities such as awards under equity compensation plans and inducement awards under separate restricted stock unit, or RSUs, award agreements. Net loss per share (diluted) attributable to common stockholders is then calculated by dividing the resulting adjusted net loss attributable to common stockholders by the combined weighted-average number of fully diluted common shares outstanding.

In July 2018, we completed an initial public offering of our common shares wherein 20,700,000 shares of Class A common stock were sold into the market. Added to existing shares of Class B common stock were shares mandatorily converted from various financial instruments as a result of the IPO. See Note 9, *Common Stock Warrants*.

There were no adjustments to net loss attributable to common stockholders in determining net loss attributable to common stockholders (diluted). Equally, there were no adjustments to the weighted average number of outstanding shares of common stock (basic) in arriving at the weighted average number of outstanding shares (diluted), as such adjustments would have been antidilutive.

Net loss per share is the same for each class of common stock as they are entitled to the same liquidation and dividend rights with the exception of voting rights. As a result, net loss per share (basic) and net loss per share (diluted) attributed to common stockholders are the same for both Class A and Class B common stock and are combined for presentation. The following table sets forth the computation of our net loss per share (basic) and net loss per share (diluted) attributable to common stockholders (in thousands, except per share amounts):

	Three Months Ended March 31,	
	2020	2019
		As Restated
Numerator:		
Net loss attributable to Class A and Class B common stockholders	$ (75,949)	$ (104,920)
Denominator:		
Weighted average shares of common stock, basic and diluted	123,763	111,842
Net loss per share available to Class A and Class B common stockholders, basic and diluted	$ (0.61)	$ (0.94)

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 March 31,	
	2020	2019
Convertible and non-convertible redeemable preferred stock and convertible notes	40,723	27,241
Stock options to purchase common stock	4,993	5,190
	45,716	32,431

12. 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 Bloom.

2002 Stock Plan

As of March 31, 2020, options to purchase 1,767,487 shares of Class B common stock were outstanding with a weighted average exercise price of $24.13 per share.

2012 Equity Incentive Plan

As of March 31, 2020, options to purchase 9,805,266 shares of Class B common stock were outstanding with a weighted average exercise price of $27.14 per share and no shares were available for future grant. As of March 31, 2020, we had outstanding RSUs that may be settled for 4,093,230 shares of Class B common stock under the plan.

2018 Equity Incentive Plan

As of March 31, 2020, options to purchase 5,933,885 shares of Class A common stock were outstanding with a weighted average exercise price of $9.31 per share and 2,919,204 shares of outstanding RSUs that may be settled for Class A common stock which were granted pursuant to the plan. As of March 31, 2020, we had 23,519,848 shares of Class A common stock available for future grant. No stock options were granted during the three months ended March 31, 2020.

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 March 31,	
	2020	**2019**
Risk-free interest rate	—%	2.60% - 2.64%
Expected term (years)	0	6.3 - 6.6
Expected dividend yield	—	—
Expected volatility	—%	50.2%

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

	Three Months Ended March 31,	
	2020	**2019**
		As Restated
Cost of revenue	$ 5,507	$ 18,312
Research and development	6,096	14,230
Sales and marketing	3,890	11,512
General and administrative	7,526	23,768
	$ 23,019	$ 67,822

Stock-based Compensation - During the quarters ended March 31, 2020 and 2019, we recognized $23.0 million and $67.8 million of total stock-based compensation costs, respectively. During the quarters ended March 31, 2020 and 2019, we recognized $0.2 million and $3.9 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 (in thousands), except per share amounts:

	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
Exercised	(110,949)	6.14		
Cancelled	(219,729)	25.79		
Balances at March 31, 2020	17,506,638	20.79	6.66	6,814
Vested and expected to vest at Current period end	16,856,937	21.20	6.57	6,071
Exercisable at Current period end	9,499,310	28.59	4.76	9

Stock Options - During the quarters ended March 31, 2020 and 2019, we recognized $5.6 million and $9.2 million of stock-based compensation costs for stock options, respectively.

We did not grant options for Class A common stock during the quarter ended March 31, 2020, and we granted 743,705 options for Class A and Class B common stock during the quarter ended March 31, 2019 and the weighted-average grant-date fair value of those awards was $11.38 per share.

As of March 31, 2020 and 2019, we had unrecognized compensation costs related to unvested stock options of $36.3 million and $65.8 million, respectively. This cost is expected to be recognized over the remaining weighted-average period of 2.4 years and 2.7 years, respectively. We had no excess tax benefits in the quarters ended March 31, 2020 and 2019. Cash received from stock options exercised totaled $0.7 million and $0.6 million ended March 31, 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	78,338	10.88
Vested	(3,010,606)	19.80
Forfeited	(167,564)	15.77
Balances at March 31, 2020	7,012,434	16.18

Restricted Stock Units (RSUs) - The estimated fair value of RSU awards is based on the fair value of our common stock on the date of grant.

During the quarters ended March 31, 2020 and March 31, 2019, we recognized $13.2 million and $51.0 million of stock-based compensation costs for RSUs, respectively.

As of March 31, 2020, we had $37.6 million of unrecognized stock-based compensation cost related to unvested RSUs. This cost is expected to be recognized over a weighted average period of 1.3 years. As of March 31, 2019, we had $145.5 million of unrecognized stock-based compensation cost related to unvested RSUs. This expense was expected to be recognized over a weighted average period of 1.3 years.

The following table presents the stock activity and the total number of RSUs available for grant under our stock plans as of March 31, 2020:

	Plan Shares Available for Grant
Balances at December 31, 2019	17,233,144
Added to plan	6,263,315
Granted	(78,338)
Cancelled	385,766
Expired	(284,039)
Balances at March 31, 2020	23,519,848

2018 Employee Stock Purchase Plan

During the quarter ended March 31, 2020, we added an additional 1,494,819 shares for use under the 2018 ESPP. During the quarters ended March 31, 2020 and 2019, we recognized $2.9 million and $2.8 million of stock-based compensation costs for the ESPP, respectively. We issued 992,846 shares in the quarter ended March 31, 2020 and there were 3,532,380 shares available for issuance under the ESPP as of March 31, 2020. We use the Black-Scholes option pricing model to determine the fair value of shares purchased under the 2018 ESPP with the following weighted average assumptions on the date of grant:

	Three Months Ended March 31,	
	2020	2019
Risk-free interest rate	1.51%	2.60% - 2.64%
Expected term (years)	0.5 - 2.0	0.5 - 2.0
Expected dividend yield	—	—
Expected volatility	61.0%	50.2%

2019 Executive Awards

In November 2019, the Board of Directors approved stock option awards ("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 is 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.

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. Under these arrangements, an operating entity is created (the "Operating Company") which purchases our Energy Servers from us. The end customer then enters into a power purchase agreement ("PPA") with the Operating Company to purchase the power generated by our Energy Servers at a specified rate per kilowatt hour for a specified term which can range from 10 to 21 years. In some cases, similar to direct purchases and leases, the standard one-year warranty and performance guaranties are included in the price of the product. The Operating Company also enters into a master services agreement with us following the first year of service to extend the warranty services and guaranties over the term of the PPA. In other cases, the master services agreements including warranties and guaranties are billed on a quarterly basis starting in the first quarter following the placed-in-service date of the Energy Server(s) and continuing over the term of the PPA. The first of such arrangements was considered a sales-type lease and the product revenue from that agreement was recognized upfront in the same manner as direct purchase and lease transactions. Substantially all of our subsequent PPAs have been accounted for as operating leases with the related revenue under those agreements recognized ratably over the PPA term as electricity revenue. We recognize the cost of revenue, primarily Energy Server depreciation and maintenance service costs, over the shorter of the estimated useful life of the Energy Server or the term of the PPA.

We and our third-party equity investors (together "Equity Investors") contribute funds into a limited liability investment entity ("Investment Company") that owns and is parent to the Operating Company (together, the "PPA Entities"). These PPA Entities constitute variable investment entities ("VIEs") under U.S. GAAP. We have considered the provisions within the contractual agreements which grant us power to manage and make decisions affecting the operations of these VIEs. We consider that the rights granted to the Equity Investors under the contractual agreements are more protective in nature rather than participating. Therefore, we have determined under the power and benefits criterion of ASC 810 - *Consolidations* that we are the primary beneficiary of these VIEs. As the primary beneficiary of these VIEs, we consolidate in our financial statements the financial position, results of operations and cash flows of the PPA Entities, and all intercompany balances and transactions between us and the PPA Entities are eliminated in the consolidated financial statements.

On June 14, 2019, we entered into a PPA II upgrade of Energy Servers transaction, and as a result we determined that we no longer retained a controlling interest in the Operating Company in PPA II and therefore, the Operating Company was no longer consolidated as a VIE into our consolidated financial statements as of June 30, 2019. See further discussion below. On November 27, 2019, we entered into a PPA IIIb upgrade of Energy Servers transaction where we bought out the equity interest of the third-party investor, decommissioned the Energy Servers in the Operating Company and sold new Energy Servers deployed at customer sites through our Managed Services financing option. The PPA IIIb Investment Company and Operating Company became wholly-owned by us but no longer met the definition of a VIE. However, we continue consolidating PPA IIIb in our consolidated financial statements. See further discussion below.

In accordance with our Power Purchase Agreement Programs, the Operating Company acquires Energy Servers from us for cash payments that are made on a similar schedule as if the Operating Company were a customer purchasing an Energy Server from us outright. In the consolidated financial statements, the sale of Energy Servers by us to the Operating Company

are treated as intercompany transactions and as a result eliminated in consolidation. The acquisition of Energy Servers by the Operating Company is accounted for as a non-cash reclassification from inventory to Energy Servers within property, plant and equipment, net on our consolidated balance sheets. In arrangements qualifying for sales-type leases, we reduce these recorded assets by amounts received from U.S. Treasury Department cash grants and from similar state incentive rebates.

The Operating Company sells the electricity to end customers under PPAs. Cash generated by the electricity sales, as well as receipts from any applicable government incentive program, are used to pay operating expenses (including the management and maintenance services we provide to maintain the Energy Servers over the term of the PPA) and to service the non-recourse debt with the remaining cash flows distributed to the Equity Investors. In transactions accounted for as sales-type leases, we recognize subsequent customer billings as electricity revenue over the term of the PPA and amortize any applicable government incentive program grants as a reduction to depreciation expense of the Energy Server over the term of the PPA. In transactions accounted for as operating leases, we recognize subsequent customer payments as electricity revenue and service revenue over the term of the PPA.

Upon sale or liquidation of a PPA Entity, distributions would occur in the order of priority specified in the contractual agreements.

We have established six different PPA Entities to date. The contributed funds are restricted for use by the Operating Company to the purchase of our Energy Servers manufactured by us in our normal course of operations. All six PPA Entities utilized their entire available financing capacity and have completed the purchase of their Energy Servers. Any debt incurred by the Operating Companies is non-recourse to us. Under these structures, each Investment Company is treated as a partnership for U.S. federal income tax purposes. Equity Investors receive investment tax credits and accelerated tax depreciation benefits. In 2016, we purchased the tax equity investor's interest in PPA I, which resulted in a change in our ownership interest in PPA I while we continued to hold the controlling financial interest in this company. In 2019, we bought out the tax equity investors' interest in DSGH, the PPA II Investment Company, and admitted two new equity investors as a member of the PPA II Operating Company, retaining only a minor contingent future equity interest in the Operating Company. One of the new equity investors became the managing member which resulted in a change in our ownership interest in the Operating Company and discontinued our controlling financial interest in the PPA II Operating Company. In December 2019, we purchased the tax equity investors' interest in PPA IIIb, which resulted in a change in the ownership structure from a variable interest entity to a wholly owned subsidiary indirectly owned by us.

PPA II Upgrade of Energy Servers

Original Transaction

A wholly-owned subsidiary of Bloom and a wholly-owned subsidiary of Credit Suisse Group AG ("Mehetia") jointly owned Diamond State Generation Holdings, LLC ("Class A Holdco"). Class A Holdco owned 100% of the membership interests in Diamond State Generation Partners, LLC ("DSGP"). Pursuant to an earlier transaction, DSGP owned and operated 30 megawatts of Energy Servers across two sites in Delaware that achieved operations in 2012 and 2013 and provided alternative energy generation for state tariff rate payers (the "Original Project"). The Original Project had been financed in part by the issuance of non-recourse promissory notes to DSGP (the "Project Debt").

Overall Upgrade

We upgraded the existing 30 megawatts of Energy Servers used in the Original Project by replacing them with 27.5 megawatts of new Energy Servers. To effect the full upgrade we repurchased all of existing Energy Servers, the proceeds of which were used by DSGP to pay down the Project Debt and to enable Class A Holdco to buy out Mehetia's interests. To finance the new Energy Servers used in the upgrade, DSGP raised capital from two new members: SP Diamond State Class B Holdings, LLC ("Class B Holdco"), a wholly owned subsidiary of Southern Power Company ("Southern") and Assured Guaranty Municipal Corporation ("Class C Holdco"). The existing Energy Servers were removed after we repurchased them from DSGP, prior to selling and installing the new Energy Servers. The upgrade was done across two phases and was completed during December 2019.

Commercial Documents

We also entered into an operations and maintenance agreement for the ongoing care of all of the new Energy Servers (the "O&M Agreement"). The operations and maintenance fees under the O&M Agreement are paid on a fixed dollar per kilowatt basis.

The terms and conditions of the EPC Agreement and the O&M Agreement, including the suite of guaranties and warranties provided with respect to the performance of the Energy Servers are customary for our transactions of this type. The

performance related guaranty and warranty were provided for each investor's Energy Servers, while the efficiency guaranties and warranties were measured across the entire 27.5 megawatts of Energy Servers.

PPA IIIb Upgrade of Energy Servers

Transaction Overview

As part of the PPA IIIb project established in 2013, Bloom, through a special purpose subsidiary (the "Project Company"), had previously entered into certain agreements for the purpose of developing, financing, owning, operating, maintaining and managing a portfolio of 5.4 megawatts of Energy Servers. On November 27, 2019, we entered into certain agreements through a wholly-owned subsidiary to (i) buy out the existing debt and equity investors in Project Company such that Project Company became indirectly wholly-owned by us, and (ii) upgrade 5.4 megawatts of the existing Energy Servers owned and managed by Project Company by selling and installing new Energy Servers. As of December 31, 2019, 5 megawatts of the PPA IIIb project had been decommissioned and written-off by us, with the remaining 0.4 megawatts decommissioned during the three months ended March 31, 2020.

PPA Entities' Activities Summary

The table below shows the details of the three Investment Companies' VIEs that were active during the first quarter of 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 March 31, 2020:			
Distributions to Equity Investor	$ 4,804	$ 7,052	$ 74,128
Debt repayment—principal	$ 8,736	$ 18,745	$ 10,419
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.

Some of our PPA Entities contain structured provisions whereby the allocation of income and equity to the Equity Investors changes at some point in time after the formation of the PPA Entity. The change in allocations to Equity Investors (or the "flip") occurs based either on a specified future date or once the Equity Investors reaches its targeted rate of return. For PPA Entities with a specified future date for the flip, the flip occurs January 1 of the calendar year immediately following the year that includes the fifth anniversary of the date the last site achieves commercial operation.

The noncontrolling interests in PPA IIIa are redeemable as a result of the put option held by the Equity Investors as of March 31, 2020 and December 31, 2019. At March 31, 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 consolidated balance sheets, after eliminations of intercompany transactions and balances, were as follows (in thousands):

	March 31, 2020	December 31, 2019
Assets		
Current assets:		
Cash and cash equivalents	$ 3,104	$ 1,894
Restricted cash	2,208	2,244
Accounts receivable	4,207	4,194
Customer financing receivable	5,170	5,108
Prepaid expenses and other current assets	2,212	3,587
Total current assets	16,901	17,027
Property and equipment, net	269,680	275,481
Customer financing receivable, non-current	49,446	50,747
Restricted cash	15,172	15,045
Other long-term assets	301	607
Total assets	$ 351,500	$ 358,907
Liabilities		
Current liabilities:		
Accounts payable	$ —	$ —
Accrued expenses and other current liabilities	2,058	1,391
Deferred revenue and customer deposits	662	662
Current portion of debt	11,109	12,155
Total current liabilities	13,829	14,208
Derivative liabilities	15,470	8,459
Deferred revenue	6,570	6,735
Long-term portion of debt	220,892	223,267
Other long-term liabilities	2,492	2,355
Total liabilities	$ 259,253	$ 255,024

As stated above, we are a minority shareholder in the PPA Entities for the administration of our Bloom Electrons program. 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 March 31, 2020, and December 31, 2019 (in thousands):

	March 31, 2020			December 31, 2019		
	Bloom Energy	PPA Entities	Consolidated	Bloom Energy	PPA Entities	Consolidated
Assets						
Current assets	$ 445,994	$ 16,901	$ 462,895	$ 455,680	$ 17,027	$ 472,707
Long-term assets	515,114	334,599	849,713	508,004	341,880	849,884
Total assets	$ 961,108	$ 351,500	$ 1,312,608	$ 963,684	$ 358,907	$ 1,322,591
Liabilities						
Current liabilities	$ 256,798	$ 2,720	$ 259,518	$ 234,328	$ 2,053	$ 236,381
Current portion of debt	15,117	11,109	26,226	325,428	12,155	337,583
Long-term liabilities	591,722	24,532	616,254	599,709	17,549	617,258
Long-term portion of debt	448,883	220,892	669,775	75,962	223,267	299,229
Total liabilities	$ 1,312,520	$ 259,253	$ 1,571,773	$ 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 lease for our former corporate offices in Sunnyvale, California expired in December 2018. We entered into a lease for our corporate headquarters located in San Jose, California, for 181,000 square feet of office space commencing January 2019 and expiring in 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. These plants together comprise approximately 281,265 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 quarters ended March 31, 2020 and 2019, rent expense for all occupied facilities was $2.1 million and $2.0 million, respectively.

Equipment Leases

Beginning in December 2015, 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 months ended March 31, 2020 and 2019.

At March 31, 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	$ 5,457	$ 28,487	$ (28,487)
2021	5,495	38,726	(38,726)
2022	4,168	39,680	(39,680)
2023	4,230	40,582	(40,582)
2024	4,356	38,442	(38,442)
Thereafter	17,913	117,592	(117,592)
Total lease payments	$ 41,619	303,509	$ (303,509)
Less: imputed interest		(177,345)	
Total lease obligations		126,164	
Less: current obligations		(11,248)	
Long-term lease obligations		$ 114,916	

[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 $443.4 million and $446.2 million as of March 31, 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 cancelable. As of March 31, 2020 and December 31, 2019, we had no material open purchase orders with our component suppliers and third-party manufacturers that are not cancelable.

Power Purchase Agreement Program - Under the terms of the Bloom Electrons program (see Note 13, *Power Purchase Agreement Programs*), customers agree to purchase power from our Energy Servers at negotiated rates, generally for periods of up to twenty-one 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.

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 consolidated statements of operations. We paid $5.7 million and $3.5 million for the quarter ended March 31, 2020 and 2019, respectively.

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 letter of credit ("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 March 31, 2020 and December 31, 2019 was $5.0 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 March 31, 2020, the balance of this cash-collateralized letter of credit was $108.7 million.

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 March 31, 2020, we had 346 full time workers in Delaware and paid $127.8 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 $3.1 million on September 30, 2021 and up to an additional $2.5 million on September 30, 2023. As of March 31, 2020, we paid $1.5 million for recapture provisions and have recorded $10.5 million in other long-term liabilities for potential recapture.

Self-Generation Incentive Program ("SGIP") - Our PPA Entities' customers receive payments under the SGIP which is a program specific to the State of California that provides financial incentives for the installation of qualifying new self-generation equipment that we own. The SGIP program issues 50% of the fully anticipated amount in the first year the equipment is placed into service. The remaining incentive is then paid based on the size of the equipment (i.e., nameplate kilowatt capacity) over the subsequent five years.

The SGIP program has operational criteria primarily related to fuel mixture and minimum output for the first five years after the qualified equipment is placed in service. If the operational criteria are not fulfilled, it could result in a partial refund of funds received. However, for certain PPA Entities, we make SGIP reservations on behalf of the PPA Entity and, therefore, the PPA Entity bears the risk of loss if these funds are not paid.

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. Our purchase of Energy Servers were by the PPA Entities and, therefore, the PPA Entities bear the risk of repayment if the assets placed in service do not meet the ITC operational criteria in the future.

Legal Matters - From time to time, we are involved in disputes, claims, litigation, investigations, proceedings and/or other legal actions consisting of commercial, securities and employment matters that arise in the ordinary course of business. We review all legal matters at least quarterly and assesses whether an accrual for loss contingencies needs to be recorded. The assessment reflects the impact of negotiations, settlements, rulings, advice of legal counsel and other information and events pertaining to a particular situation. 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.

In June 2019, Messrs. Daubenspeck and Badger filed a complaint against our CEO and our former CFO in the United States District Court for the Northern District of Illinois, Case No. 1:19-cv-04305, 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, as a result, 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, for alleged misleading statements or omissions in our Form S-1 Registration Statement filed with the Securities and Exchange Commission in connection with our July 25, 2018 initial public offering. 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 of 1933, as amended, for alleged misleading statements or omissions in our Form S-1 Registration Statement filed with the Securities and Exchange Commission in connection with our July 25, 2018 initial public offering. 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 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 of 1933. The Second Amended complaint also adds allegations pertaining to the Restatement and, as to claims under the Securities Exchange Act of 1934, extends the class period through February 12, 2020. We believe the complaint to be without merit and we intend to vigorously defend.

In November 2019, Michael Bolouri filed a class action complaint in the federal district court for the Northern District of California against us, certain members of our senior management, certain of our directors and the underwriters in our initial public offering, alleging violations under Section 11 and 15 of the Securities Act of 1933, as amended, and violations under Sections 10b and 20a of the Securities Exchange Act of 1934 for alleged misleading statements or omissions in our Form S-1 Registration Statement filed with the Securities and Exchange Commission in connection with our July 25, 2018 initial public offering and continuing through September 16, 2019. On December 11, 2019, a notice of voluntary dismissal was filed by the plaintiff and the case has now been dismissed.

In September 2019, we received a books and records demand from purported Company 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 Company 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. We are still investigating the allegations but believe the complaint to be without merit and, as a result, we have recorded no loss contingency related to this claim.

15. Segment Information

Segment and the Chief Operating Decision Maker

Our chief operating decision makers ("CODMs"), our Chief Executive Officer and the Chief Financial Officer, 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 March 31,	
	2020	2019
Total revenue from related parties	$ 1,049	$ 813
Interest expense to related parties	1,366	1,612

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 quarter ended March 31, 2020 and 2019, we recognized related party total revenue of $1.0 million and $0.8 million, respectively. Accounts receivable from this joint venture was $0.4 million as of March 31, 2020 and $2.7 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 March 31, 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	$ —	$ 52,786	$ 52,786
Non-recourse debt from related parties:				
7.5% term loan due September 2028 from related parties	36,232	2,439	30,597	33,036
Total debt from related parties	$ 87,033	$ 2,439	$ 83,383	$ 85,822

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 common stock. On March 31, 2020, we issued $30.0 million new 10% Convertible Notes to two related party note holders. We repaid $2.1 million and $0.8 million of the non-recourse 7.5% term loan principal balance in the quarters ended March 31, 2020 and 2019, respectively, and we paid $0.7 million and $0.8 million of interest in the quarters ended March 31, 2020 and December 31, 2019, respectively. See *Note 7, Outstanding Loans and Security Agreements* for additional information on our debt facilities.

17. Subsequent Events

Senior Secured Notes Private Placement

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 under 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 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 Note 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 Note 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 Note at a purchase price equal to 101% of the principal amount of the 10.25% Senior Secured Note, plus accrued and unpaid interest.

The amended 6% Convertible Notes and the $30.0 million new 10% Convertible Notes were all memorialized in the Amended and Restated Indenture between the Company and US National Bank dated April 20, 2020.

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 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 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 Consolidated Financial Statements

We have restated our previously reported financial information as of and for the three months ended March 31, 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 Consolidated Financial Statements*, in Item 1, *Financial Statements*, for additional information related to the restatement, including descriptions of the misstatements and the impacts on our 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, notwithstanding government "shelter in place" orders, although we have closed our headquarters building in Santa Clara County, California, and directed employees - unless they are directly supporting essential manufacturing production operations, installation work or service and maintenance activities - to work from their homes. 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*.

Sales

In some markets, we have experienced an increase in time to close 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 is more aligned with a longer signature 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 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 impacted our ability to obtain financing for our customers' use of our products, but we believe that the economic downturn associated with the pandemic could have a negative impact on the sources of capital we have historically utilized. A majority of the installations we have planned in the United States in 2020 remain contingent on securing financing for our customers' use of our Energy Servers at their sites, which may be increasingly difficult to obtain. Our general recent experience has been that financing parties have capital to deploy and are interested in financing our Energy Servers and, at present, revenue and cash have not been impacted by our inability to obtain financing for customer installations.

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. 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 revenue and cash. 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.

We have actively been working with new sources of capital that could finance projects. We believe the current environment may increase the time to solidify new relationships, and thus negatively impact the time required to achieve funding.

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. However, there could be some impact to near-term working capital needs over the next two quarters as we have already committed to certain items with long lead-times.

While we do not expect that it will be necessary to access capital markets for cash to operate our business for the next 12 months and have extended the terms of the 10% Convertible Notes and 10% Constellation Note to December 2021, if the impact of COVID-19 to our business and financial position is more extensive than expected, we may need additional capital to enhance liquidity. 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 into reasonable terms. Refer to Note 7, *Outstanding Loans and Security Agreements* and Note 17, Subsequent Events - *Senior Secured Notes Private Placement* in Item 1*, Financial Statements;* 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 expected to be renewed, either event could adversely affect our ability to service existing debt, 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 could 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.

Installations of Energy Servers

The COVID-19 pandemic has caused delays in some of our installations. Since we do not recognize revenue on the sales of our products until installation and acceptance, installation delays have a negative impact on our operating results. Our installations have been deemed "essential business" and allowed to proceed in many jurisdictions, which has allowed us to continue to install our Energy Servers to date. However, restrictions in some jurisdictions, such as New York and New Jersey, have required us to suspend our installations there.

In addition, we have experienced delays and interruptions to our installations where customers have shut down or otherwise limited access to their facilities. Diminished access to utilities has also contributed to installation delays, as our installations require both gas and electrical hook ups. In some states, utilities are currently refusing to work on our installations or issue permits, thereby delaying completion of the affected projects indefinitely.

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.

None of our installations in the quarter ended March 31, 2020 were impacted by COVID-19. Several installations scheduled for the next two quarters are currently impacted as the customer sites are closed, and either we are not being allowed on site or the local utility is refusing to come to our site to perform the required work so we can power up our Energy Server.

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.

If we become aware of any cases of COVID-19 among our manufacturing employees, we would be required to shut down the applicable facility until it could be sanitized, which we believe would take anywhere from one to four days. Although

this has not yet occurred, we believe there is a reasonable likelihood that it will in the future, which may cause delays in deployments of our Energy Servers.

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 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 for the 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.

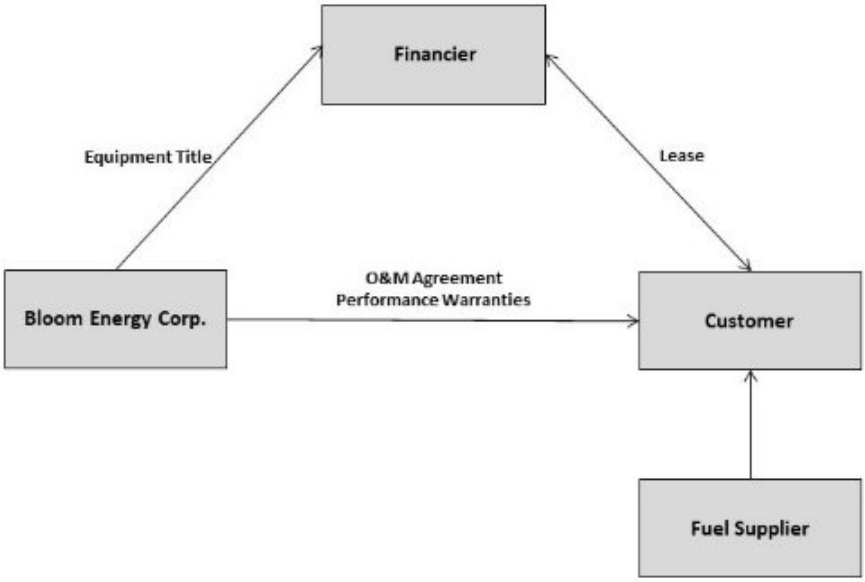
Under the Managed Services Program, the warranties and guaranties are included for the fixed period specified in the customer agreement. This period is typically 10 years, which may be extended at the option of the parties for additional years.

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 5 to 8 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.

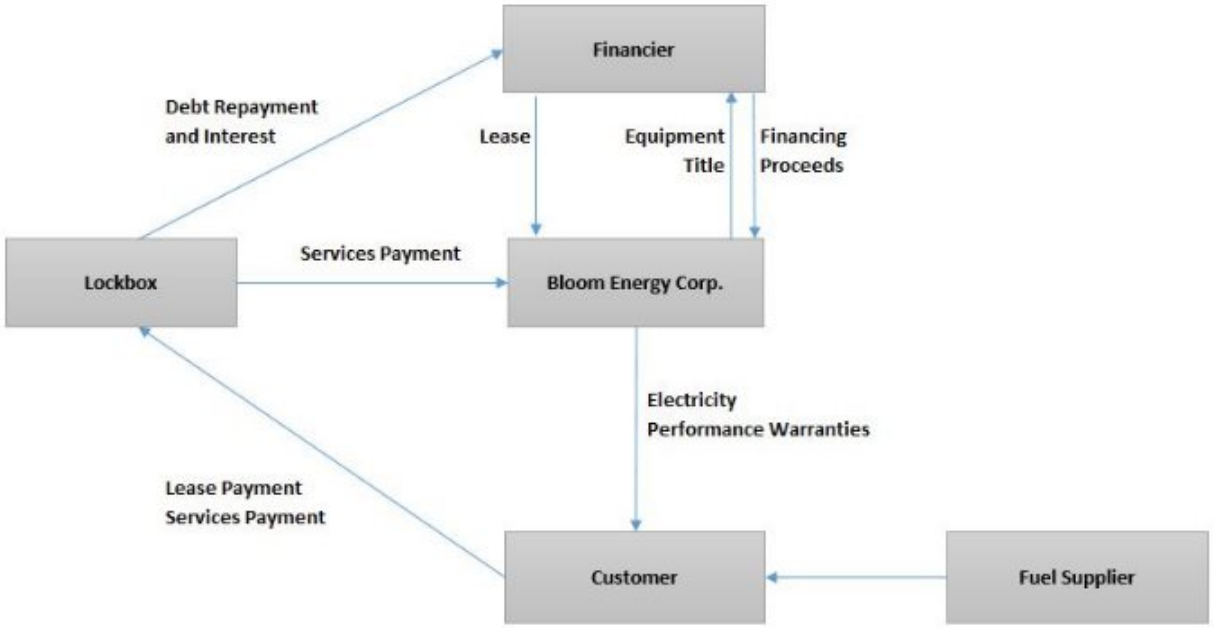
The Financing Agreement provides for the installation of our Energy Servers and includes a standard one-year warranty, to the financier, which includes the performance guaranties described below, with the warranty offered on an annually renewing basis at the discretion of, and to, the customer. The customer 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 December 31, 2019, 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 $4.8 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



In a Managed Services financing, 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 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 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.

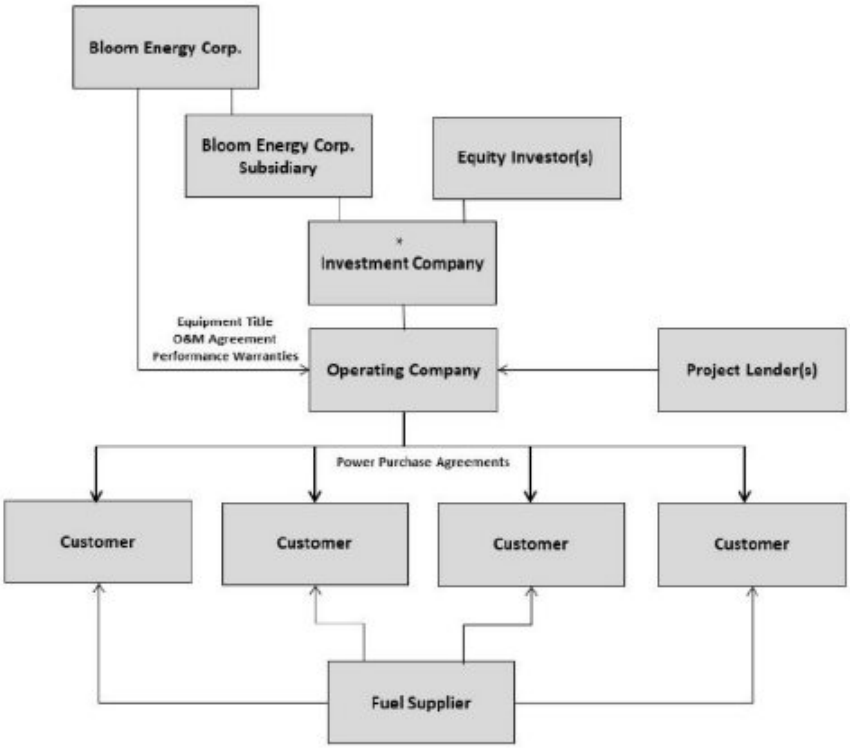
The fixed capacity payments made by the customer under the Managed Services Agreement are recognized as electricity revenue when billed and applied toward our obligation to pay the financing obligation under the master lease. Our Managed Services financings have historically shifted customer credit risk 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 December 31, 2019, 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 88%.

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.

In each Power Purchase Agreement, 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 Power Purchase Agreement, 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 Item 1*, Financial Statements*.

In our Power Purchase Agreement 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 Power Purchase Agreement 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 December 31, 2019, 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 Power Purchase Agreement projects was capped at an aggregate total of approximately $75.4 million (including payments both for low output and for low efficiency) and our aggregate remaining potential liability under this cap was approximately $59.8 million.

Obligations to Operating Companies

In addition to our obligations to the end customers, our Power Purchase Agreement 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 the 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 offtake 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 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 consolidated balance sheet. We recognize the amounts that are contractually payable to these investors in each period as distributions to noncontrolling interests in our consolidated statements of convertible redeemable preferred stock, redeemable noncontrolling interest, stockholders' deficit and noncontrolling interest. Our consolidated statements of cash flows reflect cash received from these investors as proceeds from investments by noncontrolling interests in subsidiaries. Our 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 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 Power Purchase Agreement Programs, see Note 13, *Power Purchase Agreement Programs*, in 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 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 of America, including in India and Japan. 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 of the U.S. as 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 the Preferred Distributor Agreement by 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 the Bloom 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 Bloom 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 March 31, 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 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 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 Months Ended March 31, 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 March 31,		Change	
	2020	2019	Amount	%
Product accepted during the period (in 100 kilowatt systems)	256	235	21	8.9%

Product accepted increased by approximately 21 systems, or 8.9%, for the three months ended March 31, 2020 compared to the three months ended March 31, 2019. Acceptance volume increased as we installed more systems from backlog as demand increased for our Bloom Energy servers, in addition to enhancing our ability and capacity to install more energy servers with our installation team.

As discussed in the Purchase and Lease Programs above, our customers have several purchase options for our Energy Servers. The portion of acceptances attributable to each purchase option in the three months ended March 31, 2020 and 2019 was as follows:

	Three Months Ended March 31,	
	2020	2019
Direct Purchase (including Third Party PPAs and International Channels)	98%	95%
Managed Services	2%	5%
	100%	100%

As discussed in the Purchase and Lease Programs 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 March 31,	
	2020	2019
Direct Purchase (including Third Party PPAs and International Channels)	85%	81%
Traditional Lease	1%	1%
Managed Services	7%	6%
Bloom Electrons	7%	12%
	100%	100%

Billings Related to Our Products

	Three Months Ended March 31,		Change	
	2020	2019	Amount	%
	(dollars in thousands)			
Billings for product accepted in the period	$ 111,771	$ 106,729	$ 5,042	4.7%
Billings for installation on product accepted in the period	14,611	14,463	148	1.0%
Billings for annual maintenance services agreements	20,219	17,620	2,599	14.8%

Billings for product accepted increased by approximately $5.0 million, or 4.7%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. The increase was primarily driven by the increase in product accepted. Product accepted increased by approximately 21 systems, or 8.9%, for the three months ended March 31, 2020 compared to the three months ended March 31, 2019. Billings for installation on product accepted increased $0.1 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Although product acceptances in the period increased 8.9%, billings for installation on product accepted increased 1.0% due to the mix in installation billings driven by site complexity, site size, customer financing option, personalized applications and customer option to complete the installation of our Energy Servers themselves. Billings for annual maintenance service agreements increased $2.6 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was driven primarily by the increase in our installed base.

Costs Related to Our Products

	Three Months Ended March 31,		Change	
	2020	2019	Amount	%
Product costs of product accepted in the period	$2,514/kW	$3,206/kW	$(692)/kW	(21.6)%
Period costs of manufacturing related expenses not included in product costs (in thousands)	$6,354	$6,937	$(583)	(8.4)%
Installation costs on product accepted in the period	$784/kW	$676/kW	$108/kW	16.0 %

Product costs of product accepted decreased by approximately $692 per kilowatt, or 21.6%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 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 decreased by approximately $0.6 million, or 8.4%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Our period costs of manufacturing related expenses decreased primarily as a result of higher absorption of fixed manufacturing costs into product costs due to a larger volume of builds through our factory tied to our acceptance growth, which resulted in higher factory utilization.

Installation costs on product accepted increased by approximately $108 per kilowatt, or 16.0%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 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, 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 months ended March 31, 2020 and 2019 is presented below.

Comparison of the Three Months Ended March 31, 2020 and 2019

Revenue

	Three Months Ended March 31,		Change	
	2020	2019 As Restated	Amount	%
		(dollars in thousands)		
Product	$ 99,559	$ 90,926	$ 8,633	9.5 %
Installation	16,618	12,219	4,399	36.0 %
Service	25,147	23,467	1,680	7.2 %
Electricity	15,375	20,389	(5,014)	(24.6)%
Total revenue	$ 156,699	$ 147,001	$ 9,698	6.6 %

Total Revenue

Total revenue increased by approximately $9.7 million, or 6.6%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was driven primarily by the increase in product acceptances of approximately 21 systems, or 8.9%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, offset partially by the decrease in electricity revenue which was a result of the decommissioning and deconsolidation of the existing Energy Servers during the PPA II upgrade of Energy Servers. Electricity revenue is driven from our former Bloom Electrons program, which included PPA II. When these PPAs were decommissioned, we no longer recognized electricity revenue for them.

Product Revenue

Product revenue increased by approximately $8.6 million, or 9.5%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was driven by the increase in product acceptances of approximately 21 systems, or 8.9%, for the three months ended March 31, 2020.

Installation Revenue

Installation revenue increased by approximately $4.4 million, or 36.0%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was driven by the increase in product acceptances of approximately 21 systems, or 8.9%, for the three months ended March 31, 2020 and due to the change in mix of installations driven by international sales, where our partners perform the installation, as well as site complexity, site size, customer financing option, and customer option to complete the installation of our Energy Servers themselves.

Service Revenue

Service revenue increased by approximately $1.7 million, or 7.2% for the three months ended March 31, 2020, as compared to the three months ended March 31, 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 $5.0 million, or 24.6%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, due to a reduction in electricity revenues resulting from the decommissioning and deconsolidation of the existing Energy Servers during the PPA II upgrade of Energy Servers. Electricity revenue is driven from our former Bloom Electrons program, which included PPA II, as well as from our Managed Services agreements. When PPAs are decommissioned, we no longer recognize electricity revenue for them.

Cost of Revenue

	Three Months Ended March 31,		Change	
	2020	2019 As Restated	Amount	%
		(dollars in thousands)		
Cost of revenue:				
Product	$ 72,489	$ 88,772	$ (16,283)	(18.3)%
Installation	20,779	15,760	5,019	31.8 %
Service	30,970	27,921	3,049	10.9 %
Electricity	12,530	12,984	(454)	(3.5)%
Total cost of revenue	$ 136,768	$ 145,437	$ (8,669)	(6.0)%

Total Cost of Revenue

Total cost of revenue decreased by approximately $8.7 million, or 6.0%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of total cost of revenue, stock-based compensation decreased approximately $12.8 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Total cost of revenue, excluding stock-based compensation, increased approximately $4.1 million, or 3.3%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019 driven by the increase in product acceptances of approximately 21 systems, and due to the increase in service cost of revenue from an increased installed base.

Cost of Product Revenue

Cost of product revenue decreased by approximately $16.3 million, or 18.3%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of cost of product revenue, stock-based compensation decreased approximately $11.9 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Cost of product revenue, excluding stock-based compensation, decreased approximately $4.4 million, or 5.9%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019 despite an 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 $5.0 million, or 31.8%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, primarily due to the increase in product acceptances of approximately 21 systems, or 8.9%, for the three months ended March 31, 2020 and due to the change in mix of installations driven by site complexity, size, location of gas, and customer option to complete the installation of our Energy Servers themselves.

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Cost of Service Revenue

Cost of service revenue increased by approximately $3.0 million, or 10.9%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 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 $0.5 million, or 3.5%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, mainly due to the decommissioning and deconsolidation of Energy Servers associated with the PPA II upgrade of Energy Servers in 2019 , offset by the increase in MSA acceptances which result in costs of electricity revenue recognized over the period of the related agreement.

Gross Profit (Loss)

	Three Months Ended March 31,		
	2020	2019 As Restated	Change
		(dollars in thousands)	
Gross profit:			
Product	$ 27,070	$ 2,154	$ 24,916
Installation	(4,161)	(3,541)	(620)
Service	(5,823)	(4,454)	(1,369)
Electricity	2,845	7,405	(4,560)
Total gross profit	$ 19,931	$ 1,564	$ 18,367
Gross margin:			
Product	27 %	2 %	
Installation	(25)%	(29)%	
Service	(23)%	(19)%	
Electricity	19 %	36 %	
Total gross margin	13 %	1 %	

Total Gross Profit

Gross profit improved $18.4 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of total cost of revenue, stock-based compensation decreased approximately $12.8 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Total gross profit, excluding stock-based compensation, increased approximately $5.6 million, or 28.0%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019 due to the increase in product acceptances and lower product cost driven by ongoing cost reduction activities.

Product Gross Profit

Product gross profit increased $24.9 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Excluding stock-based compensation, product gross profit increased $13.0 million, or 76.3% in the three months ended March 31, 2020, as compared to the three months ended March 31, 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 decreased $0.6 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Excluding stock-based compensation, install gross loss increased $1.7 million, or 103.6% in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019 driven by the increase in acceptances.

Service Gross Loss

Service gross loss increased $1.4 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 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

Electricity gross profit decreased $4.6 million, or 61.6% in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, mainly due to the decommissioning of Energy Servers associated with the PPA II upgrade in 2019.

Operating Expenses

	Three Months Ended March 31,		Change	
	2020	2019 As Restated	Amount	%
		(dollars in thousands)		
Research and development	$ 23,279	$ 28,859	$ (5,580)	(19.3)%
Sales and marketing	13,949	20,373	(6,424)	(31.5)%
General and administrative	29,098	39,074	(9,976)	(25.5)%
Total operating expenses	$ 66,326	$ 88,306	$ (21,980)	(24.9)%

Total Operating Expenses

Total operating expenses decreased $22.0 million, or 24.9%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of total operating expenses, stock-based compensation expenses decreased approximately $32.0 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. The decrease in stock-based compensation expense is 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 will complete their vesting in July of 2020, and the stock-based compensation charge associated with these RSUs decreases quarter-over-quarter until the final vesting date. In addition to the one-time grant, the stock-based compensation includes some previously granted RSUs with vesting beginning upon the completion of our IPO. Total operating expenses, excluding stock-based compensation, increased approximately $10.0 million, or 25.8%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was primarily due to compensation related expenses associated with hiring new employees, investments for next generation servers and customer personalized application technology development, expenses related to our demand generation functions and expenses related to our public company readiness. The increase also includes one-time expenses associated with restatement related expenses.

Research and Development

Research and development expenses decreased by approximately $5.6 million, or 19.3%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of research and development expenses, stock-based compensation expenses decreased by approximately $8.1 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Total research and development expenses, excluding stock-based compensation, increased by approximately $2.6 million, or 17.5%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was primarily due to compensation-related expenses for hiring new employees and investments made for our next generation technology development, sustaining engineering projects for the current Energy Server platform, and investments made for customer personalized applications, such as microgrid and storage solutions, and new fuel solutions utilizing biogas.

Sales and Marketing

Sales and marketing expenses decreased by approximately $6.4 million, or 31.5%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of sales and marketing expenses, stock-based compensation expenses decreased by approximately $7.6 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Total sales and marketing expenses, excluding stock-based compensation, increased by approximately $1.2 million, or 13.5%, for the three months ended March 31, 2020, as compared to the three months ended March 31, 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 $10.0 million, or 25.5%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Included as a component of general and administrative expenses, stock-based compensation expenses decreased by approximately $16.2 million for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Total general and administrative expenses, excluding stock-based compensation, increased by approximately $6.3 million, or 40.9% for the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. The increase in general and administrative expenses was mainly due to increased personnel costs and fees for restatement related expenses.

Stock-Based Compensation

	Three Months Ended March 31,		Change	
	2020	2019 As Restated	Amount	%
		(dollars in thousands)		
Cost of revenue	$ 5,507	$ 18,312	$ (12,805)	(69.9)%
Research and development	6,096	14,230	(8,134)	(57.2)%
Sales and marketing	3,890	11,512	(7,622)	(66.2)%
General and administrative	7,526	23,768	(16,242)	(68.3)%
Total stock-based compensation	$ 23,019	$ 67,822	$ (44,803)	(66.1)%

Total stock-based compensation decreased $44.8 million, or 66.1%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. Of the $23.0 million in stock-based compensation for the three months ended March 31, 2020, approximately $6.7 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 March 31,		Change
	2020	2019 As Restated	
		(in thousands)	
Interest income	$ 819	$ 1,885	$ (1,066)
Interest expense	(20,754)	(21,800)	1,046
Interest expense, related parties	(1,366)	(1,612)	246
Other income (expense), net	(8)	265	(273)
Loss on extinguishment of debt	(14,098)	—	(14,098)
Gain (loss) on revaluation of embedded derivatives	284	(540)	824
Total	$ (35,123)	$ (21,802)	$ (13,321)

Total Other Expense

Total other expense increased $13.3 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was primarily due to the loss on extinguishment of debt of $14.1 million.

Interest Income

Interest income decreased $1.1 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This decrease was primarily due to the decrease in cash balances.

Interest Expense

Interest expense decreased $1.0 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This decrease was primarily due to lower amortization expense of our debt derivatives 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 $0.2 million the three months ended March 31, 2020, as compared to the three months ended March 31, 2019 due to the conversion of $40.1 million of our 8% Notes from related parties into equity at the time of the IPO.

Other Income (Expense), net

Other income (expense), net increased $0.3 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019, due to changes in foreign currency translation expense.

Loss on Extinguishment of Debt

Loss on extinguishment of debt of $14.1 million was recorded in the three months ended March 31, 2020. There was no debt extinguishment in the three months ended March 31, 2019.

Gain (Loss) on Revaluation of Embedded Derivatives

Gain on revaluation of embedded derivatives increased $0.8 million in the three months ended March 31, 2020, as compared to the three months ended March 31, 2019. This increase was primarily due to the change in fair value of our sales contracts 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 March 31,		Change	
	2020	2019	Amount	%
		(dollars in thousands)		
Income tax provision	$ 124	$ 208	$ (84)	(40.4)%

Income tax provision decreased in the three months ended March 31, 2020, as compared to the three months ended March 31, 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 March 31,		Change	
	2020	2019	Amount	%
		(dollars in thousands)		
Less: net loss attributable to noncontrolling interests and redeemable noncontrolling interests	$ (5,693)	$ (3,832)	$ (1,861)	(48.6)%

Total loss attributable to noncontrolling interests increased $1.9 million, or 48.6%, in the three months ended March 31, 2020, as compared to the three months ended March 31, 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 March 31, 2020, we had an accumulated deficit of approximately $3.0 billion. We have financed our operations, including the costs of acquisition and installation of 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 March 31, 2020, we had $443.4 million of total outstanding recourse debt, $237.3 million of non-recourse debt and $28.5 million of other long-term liabilities. See Note 7, *Outstanding Loans and Security Agreements*, in Item 1, *Financial Statements* for a complete description of our outstanding debt. As of March 31, 2020 and December 31, 2019, we had cash and cash equivalents of $180.3 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 and 10% Constellation Note modification to December 2021, 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 for at least the next 12 months from the date of issuance of this Quarterly Report on Form 10-Q. As of March 31, 2020, the current portion of our total debt is $26.2 million.

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

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 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):

	Three Months Ended March 31,	
	2020	2019
		As Restated
Net cash provided by (used in):		
Operating activities	$ (27,948)	$ (9,845)
Investing activities	(12,360)	91,706
Financing activities	16,839	7,588

Net cash provided by (used in) our variable interest entities (the PPA Entities) which are incorporated into the consolidated statements of cash flows for the three months ended March 31, 2020 and 2019 is as follows (in thousands):

	Three Months Ended March 31,	
	2020	2019
PPA Entities [1]		
Net cash provided by PPA operating activities	$ 10,258	$ 15,490
Net cash used in PPA financing activities	(8,957)	(9,595)

[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 by operating activities for the three months ended March 31, 2020 was $27.9 million and was primarily the result of net cash loss of $26.5 million plus the net increase in working capital of $1.5 million. Net cash loss is primarily comprised of a net loss of $81.6 million, adjusted for non-cash benefit items including: (i) depreciation and amortization of $13.0 million; (ii) a loss on revaluation of derivative contracts of $0.2 million; (iii) stock-based compensation of $23.0 million; (iv) net loss on extinguishment of debt of $14.1 million; and (v) amortization of debt issuance cost of $4.8 million. Net cash used by changes in working capital consisted primarily of increases in: (i) deferred cost of revenue of $19.5 million; and (ii) other long-term assets of $2.9 million. These uses of cash from working capital were mostly offset by decreases in: (i) accounts receivable of $2.1 million; (ii) inventories of $2.1 million; (iii) customer financing receivable of $1.2 million; (iv) prepaid expenses and other current assets of $3.1 million; plus increases in: (vi) accounts payable of $4.8 million; accrued warranty of $0.7; (vii) accrued expenses and other current liabilities of $0.5 million; (viii) deferred revenue and customer deposits of $5.3 million, and (ix) other long-term liabilities of $1.2 million.

Net cash used in operating activities for the three months ended March 31, 2019 was $9.8 million and was the result of net cash loss of $21.4 million partially offset by the net increase in working capital of $11.6 million. Net cash loss is primarily comprised of a net loss of $108.8 million, adjusted for non-cash benefit items including: (i) depreciation and amortization of approximately $14.2 million; (ii) stock-based compensation of $67.8 million; and (iii) amortization of debt issuance cost of $5.2 million. Net cash provided from changes in working capital consisted primarily of decreases in: (i) accounts receivable of $4.1 million; (ii) inventory of $11.1 million; and (iii) customer financing receivable and other of $1.3 million; (iv) prepaid expenses and other current assets of $6.6 million; plus an increase in: (v) deferred revenue and customer deposits of $1.2 million; and (vi) other long term liabilities of $4.2 million. These sources of cash from working capital were partially offset by increases in: (i) deferred cost of revenue of $11.1 million; and (ii) other long-term assets of $0.4 million; plus decreases in: (iv) accounts payable of $2.5 million; (v) accrued warranty of $2.7 million; and (vi) accrued expenses and other current liabilities of $0.4 million.

Investing Activities

Net cash used by investing activities in the three March 31, 2020 was $12.4 million entirely related to the purchase of long-lived assets.

Net cash provided by investing activities in the three March 31, 2019 was $91.7 million which was primarily the result of net proceeds from maturities of marketable securities of $104.5 million, partially offset by $12.8 million used for the purchase of long-lived assets.

Financing Activities

Net cash provided by financing activities in the three March 31, 2020 was $16.8 million which included borrowings from issuance of debt to related parties of $30.0 million and proceeds from issuance of common stock of $4.8 million. This was partially offset by distributions paid to our PPA Equity Investors of $4.3 million, repayments of debt of $11.2 million, and repayment of financing obligation of $2.5 million.

Net cash provided by financing activities in the three March 31, 2019 was $7.6 million and resulted primarily from proceeds from the issuance of common stock of $7.5 million and the net proceeds from financing obligations of $9.1 million, partially offset by distributions paid to our PPA Equity Investors of $3.2 million, and repayments of long-term debt of $5.8 million.

Outstanding Loans and Security Agreements

The following is a summary of our debt as of March 31, 2020 (in thousands):

	Unpaid Principal Balance	Net Carrying Value			Unused Borrowing Capacity
		Current	Long-Term	Total	
LIBOR + 4% term loan due November 2020	$ 1,143	$ 1,117	$ —	$ 1,117	$ —
10% convertible promissory Constellation note due December 2021	36,940	—	40,709	40,709	—
10% convertible promissory notes due December 2021 *	319,299	—	338,944	338,944	—
10% notes due July 2024	86,000	14,000	69,230	83,230	—
Total recourse debt	443,382	15,117	448,883	464,000	—
7.5% term loan due September 2028	36,232	2,439	30,597	33,036	—
6.07% senior secured notes due March 2030	80,255	3,330	75,989	79,319	—
LIBOR + 2.5% term loan due December 2021	120,818	5,340	114,306	119,646	—
Letters of Credit due December 2021	—	—	—	—	1,220
Total non-recourse debt	237,305	11,109	220,892	232,001	1,220
Total debt	$ 680,687	$ 26,226	$ 669,775	$ 696,001	$ 1,220

* Note that $70.0 million of this amount was due on or before September 1, 2020, but as it was repaid on May 1, 2020 with the proceeds from long-term debt, as described below, this amount has also been classified as long-term in the condensed consolidated balance sheet as of March 31, 2020. See Note 17, *Subsequent Events* for additional information.

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 March 31, 2020 and December 31, 2019.

Recourse Debt Facilities

LIBOR + 4% Term Loan due November 2020 - In May 2013, we entered into a $5.0 million credit agreement and a $12.0 million financing agreement to help fund the building of a new facility in Newark, Delaware. The $5.0 million credit agreement expired in December 2016. The $12.0 million financing agreement has a term of 90 months, payable monthly at a variable rate equal to one month LIBOR plus the applicable margin. The weighted average interest rate as of March 31, 2020 and December 31, 2019 was 5.7% and 6.3%, respectively. The loan requires monthly payments and is secured by the manufacturing facility. In addition, the credit agreements also include a cross-default provision which provides that the remaining balance of borrowings under the agreements will be due and payable immediately if a lien is placed on the Newark facility in the event we default on any indebtedness in excess of $100,000 individually or $300,000 in the aggregate. Under the terms of these credit agreements, we are required to comply with various restrictive covenants. As of March 31, 2020 and December 31, 2019, the unpaid principal balance of debt outstanding was $1.1 million and $1.6 million, respectively.

10% Constellation Convertible Promissory Note due 2021 (originally 8% Convertible Promissory Notes) - Between December 2014 and June 2016, we issued $193.2 million of three-year convertible promissory notes ("8% Notes") to certain investors. The 8% Notes had a fixed interest rate of 8% compounded monthly, due at maturity or at the election of the investor with accrued interest due in December of each year.

On January 18, 2018, amendments were finalized to extend the maturity dates for all the 8% Notes to December 2019. At the same time, the portion of the notes that was held by Constellation NewEnergy, Inc. ("Constellation") was extended to December 2020 and the interest rate decreased from 8% to 5% ("5% Notes").

Investors held the right to convert the unpaid principal and accrued interest of both the 8% Notes and 5% Notes to Series G convertible preferred stock at any time at the price of $38.64 per share. In July 2018, upon our IPO, the $221.6 million of principal and accrued interest of outstanding 5% Notes automatically converted into additional paid-in capital, the conversion of which included all the related-party noteholders. The 5% Notes converted to shares of Series G convertible preferred stock and, concurrently, each such share of Series G convertible preferred stock converted automatically into one share of Class B common stock. Upon our IPO, conversions of 5,734,440 shares of

Class B common stock were issued and the 5% Notes were retired. Constellation, the holder of the 5% Notes ("5% Constellation Note"), has not elected to convert as of March 31, 2020.

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"). Additionally, the debt is convertible at the option of Constellation into common stock at any time through the maturity date. 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. If we fail to meet certain conditions under the Constellation Note Modification Agreement, including obtaining stockholder approval prior to September 1, 2020, the interest rate will be increased to 18% per year. At any time, we may redeem the 10% Constellation Note, at our option, at a redemption price equal to the principal amount of the 10% Constellation Note outstanding, plus a certain percentage, determined based on the time of redemption of accrued and unpaid interest as of the redemption date, plus the aggregate sum of all discounted remaining scheduled interest payments. The discount rate that shall be applied to all remaining scheduled interest payments shall be determined based on the Treasury Rate in effect as of the redemption date, plus 50 basis points, multiplied by the applicable percentage in effect as of the redemption date.

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*, 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, 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 has been recorded, as of March 31, 2020, as a loss on extinguishment of debt in the Condensed Consolidated Statement of Operations.

The new carrying amount of the 10% Constellation Note of $40.7 million, which consists of the $36.9 million principal amount of the 10% Constellation Note and a $3.8 million deemed premium paid for the 10% Constellation Note, was classified as non-current as of March 31, 2020. Furthermore, the $3.8 million deemed premium shall be amortized over the term of the 10% Constellation Note using the effective interest method.

10% Convertible Promissory Notes due December 2021 (Originally 5% Convertible Promissory Notes) - Between December 2015 and September 2016, we issued $260.0 million convertible promissory notes due December 2020, ("5% Convertible Notes") to certain investors (each a "Noteholder" and collectively, the "Noteholders"). The 5% Convertible Notes bore a 5.0% fixed interest rate, payable monthly either in cash or in kind, at our election. We amended the terms of the 5% Convertible Notes in June 2017 to increase the interest rate from 5% to 6% and to reduce the collateral securing the notes ("6% Convertible Notes"). In November 2019, one Noteholder exchanged a portion of their 6% Convertible Notes at the conversion price of $11.25 per share into 616,302 shares of common stock.

The 6% Convertible Notes contained a conversion feature in which the strike price was determined by applying a specified discount to the price of our stock upon a qualified initial public offering. Until the occurrence of a qualified public offering, the number of shares required to settle this conversion feature could not be determined. Accordingly, this conversion feature was bifurcated from the 6% Convertible Notes and accounted for as a derivative liability in accordance with ASC 815, Derivatives and Hedging. Since the amendments to the 6% Convertible Notes were accounted for as a modification of terms, the derivative liability remained as a separate financial instrument from the 6% Convertible Notes that was separately accounted for with changes in fair value being recognized in earnings. Upon our initial public offering in July 2018, the conversion terms became fixed and met all of the requirements for equity classification. Accordingly, we reclassified the conversion feature from a derivative liability to additional paid in capital. The fair value of the embedded derivative was $178.0 million upon classification.

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 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 would

be released to support the collateral required under the 10.25% Senior Secured Notes. In addition, 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 (i) 100% of the principal amount of the 10% Convertible Notes, plus (ii) accrued and unpaid interest, plus (iii) a certain percentage, determined based on the time of redemption of aggregate sum of all discounted remaining scheduled interest payments. The discount rate to determine the present value decreases, creating a redemption penalty, if redemption occurs after October 21, 2020. The Amended Convertible Notes and the $30.0 million in New Convertible Notes are all reflected in the Amended and Restated Indenture between the Company and US Bank National Association dated April 20, 2020.

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, $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 $338.9 million, which consists of the $319.3 million principal of the10% Convertible Notes, a $21.4 million premium paid for the 10% Convertible Notes less $1.8 million debt issuance costs was classified as non-current as of March 31, 2020. Furthermore, the $21.4 million deemed premium shall be amortized over the term of the 10% Convertible Notes using the effective interest method.

10% Notes due July 2024 - In June 2017, we issued $100.0 million of senior secured notes ("10% Notes"). The 10% Notes mature in 2024 and bear a 10.0% fixed rate of interest and with principal amortization started July 2019, payable semi-annually. The 10% Notes have a continuing security interest in the cash flows payable to us as servicing, operations and maintenance fees and administrative fees from certain active power purchase agreements in our Bloom Electrons program. Under the terms of the indenture governing the notes, we are required to comply with various restrictive covenants including, among other things, to maintain certain financial ratios such as debt service coverage ratios, to incur additional debt, issue guarantees, incur liens, make loans or investments, make asset dispositions, issue or sell share capital of our subsidiaries and pay dividends, meet reporting requirements, including the preparation and delivery of audited consolidated financial statements, or maintain certain restrictions on investments and requirements in incurring new debt. In addition, we are required to maintain collateral which secures the 10% Notes based on debt ratio analyses. This minimum collateral test is not a negative covenant and does not result in a default if not met. However, the minimum debt service coverage ratio test does restrict our access to the excess cash escrowed in a collection account which would otherwise be released to us on a bi-annual basis after principal amortization and interest payment. The outstanding unpaid principal and accrued interest debt balance of the 10% Notes of $14.0 million and $14.0 million were classified as current as of March 31, 2020 and December 31, 2019, respectively and the outstanding unpaid principal and accrued interest debt balances of the 10% Notes of $69.2 million and $76.0 million were classified as non-current as of March 31, 2020 and December 31, 2019 respectively.

Non-recourse Debt Facilities

5.22% Senior Secured Term Notes - In March 2013, PPA Company II refinanced its existing debt by issuing 5.22% Senior Secured Notes due March 30, 2025. The total amount of the loan proceeds was $144.8 million, including $28.8 million to repay outstanding principal of existing debt, $21.7 million for debt service reserves and transaction costs and $94.3 million to fund the remaining system purchases. In June 2019, as part of the PPA II upgrade of Energy Servers, we paid off the outstanding debt and interest of these notes for the outstanding amount of $77.6 million.

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 March 31, 2020 and 2019, respectively, and which was included as part of long-term restricted cash in the consolidated balance sheets. The loan is secured by all assets of PPA IIIa.

LIBOR + 5.25% Term Loan due October 2020 - In September 2013, PPA IIIb entered into a credit agreement to help fund the purchase and installation of our Energy Servers. In accordance with that agreement, PPA IIIb issued floating rate debt based on LIBOR plus a margin of 5.2%, paid quarterly. The aggregate amount of the debt facility was $32.5 million. In December 2019, as part of the PPA IIIa upgrade of Energy Servers, we paid off the outstanding debt and interest of these notes for the outstanding amount of $24.2 million and expensed the balance of the related debt service reserve for all funded systems.

6.07% Senior Secured Notes due March 2025 - In July 2014, PPA IV issued senior secured notes amounting to $99.0 million to third parties to help fund the purchase and installation of our Energy Servers. The notes bear a fixed interest rate of 6.07% 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 $8.1 million as of March 31, 2020 and $8.0 million as of December 31, 2019, and which was included as part of long-term restricted cash in the consolidated balance sheets.

LIBOR + 2.5% Term Loan due December 2021 - 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 are a group of five financial institutions and the terms included commitments to a letter of credit ("LC") facility (see below). The loan was initially advanced as a construction loan during the development of the PPA V Project and converted into a term loan on February 28, 2017 (the “Term Conversion Date”). As part of the term loan’s conversion, the LC facility commitments were adjusted.

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 the 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 March 31, 2020 and 2019 was $5.0 million. The unused capacity as of March 31, 2020 and 2019 was and $1.2 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 March 31, 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, 2]	$ 443,382	$ 85,143	$ 322,239	$ 36,000	$ —
Non-recourse debt[3]	237,306	11,109	128,658	20,391	77,148
Operating leases	41,619	6,712	9,465	8,651	16,791
Service arrangements	2,914	1,343	1,571	—	—
Financing obligations	303,509	38,071	78,862	78,273	108,303
Natural gas fixed price forward contracts	7,316	4,489	2,827	—	—
Grant for Delaware facility	10,469	—	10,469	—	—
Interest rate swap	17,415	1,945	4,856	4,405	6,209
Supplier purchase commitments	2,324	1,225	1,099	—	—
Renewable energy credit obligations	1,109	761	348	—	—
Asset retirement obligations	500	500	—	—	—
Total	$ 1,067,863	$ 151,298	$ 560,394	$ 147,720	$ 208,451

[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] Note that $70.0 million of this amount was due on or before September 1, 2020, but as it was repaid on May 1, 2020 with the proceeds from long-term debt, as described below, this amount has also been classified as long-term in the condensed consolidated balance sheet as of March 31, 2020. See Note 17, *Subsequent Events* for additional information.

[3] 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 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 March 31, 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 three 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 Securities Exchange Act of 1934, as amended (Exchange Act), is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer (our principal executive officer) and Chief Financial Officer (our principal financial officer) as appropriate, to allow for timely decisions regarding required disclosure.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of March 31, 2020. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that as of March 31, 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 or third-party technical resources with accounting expertise on complex or non-routine transactions who will provide 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 March 31, 2020 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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 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 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 this 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 assist our customers in obtaining financing for our products, we have traditional lease programs with two leasing partners who have prequalified our product and provide financing for customers through various leasing arrangements. In addition to the traditional lease model, we also offer Power Purchase Agreement Programs, including Third-Party PPAs, in which financing the cost of the Energy Server is provided by an entity that owns the Energy Servers (an "Operating Company") and funded by a subsidiary investment entity (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 may impose "departing load," "standby," or other charges, including power factor charges, on our customers in connection with their acquisition 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 or 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.

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, have customer incumbency advantages, have access to and influence with local and state governments, and have 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 (Korea) 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.

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. Although we have been able to maintain some of our operations as an "essential business" in California and Delaware, notwithstanding government "shelter in place" orders, we have closed our headquarters building in Santa Clara

County, California, and directed employees - unless they are directly supporting essential manufacturing production operations, installation work or service and maintenance activities - to work from their homes. This has caused and may continue to cause disruptions in certain of our operations, including our research and development, sales and marketing activities.

We are experiencing COVID 19-related delays from certain vendors and suppliers, which, in turn, could cause delays in the manufacturing and installation of our Energy Servers. To date, we have been able to offset any issues with alternative suppliers although 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, some of our international suppliers have been disrupted by the COVID-19 pandemic and by governmental orders in response to the pandemic. These orders have had the effect of disrupting the supply chain on which we rely for certain parts critical to our manufacturing and maintenance capabilities, which impacts both our sale and installation of new products and our operations and maintenance of previously-sold Energy Servers. 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 customer's purchases of our Energy Servers. A majority of the installations we have planned in the United States in 2020 remain contingent on securing financing for our customers' use of our Energy Servers at their sites. 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 impacts our ability to deploy our Energy Servers and receive cash and recognize revenue. We believe the current environment may also increase the time to solidify new relationships which could impact the time required to achieve funding. We have already experienced one delayed closing due to a financier's inability to close in light of its own liquidity concerns, and we may experience more. Our ability to obtain financing for our Energy Servers 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 revenue and cash. 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 revenues and results of operations will be adversely affected. We have actively been working with new sources of capital that could finance projects.

Our installation and maintenance operations have also been 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. 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, our cash and our revenue.

We cannot predict with certainty at this time the full extent to which COVID-19 will impact our business, results and financial condition, which 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 installation sites even if permitted to do so, the disruption to the global economy and to our 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, 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 December 31, 2019, we had a total of 35 megawatts in total deployed early generation servers, including our first and second generation servers, out of our total installed base of 456 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 us 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, China, India, and the Republic of Korea (collectively, our "Asia Pacific region"), where 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, the California Self Generation Incentive Program ("SGIP") is a program administered by the California Public Utilities Commission ("CPUC") which provides incentives to investor-owned utility customers that install eligible distributed energy resources. In July 2016, the CPUC modified the SGIP to provide a smaller allocation of the incentives available to generating technologies such as our Energy Servers and a larger allocation to storage technologies. As modified, the SGIP will require all eligible power generation sources consuming natural gas to use a minimum 50% biogas to receive SGIP funds in 2019 and 100% in 2020. In addition, the CPUC provided a further limitation on the available allocation of funds that any one participant may claim under the SGIP. The SGIP has been extended until January 1, 2026. For example, our customer sites accepted benefiting from the SGIP represented approximately 3% and 4% of total sites accepted for the years ended December 31, 2019 and 2018, respectively.

Changes in federal, state, or local programs or the RPS in the Asia Pacific region 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 financing parties ("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, the EPA has asked us to show cause why it should not collect approximately $1.0 million in fines from us for the prior period, which we are contesting. Additionally, we paid a nominal fine to an agency in a different state 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. A citizen-antagonist continues to oppose the Delaware Project and seeks support from Delaware officials and others. In 2018, he unsuccessfully petitioned the Delaware Public Service Commission. Most recently, he unsuccessfully appealed a favorable Order of the Secretary of Delaware's Department of Natural Resources and Environmental Control to Delaware's Environmental Appeals Board (EAB), an administrative entity with authority to review the Secretary's Orders. The Secretary's Order at issue approved permits that enable the upgrade of the Delaware Project. As we expected, the EAB upheld the Secretary's Order as the appeal was without merit and raised issues that were outside the scope of the permits and beyond the jurisdiction of the EAB. The Appeal and the opposition to the Delaware Project are examples of potentially material risks associated with electric power regulation.

At the federal level, FERC has authority to regulate under various federal energy regulatory laws, wholesale sales of electric energy, capacity, and ancillary services, and the delivery of natural gas in interstate commerce. Also, several of 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 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.

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 March 31, 2020, we had an accumulated deficit of $3.0 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, 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 are an 'emerging growth company' and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors and may make it more difficult to compare our performance with other public 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 March 31, 2020, we and our subsidiaries had approximately $696.0 million of total consolidated indebtedness, of which an aggregate of $464.0 million represented indebtedness that is recourse to us, of which $15.1 million is classified as current and $448.9 million is classified as non-current. Of this $448.9 million debt, $69.2 million represented debt under our 10% Notes, $338.9 million represented debt under our 10% Convertible Notes, and $40.7 million represented debt under our 10% Constellation Note. In addition, our PPA Entities' outstanding indebtedness of $232.0 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% Constellation Note and 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 March 31, 2020, we and our subsidiaries have approximately $696.0 million of total consolidated indebtedness, including $26.2 million in short-term debt and $669.8 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 and 10% Constellation Note 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 March 31, 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 March 31, 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.

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.

We are an "emerging growth company" and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our Class A common stock less attractive to investors and may make it more difficult to compare our performance with other public companies.

We are an emerging growth company ("EGC") as defined in the U.S. legislation Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), and we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies that are not EGC, including not being required to comply with the auditor attestation

requirements of Section 404 of 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 nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We may take advantage of these exemptions for so long as we are an EGC, which could be until December 31, 2023, the last day of the fiscal year following the fifth anniversary of our IPO. We cannot predict if investors will find our Class A common stock less attractive because we rely on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock, and our stock price may be more volatile.

An EGC may elect to provide financial statements in conformance with the U.S. GAAP requirement for transition periods to comply with new or revised accounting standards. With our not making this election, Section 102(b)(2) of the JOBS Act allows us to delay our adoption of new or revised accounting standards until those standards apply to private companies. As a result, our financial statements may not be comparable to companies that comply with public company revised accounting standards effective dates.

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 90,283,024 shares of our Class A common stock and 34,867,666 shares of our Class B common stock outstanding as of March

31, 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 March 31, 2020, we had an aggregate of $319.3 million in convertible debt, our 10% Convertible Notes, under which the outstanding principal and interest may be converted, at the option of the holders, into an aggregate of 39,857,796 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 March 31, 2020, we had options and RSUs outstanding that, if fully exercised or settled, would result in the issuance of 8,853,089 shares of Class A common stock and 15,665,983 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 March 31, 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 March 31, 2020, an aggregate of 29,982,796 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 March 31, 2020, in CPPIB having approximately 41% 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				Filed herewith
4.2		Form of 10% Convertible Senior Secured Note due 2021				Filed herewith
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				Filed herewith

4.4		Form of Indenture for Senior Secured Notes due 2027				Filed herewith
4.5		Form of 10.25% Senior Secured Notes due 2027				Filed herewith
4.6		Form of Security Agreement for Senior Secured Notes due 2027				Filed herewith
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				Filed herewith
10.1		Convertible Note Purchase Agreement among the Registrant, Rye Creek, LLC, and the purchasers listed therein, dated as of March 31, 2020				Filed herewith
10.2		Support Agreement among KR Sridhar and the investors named therein, dated as of March 31, 2020				Filed herewith
10.3		Note Purchase Agreement among the Registrant, the guarantor named therein, and the purchasers listed therein, dated as of March 30, 2020				Filed herewith
10.4		Amendment Support Agreement by and among the Registrant and the investors named therein, dated as of March 31, 2020				Filed herewith
10.5		Offer Letter between the Company and Gregory Cameron, dated March 20, 2020	8-K	001-38598	10.1	4/2/2020
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:	May 11, 2020	By:	/s/ KR Sridhar
			KR Sridhar Founder, President, Chief Executive Officer and Director (Principal Executive Officer)
Date:	May 11, 2020	By:	/s/ Gregory Cameron
			Gregory Cameron Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)

Exhibit 4.1

BLOOM ENERGY CORPORATION

THE GUARANTORS PARTY HERETO,

as Guarantors

AND

U.S. BANK NATIONAL ASSOCIATION,

as Trustee and Collateral Agent

AMENDED AND RESTATED INDENTURE

Dated as of April 20, 2020

10.0% Convertible Senior Secured Notes due 2021

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AMENDED AND RESTATED INDENTURE dated as of April 20, 2020, among BLOOM ENERGY CORPORATION, INC., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01), the Guarantors (as defined herein) from time to time party hereto and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as trustee (the "**Trustee**," as more fully set forth in Section 1.01) and as collateral agent (in such capacity, the "**Collateral Agent**," as more fully set forth in Section 1.01).

W I T N E S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 10.0% Convertible Senior Secured Notes due 2021 (the "**Notes**"), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice, Form of Specified Repurchase Date Notice, Form of Change of Control Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company and the Guarantors, if any, covenant and agree with the Trustee and the Collateral Agent for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1.
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words "herein," "hereof," "hereunder" and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

"**2020 Financing Transaction**" means the 2020 Secured Notes and any other
Indebtedness the proceeds of which are used in whole or in part to repurchase, redeem or offer to repurchase or redeem any Notes, which Indebtedness will be secured by 2020 Transaction Collateral.

"**2020 Financing Transaction Date**" means, with respect to each 2020 Financing Transaction, the date on which such 2020 Financing Transaction has been consummated.

"**2020 Released Collection Account**" means, with respect to each 2020 Financing Transaction, the account to be opened at an account bank selected by the Company in which solely the proceeds of the applicable 2020 Released Servicing Payments in connection with such 2020 Financing Transaction, and any interest or other investment income earned on amounts in such account, shall be deposited (and any permitted account in replacement thereof).

"**2020 Released Servicing Agreements**" means, with respect to each 2020 Financing Transaction, all Existing Servicing Agreements identified by the Company in the certification to the Trustee referred to below that are to be excluded and released from the Collateral concurrently with such 2020 Financing Transaction in accordance with Section 17.03(c); *provided* that the Company shall certify to the Trustee that the ratio of (a) the aggregate cash flow payable to the Company pursuant to such 2020 Released Servicing Agreements as in effect as of the date hereof to (b) the aggregate cash flow payable to the Company pursuant to the Existing Servicing Agreements as in effect as of the date hereof, expressed as a percentage, does not exceed the applicable Release Percentage with respect to such 2020 Released Agreements.

"**2020 Released Servicing Payments**" means, with respect to each 2020 Financing Transaction, any and all cash flows payable as servicing, operations and maintenance, warranty or similar fees under the applicable 2020 Released Servicing Agreements on or after the applicable 2020 Financing Transaction Date (or such later date as provided in the documents governing the applicable 2020 Financing Transaction).

"**2020 Secured Notes**" means the Company's 10.25% Senior Secured Notes due 2027, to be issued pursuant to a Note Purchase Agreement, dated as of March 31, 2020, among the Company and the investors named therein, the first $70.0 million of which notes are issued under the indenture (the form of which is attached to such Note Purchase Agreement) within 60 days of the date hereof; *provided* that such indenture includes an accordion or reopener provision permitting at least $150.0 million of senior secured notes (including the initial $70.0 million) issued thereunder to be secured by the 2020 Transaction Collateral.

"**2020 Transaction Collateral**" means, with respect to each 2020 Financing Transaction: (a) the applicable 2020 Released Collection Account; (b) any and all money, cash, checks, funds, Financial Assets, Securities Account Investment Property or other property or assets on deposit in or credited to the applicable 2020 Released Collection Account; (c) the applicable 2020 Released Servicing Payments; (d) any and all of the contractual rights of the Company under the applicable 2020 Released Servicing Agreements, including the right to receive the 2020
Released Servicing Payments thereunder, including any and all Receivables; and (e) all proceeds of the foregoing; *provided that* (i) any of the funds released by the trustee or other paying agent, as applicable, from any 2020 Released Collection Account in accordance with the documents

governing the applicable 2020 Financing Transaction shall not constitute "2020 Transaction Collateral" and shall be directed by the

Company to an account subject to a Deposit Account Control Agreement in favor of the Collateral Agent and (ii) the documents governing the applicable 2020 Financing Transaction shall provide for the release of funds, free and clear of all Liens, from each 2020 Released Collection Account on terms no less favorable to the Company in any respect than the corresponding terms in the indenture governing the Revenue Notes (it being acknowledged and agreed that the provisions of the documents governing the 2020 Secured Notes providing for such release are on terms no less favorable to the Company in any respect than the corresponding terms in the indenture governing the Revenue Notes).

"**5% Convertible Notes**" means the Company's 5.0% Amended and Restated Subordinated Secured Convertible Promissory Note due 2020 (originally 8% Subordinated Convertible Promissory Notes due 2018), dated January 18, 2018.

"**Account**" means, with respect to a Person, any of such Person's now owned and hereafter acquired or arising "accounts", as defined in the UCC, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance, and "Accounts" means, with respect to any such Person, all of the foregoing.

"**Acquisition**" means (i) any consolidation or merger of the Company with or into any other corporation or other entity or person (but excluding any merger effected solely for the purpose of reincorporating into another state), or any other corporate reorganization (any of such transactions or series of such transactions, a "combination transaction"), in which the stockholders of the Company immediately prior to such combination transaction, own less than 50% of the voting power of the surviving or successor entity or its parent immediately after such combination transaction, (ii) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred (excluding any such transaction to the extent it does not also involve the transfer of the economic rights associated with a majority of the Common Stock on a fully-diluted basis) or (iii) any sale, lease, or other disposition of all or substantially all of the assets of the Company. Notwithstanding the foregoing, no transaction or series of related transactions principally for *bona fide* equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted, or a combination thereof, nor the transfer by any shareholder of shares of the Company's capital stock to any third party in a transaction or series of related transactions to which the Company is not a party, shall be deemed an Acquisition.

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 4.10 and Section 6.04, as applicable.

"**Additional Notes**" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 2.10 hereof, as part of the same series as the Notes issued as Initial Notes.

"**Additional Shares**" shall have the meaning specified in Section 14.04(a).

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified

Person. For the purposes of this definition, "control," when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Affiliate Note**" means each Physical Note, if any, issued to, and registered in the name of, any Affiliate of the Company and each Note issued in exchange of, or in substitution for, such Physical Note; *provided*, *however*, that a Note that is an Affiliate Note will cease to be an Affiliate Note at such time, if any, that (a) either (i) such Note is eligible for resale pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; (ii) such Note is sold or otherwise transferred pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer; (iii) such Note is sold or otherwise transferred pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Note ceases to constitute a "restricted security" (as defined in Rule 144); and (b) the Company has received such certificates or other documentation or evidence as the Company may reasonably require in order to establish that (x) the Holder or

beneficial owner of such Note is not, and was not at any time during the preceding three (3) months, an Affiliate of the Company; and (y) at least one of the conditions set forth in clause (a) above has been satisfied. For the avoidance of doubt, a PIK Note will be deemed to be an Affiliate Note if such PIK Note is issued in respect of PIK Interest on any Affiliate Note. The Trustee will have no obligation to determine or verify whether a Note is an Affiliate Note.

"**Affiliate Share**" means each share of Common Stock issued upon conversion of an Affiliate Note, and each other share of Common Stock issued in exchange thereof, or in substitution therefor; *provided*, *however*, that a share of Common Stock that is an Affiliate Share will cease to be an Affiliate Share at such time, if any, that (a) either (i) such share is eligible for resale pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice; (ii) such share is sold or otherwise transferred pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer; (iii) such share is sold or otherwise transferred pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such share ceases to constitute a "restricted security" (as defined in Rule 144); and (b) the Company has received such certificates or other documentation or evidence as the Company may reasonably require in order to establish that (x) the holder or beneficial owner of such share is not, and was not at any time during the preceding three (3) months, an Affiliate of the Company; and (y) at least one of the conditions set forth in clause (a) above has been satisfied. The Trustee will have no obligation to determine or verify whether any share of Common Stock is an Affiliate Share.

"**Applicable Percentage**" means, for any Redemption Date with respect to which the Applicable Premium is included in the redemption price, (i) 0%, if such Redemption Date occurs after the date hereof and on or prior to the six-month anniversary of the date hereof, (ii) 25%, if such Redemption Date occurs after the six-month anniversary of the date hereof and on or prior

to the nine-month anniversary of the date hereof, (iii) 50% if such Redemption Date occurs after the nine-month anniversary of the date hereof and on or prior to the 13-month anniversary of the date hereof, and (iv) 100% if such Redemption Date occurs at any time thereafter.

"**Applicable Premium**" means, for any Redemption Date with respect to which the Applicable Premium is included in the redemption price, an amount equal to:

(1) the present value, as of such Redemption Date, of all regularly scheduled interest payments due on such Note on each Interest Payment Date occurring after such Redemption Date and on or before the Maturity Date, such present value to be computed using a discount rate equal to the Treasury Rate as of such Optional Redemption Date plus fifty (50) basis points; provided, however, that, for these purposes, the amount of interest due on the Interest Payment Date immediately after such Optional Redemption Date will be deemed to be the following amount: (A) if such Optional Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, zero (and, for the avoidance of doubt, interest due on such Interest Payment Date will be paid in accordance with the proviso to Section 13.02(c)); and (B) in all other cases, the full amount of interest due on such Note on the Interest Payment Date immediately after such Optional Redemption Date, less an amount equal to the Stated Interest that has accrued on such Note from, and including, the Interest Payment Date immediately before such Redemption Date to, but excluding, such Optional Redemption Date; *multiplied by*

(2) the Applicable Percentage.

The Trustee shall have no duty to calculate or verify the calculation of the Applicable Premium.

"**Applicable Rate**" means 10.0% per year.

"**Available Eligible Assets**" shall have the meaning specified in Section 4.14.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "**Bankruptcy,**" as now and hereinafter in effect, or any successor statute.

"**Bankruptcy Law**" means the Bankruptcy Code and any other federal, state or foreign bankruptcy, insolvency, receivership or similar law.

"**Board of Directors**" means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

"**Board Resolution**" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

"**Book Value**" with respect to any asset or liability of a Person on any date shall mean the net value of such asset or liability that would be reflected on a balance sheet of such Person on such date prepared in accordance with GAAP, net of deductions and contra-asset and contra-liability accounts that would be properly reflected in accordance with GAAP.

"**Business Day**" means any day other than a Saturday, a Sunday or other day on which banking institutions in New York City or, with respect to any payment on a Note, the place of payment, are authorized or required by law, regulation or executive order to close or remain closed.

"**Calculation Period**" shall have the meaning specified in the definition of "Transaction Price."

"**Capital Lease Obligation**" means, with respect to any Person, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP; and, for the purposes of this Indenture, the amount of such obligations at any time shall be the capitalized amount thereof at such time determined in accordance with GAAP.

"**Capital Stock**" means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock, limited liability company interests or other equity interests issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

"**Cash Interest**" shall have the meaning specified in Section 2.03(c)(i).

"**Change of Control**" means (i) any combination transaction in which the stockholders of the Company immediately prior to such combination transaction, own less than 50% of the voting power of the surviving or successor entity or its parent immediately after such combination transaction, (ii) any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred,
(iii)any sale, lease, or other disposition of all or substantially all of the assets of the Company or
(iv)the adoption of a plan by the Company's shareholders relating to the Company's dissolution or liquidation in accordance with the Company's organizational documents. Notwithstanding the foregoing, no transaction or series of related transactions principally for *bona fide* equity financing purposes in which cash is received by the Company or indebtedness of the Company is cancelled or converted, or a combination thereof, nor the transfer by any shareholder of shares of the Company's capital stock to any third party in a transaction or series of related transactions to which the Company is not a party, shall be deemed a Change of Control.

"**Change of Control Company Notice**" shall have the meaning specified in Section 15.03(b).

"**Change of Control Conversion Obligation**" shall have the meaning specified in Section 14.01.

"**Change of Control Conversion Rate**" shall have the meaning specified in Section 14.01.

"**Change of Control Effective Date**" shall have the meaning specified in Section 14.01. 6

"**Change of Control Maximum Conversion Price**" means $1,000 divided by the Change of Control Maximum Conversion

Rate (taken out to eight decimal places).

"**Change of Control Maximum Conversion Rate**" shall have the meaning specified in Section 14.05.

"**Change of Control Redemption**" shall have the meaning specified in Section 13.03.

"**Change of Control Redemption Notice**," with respect to a Change of Control Redemption Right Event, shall mean the Company's notice to all Holders of Notes, the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) specifying whether the Company elects to make, or irrevocably elects not to make, a Change of Control Redemption in connection with such Change of Control Redemption Right Event. If the Company elects to make a Change of Control Redemption in connection with such Change of Control Redemption Right Event, such notice shall also state the Change of Control Redemption Price.

"**Change of Control Redemption Price**" means per $1,000 principal amount of Notes (i) in the event that the shares of Series G Preferred Stock remain outstanding following the Change of Control Redemption Right Event, a number of shares of a new series of preferred stock of the Company or the surviving company in such Change of Control Redemption Right Event, as applicable, equal to the then-applicable Change of Control Maximum Conversion Rate with terms identical to the terms of the Series G Preferred Stock (other than (a) the conversion rate for the conversion of such new series of preferred stock into Common Stock, which shall be initially on a one-to-one basis, and (b) liquidation preference, which shall be equal to the Change of Control Maximum Conversion Price for such Change of Control Redemption Right Event) and/or (ii) in the event that the shares of Series G Preferred Stock are converted into consideration consisting of cash, securities or property in connection with such Change of Control Redemption Right Event, the same amount and mix of such consideration issuable upon conversion of such Series G Preferred Stock (for this purpose assuming that each $1,000 principal amount of the Notes converts into a number of shares of Series G Preferred Stock equal to $1,000 multiplied by the quotient equal to (x) the then-applicable Change of Control Maximum Conversion Rate (expressed as a fraction, the numerator of which is the number of shares of Common Stock issuable at such Change of Control Maximum Conversion Rate and denominator of which is $1,000 in principal amount of Notes) divided by (y) the then-applicable number of shares of Common Stock issuable upon conversion of each share of Series G Preferred Stock), as determined by the Company in a good faith and commercially reasonable manner.

"**Change of Control Redemption Right Event**" means the occurrence or effectiveness prior to the Qualified IPO of a Change of Control that constitutes a *bona fide* business
transaction to which the Company is a party involving an Acquisition that is not effected for the principal purpose of raising capital or causing a change in the Company's capital structure.

"**Change of Control Repurchase Date**" shall have the meaning specified in Section 15.03(a).

"**Change of Control Repurchase Expiration Time**" shall have the meaning specified in Section 15.07(a)(i).

"**Change of Control Repurchase Notice**" shall have the meaning specified in Section 15.07(a)(i).

"**Change of Control Repurchase Price**" shall have the meaning specified in Section 15.03(a).

"**Clause A Distribution**" shall have the meaning specified in Section 14.05(c). "**Clause B Distribution**" shall have the meaning specified in Section 14.05(c). "**Clause C Distribution**" shall have the meaning specified in Section 14.05(c). "**close of business**" means 5:00 p.m. (New York City time).

"**Collateral**" has the meaning ascribed to such term in the Security Documents.

"**Collateral Agent**" means U.S. Bank National Association in its capacity as collateral agent under the Security Documents, together with its successors in such capacity.

"**Collateral Value**", as of a date, means the sum, without duplication, as reasonably determined by the Company in a good faith manner, of (i) the Book Value of the Eligible Assets owned by the Company (excluding the equity interests of Pledged Foreign Subsidiaries and Guarantors) that secure the Notes pursuant to a perfected (under U.S. law) first priority Lien for the benefit of the Holders, (ii) the Book Value of Eligible Assets owned by Guarantors (excluding the equity interests of Pledged Foreign Subsidiaries and other Guarantors) that secure the Notes pursuant to a perfected first priority Lien for the benefit of the Holders, (iii) 65% of the Book Value of the assets of the Pledged Foreign Subsidiaries, net of the liabilities of the Pledged Foreign Subsidiaries (provided that there shall be excluded from such calculation any Pledged Foreign Subsidiary with a net Book Value on such date that is less than zero) and (iv) the deemed Book Value (determined as hereinafter provided) of the portion of Eligible Assets consisting of Intellectual Property owned by the Company or any Subsidiary that secure the Notes pursuant to a perfected (under U.S. law) first priority Lien for the benefit of the Holders (subject to any Intercreditor Agreement in respect thereof entered into in compliance with the Indenture Documents). For purposes of the foregoing, the Book Value of Eligible Assets consisting of Intellectual Property owned by the Company on the Issue Date shall be deemed to be $200 million. After the Issue Date, the deemed Book Value of assets consisting of Intellectual Property owned by the Company or any Subsidiary shall be, as reasonably determined by the Company in a good faith manner, deemed to be (a) decreased by the fair market value of any such Intellectual Property or rights in such Intellectual Property that are assigned, exclusively licensed, licensed outside the ordinary course of business, sold, conveyed or otherwise transferred to another party by the Company or such Subsidiary, as applicable, (b) increased by the fair market value of any such Intellectual Property or rights in such Intellectual Property that are assigned, exclusively licensed, licensed outside the ordinary course of business, sold, conveyed or otherwise transferred to the Company or such Subsidiary, as applicable, by the Company or a Subsidiary of the Company, as the case may be, and

(c) decreased by the Book Value of any Indebtedness secured by a Lien on Intellectual Property that is not for the benefit of the Holders in their capacities as such.

"**combination transaction**" shall have the meaning specified in the definition of Acquisition.

"**Commission**" means the U.S. Securities and Exchange Commission.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means, for all purposes of conversion, the Class B Common Stock, par value $0.0001 per share, of the Company; *provided, however*, that, when appropriate, Common Stock will include any class of common stock into which the Class B Common Stock is convertible, including, without limitation, for purposes of the definitions of Fundamental Change and Last Reported Sale Price, subject to Section 14.08.

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by one of its Officers and delivered to the Trustee.

"**Competitor**" means a competitor of the Company, as reasonably determined by the Company within five (5) Business Days after any request by a Holder for such determination to be made.

"**Conversion Agent**" shall have the meaning specified in Section 4.02. "**Conversion Date**" shall have the meaning specified

in Section 14.03(c). "**Conversion Obligation**" shall have the meaning specified in Section 14.02.

"**Conversion Price**" means as of any time, $1,000, divided by the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 14.02.

"**Corporate Trust Office**" means the designated office of the Trustee at which at any time its corporate trust business shall be administered for purposes of this Indenture, which office at the Issue Date is located at 633 West Fifth Street, Los Angeles, CA 90071,
Attn: B. Scarbrough (Bloom Energy Corporation Convertible Senior Secured Notes due 2021), or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

"**CPP Investments**" means The Canada Pension Plan Investment Board.

"**Custodian**" means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity appointed by the Company as custodian for the Depositary under this Indenture.

"**Default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Amounts**" means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Provisional Redemption Price, principal and interest) that are payable but are not punctually paid or duly provided for.

"**Delaware Property**" means the land, building and other improvements located at 200 Christina Parkway, Newark, Delaware 19713 and subject to that certain Ground Lease by and between 1743 Holdings, LLC, as landlord, and Diamond State Generation Partners, LLC, as tenant.

"**Delaware Property Mortgage**" shall mean a mortgage, deed of trust, assignment of leases and rents, leasehold mortgage or other security document granting a Lien on the Delaware Property to secure the Obligations. The Delaware Property Mortgage shall be in form and substance substantially the same as the mortgage on the Delaware Property on the date hereof, with such modifications as the Issuer reasonably determines are appropriate after consultation with beneficial owners of the Notes representing at least the Minimum Principal Amount. The Trustee shall have no obligation to review or approve the form or substance of the Delaware Property Mortgage.

"**Delaware Property Release Date**" means the first date on which the Delaware Property is not encumbered by a mortgage in favor of a party other than the Collateral Agent.

"**Deposit Account Control Agreement**" has the meaning specified in the Security Agreement.

"**Depositary**" means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Determination Date**" has the meaning set forth in the definition of "Permitted Investments."

"**Disputing Holders**" shall have the meaning specified in the definition of Transaction Price.

"**Distributed Property**" shall have the meaning specified in Section 14.05(c). "**DTC**" shall mean The Depository Trust Company, a New York corporation.

"**Effective Date**" means the first date on which shares of the Common Stock trade on the applicable exchange, in the applicable market or otherwise, regular way, reflecting the relevant share split or share combination, as applicable.

"**Eligible Assets**" means all assets of the Company and the Guarantors (whether currently owned or acquired after the date of this Indenture) excluding (a) property as to which Liens are outstanding on the Issue Date to holders of debt for borrowed money, capital lease obligations or purchase money indebtedness (other than (i) Silicon Valley Bank, including pursuant to the Loan and Security Agreement, dated as of March 30, 2012, by and between Silicon Valley Bank and Bloom Energy Corporation and (ii) Liens arising under the Security Documents) so long as such Liens are in effect, (b) any Capital Stock outstanding on the Issue Date and pledged to holders of debt for borrowed money, capital lease obligations or purchase money indebtedness (other than (i) Silicon Valley Bank, including pursuant to the Loan and Security Agreement, dated as of March 30, 2012, by and between Silicon Valley Bank and Bloom Energy Corporation and (ii)Liens arising under the Security Documents) so long as such Liens are in effect, (c) Capital Stock in PPA Companies, (d) any Capital Stock in any Foreign Subsidiary of the Company to the extent that the pledge of such Capital Stock would cause the amount of Capital Stock of such Foreign Subsidiary pledged to secure obligations of the Company to exceed 65% of the outstanding combined voting power of all classes of voting equity interests in such Foreign Subsidiary, (e) any Capital Stock in any Project Entities, (f) following the release of the security interest of the Collateral Agent therein pursuant to Section 17.04(a)(v), Intellectual Property and (g) Excluded Assets (as defined in the Security Agreement).

"**Equity Offering**" means a primary public or private offering of Capital Stock of the Company (excluding, for avoidance of doubt, a public offering registered on Form S-4 or Form S-8).

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Excluded Debt**" means (i) the Notes (other than any Additional Notes issued after the date hereof), (ii) Existing Noteholder Debt, (iii) with respect to any 2020 Financing Transaction debt facility with respect to which at least $70.0 million in aggregate principal amount of Indebtedness has been issued, the next $80.0 million in aggregate principal amount of Indebtedness issued under the accordion, incremental facility or reopener provision, if any, of such 2020 Financing Transaction debt facility, (iv) Indebtedness incurred pursuant to an unsecured working capital facility in an aggregate principal amount not to exceed $25.0 million at any time outstanding, and (v) all Indebtedness (other than Indebtedness described in clauses (i), (ii), (iii) and (iv) above) existing on the date hereof.

"**Ex-Dividend Date**" means the first date on which shares of the Common Stock trade on the applicable exchange, in the applicable market or otherwise, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange, market or otherwise (in the form of due bills or otherwise) as determined by such exchange, market or otherwise.

"**Existing Noteholder Debt**" means up to $30.0 million in aggregate principal amount of Additional Notes issued to any beneficial owner of Notes as of the date hereof (or their respective Affiliates).

"**Existing Preferred Stock**" shall have the meaning specified in Section 4.15.

"**Existing Servicing Agreements**" means each of the agreements listed on Exhibit F, including any and all amendments thereto and any and all Replacement Servicing Agreements.

"**Extraordinary Transaction**" shall mean (i) any transfer of Eligible Assets outside the ordinary course of business and (ii) any material loss or destruction of Eligible Assets from fire, hazard or other calamity to the extent that the Company or any Subsidiary of the Company does not have the benefit of insurance to cover such loss. For the avoidance of doubt, and without limiting the generality of the foregoing, one or more dispositions of inventory to customers or dispositions of obsolete or worn-out

equipment, in each case, consistent with the Company's past practice, shall not constitute an Extraordinary Transaction.

"**Financial Assets**" means any "financial asset", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"**Financial Statement Availability Date**" with respect to any fiscal quarter, shall mean
(i)prior to a Qualified IPO, the 45th calendar day following the end of such fiscal quarter and
(ii)after a Qualified IPO, the date on which a 10-Q or 10-K containing financial statements for such fiscal quarter is first filed with the Commission.

"**Foreign Subsidiary**" means, with respect to any Person, (a) any direct or indirect Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia and is a "controlled foreign corporation" for U.S. federal income tax purposes, (b) any direct or indirect Subsidiary of such Person if substantially all of its assets consists of Capital Stock of one or more direct or indirect Subsidiaries described in clause (a) of this definition or of such Capital Stock and intercompany obligations of such Subsidiaries described in clause (a) of this definition or (c) any Subsidiary of a Subsidiary described in clauses (a) or (b) of this definition.

"**Form of Assignment and Transfer**" means the "Form of Assignment and Transfer" attached as Attachment 5 to the Form of Note attached hereto as Exhibit A.

"**Form of Change of Control Repurchase Notice**" means the "Form of Change of Control Repurchase Notice" attached as Attachment 4 to the Form of Note attached hereto as Exhibit A.

"**Form of Fundamental Change Repurchase Notice**" means the "Form of Fundamental Change Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "**Form of Note**" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means the "Form of Notice of Conversion" attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

"**Form of Specified Repurchase Date Notice**" means the "Form of Specified Repurchase Date Notice" attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

"**Fundamental Change**" shall be deemed to have occurred if any of the following occurs on or after the Qualified IPO and prior to the Maturity Date:

(a) other than as described in clause (b) below, a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its direct or indirect Wholly-Owned Subsidiaries and the employee benefit plans of the Company and its direct or indirect Wholly-Owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Company's Common Equity representing more than 50% of the voting power of the Company's Common Equity;

(b) the consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (ii) any share exchange, consolidation, merger or similar transaction involving the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (iii) any sale, conveyance, lease or other transfer or similar transaction in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company's direct or indirect Wholly-Owned Subsidiaries; *provided*, *however*, that a transaction described in clause (i) or (ii) in which the holders of all classes of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same

proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any Permitted Exchange;

provided, *however*, that a transaction or transactions described in clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock, excluding cash payments for fractional shares and cash payments made in respect of statutory appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any Permitted

Exchange or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes Reference Property for the Notes, excluding cash payments for fractional shares and cash payments made pursuant to statutory appraisal rights (subject to the provisions set forth under Section 14.03).

If any transaction occurs in which the Common Stock is converted into, or exchanged for, Reference Property consisting of Common Equity of another entity, following completion of the related Make-Whole Fundamental Change Period, if any, references to the Company in the definition of "Fundamental Change" above shall instead be references to such other entity.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(b).

"**Fundamental Change Repurchase Expiration Time**" shall have the meaning specified in Section 15.07(a)(i).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.07(a)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 15.02(a).

"**GAAP**" means generally accepted accounting principles in the United States of America as in effect from time to time, including, without limitation, those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. Notwithstanding the foregoing, for purposes of determining compliance with any provision herein, the determination of whether a lease is to be treated as an operating lease or capital lease shall be made without giving effect to any change in accounting for leases pursuant to GAAP resulting from the implementation of proposed Accounting Standards Update (ASU) Leases (Topic 840) issued August 17, 2010, or any successor proposal.

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Guarantee**" means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise); or

(b) entered into for the purpose of assuring in any other manner the obligee against loss in respect thereof (in whole or in part);

provided, *however*, that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"**Guarantor**" means (a) each Subsidiary of the Company that is not a Foreign Subsidiary and that executes and delivers this Indenture on the Issue Date, and (b) each Subsidiary of the Company that (i) executes a supplemental indenture with the Company and the Trustee substantially in the form of Exhibit C attached hereto and delivers it to the Trustee, pursuant to which such Subsidiary shall unconditionally Guarantee, on a senior secured basis, all of the Company's Obligations under the Indenture Documents on the terms set forth in this Indenture and the Security Documents until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture and (ii) that takes such actions as are necessary to grant to the Collateral Agent for the benefit of the Holders a first priority perfected security interest, subject to Permitted Priority Liens and the Intercreditor Agreement, in the assets of such Subsidiary, only to the extent such assets would be required to be pledged as Collateral assuming such Subsidiary were a Grantor (as defined in the Security Agreement) under the Security Agreement (*provided*, *however*, that for the avoidance of doubt, such Subsidiary shall not be a Guarantor for purposes of the definition of Permitted Investment if prohibitions imposed by such Subsidiary's organizational documents or governing documents, including such Subsidiary's agreements with stockholders, partnership agreements, limited liability company agreements or similar instruments, materially restrict the ability of such Subsidiary to pledge such Collateral that would, absent such prohibition, be pledged pursuant to the Security Agreement), including the filing of financing statements in such jurisdictions as may be required by the Security Documents or by law and, in each case, their respective successors and assigns.

"**Hedging Obligations**" means, with respect to any specified Person, the obligations of such Person under:

(a) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(b) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(c) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

"**Holder,**" as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), means any Person in whose name at the time a particular Note is registered on the Note Register.

"**Indebtedness**" means, with respect to any Person on any date of determination (without duplication):

(a) the principal (or, with respect to such Indebtedness issued with original issue discount, the accreted value) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, including, in each case, any premium on such indebtedness to the extent such premium has become due and payable;

(b) all Capital Lease Obligations of such Person;

(c) the principal component of all obligations of such Person issued or assumed as the deferred purchase price of property due more than one year after such property is acquired, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement to the extent of the value of such property (but excluding any accounts payable or other liability to trade creditors arising in the ordinary course of business);

(d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers' acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in clauses (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the 30th day following payment on the letter of credit);

(e) to the extent not otherwise included in this definition, Hedging Obligations of such Person;

(f) all obligations of the type referred to in clauses (a) through (e) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee; and

(g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the fair market value of such property or assets and the amount of the obligation so secured,

if, and to the extent, with respect to clauses (a), (b), (c) and (e) only, any of the preceding items referred to in clauses (a), (b), (c) and (e) would appear as a liability upon the balance sheet of the specified Person in accordance with GAAP; provided that Indebtedness shall not include deemed Indebtedness pursuant to Accounting Standards Codification 825 or 480 (formerly SFAS Nos. 133 or 150, respectively).

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Indenture Documents**" means this Indenture, the Notes, the Note Guarantees and the Security Documents.

"**Indenture Obligations**" means all Obligations in respect of the Notes or arising under the Indenture Documents. Indenture Obligations shall include all interest accrued (or which would, absent the commencement of an insolvency or liquidation proceeding, accrue) after the commencement of an insolvency or liquidation proceeding in accordance with and at the rate specified in the relevant Indenture Document whether or not the claim for such interest is allowed as a claim in such insolvency or liquidation proceeding.

"**Initial Notes**" the first $160,000,000 aggregate principal amount of Notes issued under this Indenture on the Issue Date.

"**Intercreditor Agreement**" means an intercreditor agreement in the form attached as Exhibit E to this Indenture.

"**Interest Payment Date**" means each January 1, February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, November 1 and December 1 of each year, beginning on February 1, 2016.

"**Interest Period**" means the period commencing on and including an Interest Payment Date and ending on and including the day immediately preceding the next succeeding Interest Payment Date, with the exception that the first Interest Period shall commence on and include the Issue Date (the Interest Payment Date for any Interest Period shall be the Interest Payment Date occurring on the day immediately following the last day of such Interest Period).

"**Intellectual Property**" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"**Investment**" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations) and advances (other than loans, Guarantees, obligations and advances to the extent that they both (i) are due within 60 days from the date made or incurred and (ii) do not exceed

$10,000,000 in the aggregate outstanding at any time of determination), capital contributions, purchases or other acquisitions for consideration of Capital Stock or other securities. For purposes of the third parenthetical in the immediately preceding sentence, in the event that one or more loans, Guarantees, obligations or advances excluded from the definition

of Investment pursuant to such parenthetical is not repaid within 60 days from the date made or incurred, such loans, Guarantees obligations or advances not so repaid shall be deemed to be Investments as of the date originally made or incurred. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value. The amount of all Investments (other than cash) will be the fair market value on the date of the transfer or issuance of the asset(s) or securities proposed to be transferred or issued by the Company or such Guarantor, as the case may be, pursuant to the Investment.

"**Investment Collateral Value**", as of a Determination Date with respect to an Investment, means the sum, without duplication, as reasonably determined by the Company in a good faith manner, of (i) the Book Value of the Eligible Assets owned by the Company (excluding the equity interests of Pledged Foreign Subsidiaries and Guarantors) that secure the Notes pursuant to a perfected (under U.S. law) first priority Lien for the benefit of the Holders, (ii) the Book Value of Eligible Assets owned by Guarantors (excluding the equity interests of Pledged Foreign Subsidiaries and other Guarantors) that secure the Notes pursuant a perfected (under U.S. law) first priority Lien for the benefit of the Holders, (iii) 65% of the Book Value of the assets of the Pledged Foreign Subsidiaries, net of the liabilities of the Pledged Foreign Subsidiaries, in each case on a *pro forma* basis as of such Determination Date after giving effect to (x) such Investment and (y) any other investments and any Extraordinary Transactions following the latest Determination Date with respect to such Investment and prior to the time such Investment is consummated; provided that there shall be excluded from clause (iii) any Pledged Foreign Subsidiary with a *pro forma* net Book Value on the relevant Determination Date that is less than zero, and (iv) the deemed Book Value (determined as hereinafter provided) of the portion of Eligible Assets consisting of Intellectual Property owned by the Company or any Subsidiary that secure the Notes pursuant to a perfected first priority Lien for the benefit of the Holders (subject to any Intercreditor Agreement in respect thereof entered into in compliance with the Indenture Documents). For purposes of the foregoing, the Book Value of Eligible Assets consisting of Intellectual Property owned by the Company on the Issue Date shall be, as reasonably determined by the Company in a good faith manner, deemed to be $200 million. After the Issue Date, the deemed Book Value of assets consisting of Intellectual Property owned by the Company or any Subsidiary shall be deemed to be (a) decreased by the fair market value of any such Intellectual Property or rights in such Intellectual Property that are assigned, exclusively licensed, licensed outside the ordinary course of business, sold, conveyed or otherwise transferred to another party by the Company or such Subsidiary, as applicable, (b)increased by the fair market value of any such Intellectual Property or rights in such Intellectual Property that are assigned, exclusively licensed, licensed outside the ordinary course of business, sold, conveyed or otherwise transferred to the Company or such Subsidiary, as applicable, by the Company or a Subsidiary of the Company, as the case may be, and (c)decreased by the Book Value of any Indebtedness secured by a Lien on Intellectual Property that is not for the benefit of the Holders in their capacities as such.

"**Issue Date**" means December 15, 2015.

"**Last Reported Sale Price**" of the Common Stock or any other security on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the

average ask prices) on that date as reported in composite transactions for the Relevant Stock Exchange on which the Common Stock (or such other security) is then listed or admitted for trading. If the Common Stock or such other security is not listed for trading on a Relevant Stock Exchange on the relevant date, the "**Last Reported Sale Price**" shall be the average of the last quoted bid and ask prices for the Common Stock or such other security in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock or such other security is not so quoted, the "**Last Reported Sale Price**"

shall be the average of the mid-point of the last bid and ask prices for the Common Stock or such other security on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The "**Last Reported Sale Price**" shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours. None of the Trustee, Collateral Agent, Paying Agent or Conversion Agent shall be responsible for monitoring the Last Reported Sale Price.

"**Lien**" means, with respect to any asset (a) any mortgage, deed of trust, lien, pledge, encumbrance, charge or security interest in or on such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"**Lock-up Agreements**" shall have the meaning specified in the definition of Lock-up Release Date.

"**Lock-up Release Date**" means the day that is the earliest of (i) the day that is 180 days following the date of the final prospectus for the Qualified IPO, (ii) if all executive officers, directors and shareholders of more than 1% of the Common Equity of the Company enter into customary lock-up agreements (the "**Lock-up Agreements**") with the applicable underwriters in connection with the Qualified IPO, the earliest day on which any such lock-up agreements expire, (iii) if less than all executive officers, directors and shareholders of more than 1% of the Common Equity of the Company enter into Lock-up Agreements with the applicable underwriters in connection with the Qualified IPO, the day that the Qualified IPO is consummated and (iv) such date on which the Lock-up Agreements otherwise terminate or expire.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the proviso in clause (b) of the definition thereof).

"**Make-Whole Fundamental Change Effective Date**" shall have the meaning specified in Section 14.04(c).

"**Make-Whole Fundamental Change Period**" shall have the meaning specified in Section 14.04(a).

"**Make-Whole Provisions**" shall have the meaning specified in Section 14.04(d).

"**Make-Whole Table**" means the make-whole table attached hereto as Exhibit G.

"**Material Pledged Foreign Subsidiary**" means any Pledged Foreign Subsidiary having assets with a book value in excess of $10,000,000.

"**Maturity Date**" means December 1, 2021.

"**Maximum Initial Conversion Rate**" shall have the meaning specified in Section 14.05.

"**Minimum Principal Amount**" means (a) from September 20, 2016 through March 31, 2017, at least 75% in aggregate principal amount of the Notes outstanding and (b) on and after April 1, 2017, (i) if no one Holder (or if the Notes are held in global form, an owner of a beneficial interest in the Global Note) owns more than 50% in aggregate principal amount of the Notes, then at least a majority in aggregate principal amount of the Notes then outstanding and (ii) in all other cases, at least 60% in aggregate principal amount of the Notes then outstanding. Upon request of the Trustee, the Company will certify to the Trustee as to whether any owner of a beneficial interest in a Global Note owns more than 50% in aggregate principal amount of the Notes (it being agreed that the Trustee shall have no obligation to determine whether a purported owner of a beneficial interest in a Global Note actually owns such interest).

"**Mortgages**" means a collective reference to each mortgage, deed of trust or deed to secure debt under which any Lien on the Premises or any other Collateral secured by and described in such mortgages, deeds of trust or deeds to secure debt is granted to secure any Indenture Obligations.

"**Non-Material Real Property**" means any fee interest in any real property with a fair market value (together with improvements thereof) as reasonably determined by the Company not exceeding $2.0 million and any leasehold, easement or licensed interest in real property (together with improvements located thereon not owned by the Company but subject to such lease, easement or license). Notwithstanding the foregoing, the Delaware Property shall constitute Non-Material Real Property so long as such property is encumbered by a mortgage in favor of a party other than the Collateral Agent.

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture. Any Initial Notes, any PIK Notes (and any increases in Global Notes reflecting a PIK Payment) and any Additional Notes shall be treated as a single class for all purposes under this Indenture, including, without limitation, waivers, amendments, redemptions and offers to purchase. Unless the context otherwise requires, (a) all references to the "**Notes**" include any Initial Notes, any PIK Notes (and any increases in Global Notes reflecting a PIK Payment) and any Additional Notes and (b) all references to "principal amount" of Notes include any increase in the principal amount of outstanding Notes (including PIK Notes) as a result of a PIK Payment.

"**Note Guarantee**" means any Guarantee of payment of the Notes pursuant to the terms of this Indenture and any supplemental indenture thereto and, collectively, all such Note Guarantees.

"**Note Register**" shall have the meaning specified in Section 2.05(a). "**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notice of Conversion**" shall have the meaning specified in Section 14.03(b). "**Notice of Redemption**" shall have the meaning specified in Section 13.04(a).

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President").

"**Obligations**" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"**Officer's Certificate,**" when used with respect to the Company or a Guarantor, means a certificate that is signed by any Officer of the Company or a Guarantor, as the case may be. Each such certificate shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer's Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

"**open of business**" means 9:00 a.m. (New York City time).

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel who is reasonably acceptable to the Trustee and/or the Collateral Agent, as applicable, which opinion may contain customary exceptions and qualifications as to the matters set forth therein. Each such opinion shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section.

"**Optional Redemption Date**" shall have the meaning specified in Section 13.02. "**Optional Redemption Price**" shall have the meaning specified in Section 13.02.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and

delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and

(e) Notes repurchased or redeemed by the Company.

"***Pari passu* Obligations**" means all Indebtedness and other obligations in an amount not to exceed $150,000,000 in aggregate principal amount that is secured by Intellectual Property and the proceeds thereof; *provided*, that any Liens securing such Indebtedness shall be subject to the Intercreditor Agreement.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Permitted Bond Hedge or Warrant Transaction**" means (i) any call option or capped call option (or substantively equivalent derivative transaction) relating to or referencing the Company's common stock (or other securities or property following a merger event or other change of the common stock of the Company) purchased by the Company in connection with the issuance of any indebtedness convertible into or exchangeable for Capital Stock of the Company and/or (ii) any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to or referencing the Company's common stock (or other securities or property following a merger event or other change of the common stock of the Company) and/or cash (in an amount determined by reference to the price of such common stock) sold by the Company substantially concurrently with any purchase by the Company of an instrument described in clause (i) of this definition.

"**Permitted Exchange**" means any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

"**Permitted Intellectual Property Liens**" means Liens described in clauses (c), (d), (l), (p), (s), or (v) of the definition of "Permitted Liens".

"**Permitted Investment**" means:

(a) any Investment in a PPA Company; *provided* that, with respect to any such Investment made on or after the Second Supplemental Indenture Date and prior to the Qualified Capital Raise the amount of such Investment, when aggregated with all other Investments in PPA Companies during such period, shall not exceed $25,000,000 in the aggregate unless the Holders of a majority in aggregate principal amount of the Notes shall have consented thereto in writing;

(b) any Investment in a Guarantor;

(c) any Investment in a Pledged Foreign Subsidiary; *provided* that, with respect to any such Investment made on or after the Second Supplemental Indenture Date and prior to the Qualified Capital Raise the amount of such Investment, when aggregated with all other Investments in Pledged Foreign Subsidiaries during such period, shall not

exceed $25,000,000 in the aggregate unless the Holders of a majority in aggregate principal amount of the Notes shall have consented thereto in writing;

(d) any Investment in any Subsidiary of the Company made (i) at any time following the Qualified Capital Raise; *provided* that, on the date of such Investment (the "**Calculation Date**"), the Investment Collateral Value on the last day of each of the four most recently ended fiscal quarters (with the last of such four fiscal quarters being the most recent quarter for which the Financial Statement Availability Date has occurred) (each such last day, a "**Determination Date**") preceding the Calculation Date exceeds the Threshold Amount as of the Calculation Date, or (ii) with the written consent of the Holders of a majority in aggregate principal amount of the Notes.

The Holders hereby agree that they will not charge the Company any fee in connection with providing consent to any Investment as contemplated by this definition.

"**Permitted Liens**" means:

(a) Liens on Intellectual Property and the proceeds thereof securing *Pari passu* Obligations;

(b) Liens to secure Capital Lease Obligations and purchase money debt (and other Obligations related thereto), provided that, in each case, any such Lien may not extend to any Property of the Company or any Subsidiary of the Company, other than the Property acquired, constructed, improved or leased with the proceeds of such Indebtedness and any additions, parts, attachments, fixtures, leasehold improvements, proceeds, improvements or accessions related thereto;

(c) Liens for taxes, assessments or governmental charges or levies on the Property of the Company or any Subsidiary of the Company if the same shall not at the time be delinquent for more than 30 days or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings, provided that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor, such contest has the effect of preventing forfeiture or sale of the property or assets subject to any such lien;

(d) Liens imposed by law or arising by operation of law, including without limitation, landlords', mailmen's, suppliers', vendors', carriers', warehousemen's and mechanics' Liens and other similar Liens, Liens for master's and crew's wages and other similar laws, on the Property of the Company or any Subsidiary of the Company arising in the ordinary course of business and for payment obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;

(e) Liens on the Property of the Company or any Subsidiary of the Company incurred in the ordinary course of business to secure performance of obligations with respect to letters of credit, bank guarantees, statutory or regulatory requirements, performance or return-of-money bonds, surety or appeal bonds, or other obligations of a like nature and Incurred in the ordinary course of business;

(f) Liens on Property at the time the Company or any Subsidiary of the Company acquired such Property, including any acquisition by means of a merger or consolidation with or into the Company or any Subsidiary of the Company; provided, however, that any such Lien may not extend to any other Property of the Company or any Subsidiary of the Company; provided further, however, that such Liens shall not have been incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by the Company or any Subsidiary of the Company;

(g) Liens on the Property of a Person existing at the time such Person becomes a Subsidiary of the Company; provided, however, that any such Lien may not extend to any other Property of the Company or any other Subsidiary that is not a direct Subsidiary of such Person; provided further, however, that any such Lien was not Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Person became a Subsidiary of the Company;

(h) Liens Incurred or pledges or deposits made by the Company or any Subsidiary of the Company under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which the Company or any Restricted Subsidiary is party, or deposits to secure public or statutory obligations of the Company, or deposits for the payment of rent, in each case Incurred in the ordinary course of business;

(i) easements, building restrictions, zoning restrictions, minor survey exceptions, easements or reservations of rights

of others for licenses, rights of way and similar purposes and such other encumbrances or charges against real Property as do not materially interfere with the Company's use of the real Property;

(j) Liens existing on the Issue Date;

(k) Liens on the Property of the Company or any Restricted Subsidiary to secure any Refinancing, in whole or in part, of any Debt secured by Liens referred to in clauses (f), (g) and (j) of this definition; provided, however, that any such Lien shall be limited to all or part of the same Property that secured the original Lien (together with improvements and accessions to such Property) and the aggregate principal amount of Indebtedness that is secured by such Lien shall not be increased to an amount greater than the sum of:

(1)the outstanding principal amount, or, if greater, the committed amount, of the Indebtedness secured by Liens; and

(2)an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the Company or such Restricted Subsidiary in connection with such Refinancing;

(l) judgment Liens with respect to judgments, decrees or orders not giving rise to a Default or Event of Default so long as such Liens are adequately bonded and any

appropriate legal proceedings that may have been initiated for the review of such judgments, decrees or orders shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(m) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of letters of credit, bank guarantees or banker's acceptances issued or credited for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(n) Liens securing obligations of the Company under Hedging Obligations incurred in the ordinary course of business;

(o) Liens arising under consignment or similar arrangements for the sale of goods in the ordinary course of business;

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(q) Liens securing other Indebtedness or other obligations not exceeding $10.0 million at any time outstanding;

(r) Liens securing the Indenture Obligations in respect of the Notes and Notes Guarantees;

(s) (i) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company or any of its Subsidiaries, (ii) any interest or title of a lessor under any leases or subleases entered into by the Company or any of its Subsidiaries in the ordinary course of business, and (iii) any interest of co-sponsors, co-owners or co-developers of intellectual property;

(t) Liens (i) of a collection bank on items in the course of collection, (ii) attaching to commodity trading accounts or other brokerage accounts in the ordinary course of business, (iii) in favor of banking institutions by law or contract encumbering deposits which are customary in the banking industry and (iv) Liens securing cash management obligations arising in the ordinary course of business;

(u) customary Liens in favor of trustees, collateral agents and escrow agents securing obligations owing to such Persons in such capacities;

(v) options, put and call arrangements, rights of first refusal and similar rights relating to investments in joint ventures;

(w) Liens arising from UCC financing statements regarding operating leases entered into by the Company or any of its Subsidiaries in the ordinary course of business;

(x) Liens arising by law or contract on insurance policies and the proceeds thereof to secure premiums thereunder;

(y) deposits as security and liens securing surety and appeal bonds, letters of credit and similar obligations in connection with contested taxes or contested import or customs duties; and

(z) Liens on the Delaware Property securing Indebtedness or other obligations.

"**Permitted Priority Liens**" means (i) Liens that are not for the benefit of the Holders in their capacities as such and that are *pari passu* with the Liens granted pursuant to the Security Documents and (ii) Liens incurred pursuant to clauses (b), (c), (d), (e), (f), (g), (h), (j) (other than Liens pursuant to the Loan and Security Agreement, dated as of March 30, 2012, by and between Silicon Valley Bank and Bloom Energy Corporation), (k), (l), (m), (p), (x) or (y) of the definition of "Permitted Liens" to the extent such Liens have priority over the Liens granted pursuant to the Security Agreement by operation of law.

"**Person**" means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Physical Notes**" means permanent certificated Notes in registered form issued in minimum denominations of $1,000 principal amount and integral multiples of $1,000 in excess thereof; *provided*, that after a PIK Payment, Physical Notes means permanent certificated Notes in registered form issued in minimum denominations of $1.00 principal amount and integral multiples of $1.00 in excess thereof.

"**PIK Interest**" shall have the meaning specified in Section 2.03(c)(i). "**PIK Notes**" shall have the meaning specified in

Section 2.03(c)(ii). "**PIK Payment**" shall have the meaning specified in Section 2.03(c)(ii).

"**Pledged Foreign Subsidiary**" means a (i) Foreign Subsidiary of the Company (which Foreign Subsidiary is not owned directly or indirectly by another Foreign Subsidiary of the Company) or (ii) Foreign Subsidiary of any Guarantor (which Foreign Subsidiary is not owned directly or indirectly by another Foreign Subsidiary of the Company), in each case with respect to which 65% of each class of its voting equity interests and all of its non-voting equity interests is pledged pursuant to the Security Documents.

"**PPA Company**" means (i) an Affiliate of the Company that is the project entity (including, for the avoidance of doubt, any parent company of such project entity whose assets consist solely of 100% of the Capital Stock of such project entity) in a bona fide power purchase agreement program involving one or more third party investors and having a structure (including capital structure) that is materially consistent with that used in the Company's past practice (as the same may be modified in good faith by the Company to take into account changes in tax law or industry practice), including the incurrence of only Indebtedness that is non recourse to the assets of the Company and its Restricted Subsidiaries and is secured only by the assets of such project entity, (ii) a Wholly Owned Subsidiary of the Company whose assets consist solely of the Capital Stock of one or more project entities described in clause (i) above, or (iii) a Wholly-

Owned Subsidiary of the Company whose total assets as of any date of determination are less than $100,000 and whose total revenues for the most recently ended twelve-month period do not exceed $50,000 and who are formed for the purpose of (A) bidding on potential transactions and, if secured, financing, developing and/or operating such transactions in a fashion similar to the Company's other power purchase agreement projects, or (B) bidding on awards under federal, state or local incentive programs and passing the benefits of such programs on to the Company or the owner or offtaker of the applicable fuel cell assets.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06

in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

"**Premises**" shall have the meaning specified in Section 4.16.

"**Property**" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person.

"**Provisional Redemption**" shall have the meaning specified in Section 13.01. "**Provisional Redemption Date**" shall have

the meaning specified in Section 13.01. "**Provisional Redemption Price**" shall have the meaning specified in Section 13.01.

"**Qualified Capital Raise**" means the first firmly underwritten registered public offering of Common Stock the net proceeds (after deduction of underwriting discounts and commissions and offering expenses) to the Company from which, when aggregated with the net proceeds (after deduction of underwriting discounts and commissions and offering expenses) to the Company from any and all prior firmly underwritten registered public offerings of Common Stock, exceed $250.0 million.

"**Qualified IPO**" means the first firmly underwritten registered public offering of Common Stock that results in aggregate gross proceeds to the Company of at least $75.0 million, and after which the Common Stock is listed for trading or quoted on The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

"**Qualified IPO Price**" means the price per share at which the shares of Common Stock are sold to the public pursuant to the Qualified IPO.

"**Receivables**" means, with respect to the 2020 Released Servicing Agreements and 2020 Released Servicing Payments (as applicable), all (i) Accounts, (ii) Chattel Paper, (iii) Payment Intangibles, (iv) Instruments, (v) General Intangibles, and (vi) to the extent not otherwise included in the foregoing, all other rights to payment, whether or not earned by performance or for services rendered or to be rendered, regardless of how classified under the UCC, in each case with respect to the foregoing clauses (i) through (vi), to the extent representing or evidencing

2020 Released Servicing Payments or the contractual right to receive 2020 Released Servicing Payments.

"**Record Date**" means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

"**Redemption Conversion Period**" shall have the meaning specified in Section 14.04(a).

"**Redemption Date**" shall mean a date of redemption pursuant to Section 4.22(c), an Optional Redemption Date, a Provisional Redemption Date or a Change of Control Redemption Date, as the case may be.

"**Redemption Notice Date**" shall have the meaning specified in Section 13.04(a).

"**Redemption Price**" shall mean the redemption price pursuant to Section 4.22(a) or Section 4.22(b), Optional Redemption Price, Provisional Redemption Price or the Change of Control Redemption Price, as the case may be.

"**Reference Property**" shall have the meaning specified in Section 14.08(a).

"**Refinance**" means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement,

restructure, replace, refund or repay, or to issue other Indebtedness, in exchange or replacement for, such Indebtedness. "**Refinanced**" and "**Refinancing**" shall have correlative meanings.

"**Registration Rights Agreement**" means the Eighth Amended and Restated Registration Rights Agreement, dated as of June 30, 2011, by and between the Company and the investors listed on the signature pages thereto, as such agreement may be amended, modified or supplemented from time to time.

"**Regular Record Date,**" with respect to any Interest Payment Date, means the December 15, January 15, February 15, March 15, April 15, May 15, June 15, July 15,
August 15, September 15, October 15 and November 15 (whether or not such day is a Business Day) immediately preceding the applicable January 1, February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, November 1 or December 1 Interest Payment Date, respectively.

"**Release Percentage**" means, with respect to each 2020 Financing Transaction, the ratio of (a) the aggregate principal amount of the Indebtedness incurred (excluding any committed or uncommitted incremental facilities thereunder) pursuant to such 2020 Financing Transaction to (b) 150 million, expressed as a percentage; *provided* that, if at any time the face amount of the 2020 Secured Notes issued is equal to or greater than 70.0 million, the Release Percentage with respect to such issuance shall be deemed to be 100%.

"**Relevant Stock Exchange**", with respect to the Common Stock (or any other security for which a closing sale price must be determined) means The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market, or if the Common Stock (or such other security) is not then listed or admitted for trading on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market, the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or admitted for trading.

"**Replacement Servicing Agreement**" means an agreement entered into by the Company or any Subsidiary of the Company after the Effective Date to provide servicing, warranty or operations and maintenance services (or similar) in replacement of any Existing Servicing Agreements.

"**Requisite Stockholder Approval**" shall have the meaning specified in Section 14.13.

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.05(c).

"**Responsible Officer**" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such person's knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

"**Restricted Investment**" means an Investment by the Company in any of its Affiliates other than a Permitted Investment.

"**Restricted Securities**" shall have the meaning specified in Section 2.05(c).

"**Restriction Agreement**" means a restriction agreement in the form of Exhibit B hereto that is executed by each Holder on the Issue Date and that must be executed by a transferee of Notes and delivered to the Company prior to taking possession of Notes if possession of Notes is to occur prior to the Lock-up Release Date.

"**Revenue Notes**" means up to $150 million in aggregate principal amount of senior secured notes, if any, to be issued by the Company on or following the date hereof pursuant to that certain Note Purchase Agreement, dated as of June 29, 2017, by and among the Company, the guarantors party thereto and the investors listed on Schedule II thereto.

"**Rule 144**" means Rule 144 as promulgated under the Securities Act (or any successor rule).

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act (or any successor rule).

"**Scheduled Trading Day**" means a day that is scheduled to be a Trading Day on the Relevant Stock Exchange on which the Common Stock is then listed or admitted for trading. If the Common Stock is not listed or admitted for trading on a Relevant Stock Exchange, "**Scheduled Trading Day**" means a Business Day.

"**Second Supplemental Indenture Date**" means June 29, 2017.

"**Securities Account Investment Property**" means, with respect to a Person, all of such Person's right, title, and interest in and to any and all "investment property", as defined in the UCC, including, all (a) securities, whether certificated or uncertificated, (b) security entitlements and (c) securities accounts; together with all other units, rights, or other equivalent evidences of ownership (howsoever designated) issued by any Person.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Security Agreement**" means that certain security agreement, dated as of the Issue Date, by and among the Company, the other grantors from time to time party thereto and the Collateral Agent, as amended by the First Amendment to Security Agreement dated as of June 29, 2017, the Second Amendment to Security Agreement dated as of July 7, 2017, and the Third Amendment to Security Agreement, and as further amended, supplemented, modified or replaced in accordance with this Indenture and its terms.

"**Security Documents**" means all security agreements (including the Security Agreement), intercreditor agreements (including the Intercreditor Agreement), pledge agreements, collateral assignments, Mortgages, collateral agency agreements, debentures, Deposit Account Control Agreements or other grants or transfers for security executed and delivered by the Company or any Guarantor creating (or purporting to create) a Lien upon Collateral for the benefit of the Holders to secure the Indenture Obligations, in each case, as amended, supplemented, modified, renewed, restated or replaced, in whole or in part, from time to time, in accordance with its terms and the terms of this Indenture.

"**Series G Preferred Stock**" means the Company's Series G Preferred Stock.

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act; *provided*, that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) of the definition thereof, such Subsidiary shall not be a Significant Subsidiary unless the Subsidiary's income or loss from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds $5.0 million.

"**Significant Investment**" means an Investment or series of related Investments, taken together, valued at more than 50% of the Collateral Value that is in excess of the then-applicable Threshold Amount.

"**Specified Corporate Event**" shall have the meaning specified in Section 14.08(a).

"**Specified Repurchase Date**" shall mean shall have the meaning specified in Section 15.01(a).

"**Specified Repurchase Date Notice**" shall have the meaning specified in Section 15.07(a)(i).

"**Specified Repurchase Date Price**" shall have the meaning specified in Section 15.01(a).

"**Specified Repurchase Date Right Notice**" shall mean shall have the meaning specified in Section 15.01(b).

"**Spin-Off**" shall have the meaning specified in Section 14.05(c).

"**Stated Maturity**" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which the payment of interest or principal was scheduled to be paid in the documentation governing such Indebtedness as of the first date it was incurred in compliance with the terms of this Indenture, and will not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

"**Stock Price**" shall have the meaning specified in Section 14.04(c).

"**Subsidiary**" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

"**Successor Company**" shall have the meaning specified in Section 11.01(a).

"**Support Agreement**" means that certain Amendment Support Agreement, dated March 31, 2020, entered into between the Company and the investor parties thereto.

"**Third Amendment to Security Agreement**" means that certain Third Amendment to Security Agreement, dated as of the date hereof, among the Company, the Guarantors party thereto, and the Collateral Agent.

"**Threshold Amount**" means, as of any date of determination, 200% of the principal amount of and accrued and unpaid interest on the outstanding Notes.

"**Trading Day**" means a day on which (i) trading in the Common Stock (or any other security for which a closing sale price must be determined) generally occurs on a Relevant Stock Exchange and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided*, that, if the

Common Stock (or such other security) is not so listed or traded, "**Trading Day**" means a Business Day.

"**Transaction Price**" means the per share amount of consideration received by the holders of Common Stock in a Change of Control. If the consideration is paid in property other than in cash, the value of such consideration, on a per share basis, shall be the fair market value of such property, determined as follows:

(a) for securities not subject to investment letters or similar restrictions on free marketability,

(1)if traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the thirty (30) day period ending three (3) days prior to the closing of such transaction;

(2)if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the thirty (30) day period ending three (3) days prior to the closing of such transaction; or

(3)if there is no active public market, the value shall be the fair market value thereof, as reasonably determined in good faith by the Board of Directors of the Company; and

(b) for securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate), the valuation methodology shall take into account an appropriate discount (as determined in good faith by the Board of Directors of the Company) from the market value as determined pursuant to clause (a) above so as to reflect the approximate fair market value thereof.

Within two Business Days after the "Change of Control Effective Date," the Company shall deliver to Holders, the Trustee and the Conversion Agent (if other than the Trustee) the Transaction Price and a schedule and reasonable explanation of the calculation thereof (the "**Transaction Price Notice**"). To the extent Holders of at least the Minimum Principal Amount of the Notes then outstanding (such holders, the "**Disputing Holders**") dispute the Transaction Price calculation in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of the Transaction Price Notice, the Transaction Price shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, the Transaction Price shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent on or prior to the 40th Business Day following the Change of Control Effective Date.

"**Transaction Price Notice**" shall have the meaning specified in the definition of Transaction Price.

"**transfer**" shall have the meaning specified in Section 2.05(c).

"**Treasury Rate**" means, as of any Optional Redemption Date, the yield to maturity, as of such Optional Redemption Date, of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days before such Optional Redemption Date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Redemption Date to the Maturity Date; *provided*, *however*, that if such period is less than one (1) year, then the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one (1) year will be used.

"**Trigger Event**" shall have the meaning specified in Section 14.05(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the Issue Date, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "**Trustee**" shall mean or include each Person who is then a Trustee hereunder.

"**UCC**" means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue or perfection of security interests.

"**unit of Reference Property**" shall have the meaning specified in Section 14.08(a). "**Valuation Period**" shall have the

meaning specified in Section 14.05(c).

"**VWAP**" per share of Common Stock on any Trading Day means the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "BE <EQUITY> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading on the relevant Trading Day until the scheduled close of trading on such Trading Day (or if such volume-weighted average price is unavailable, the market price of one share of Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized investment banking firm (unaffiliated with the Company) retained by the Company for such purpose).

"**VWAP Market Price**" means, for each share of Common Stock, as of the applicable Conversion Date pursuant to Section 14.13, the arithmetic average of the VWAP per share of Common Stock for each of the five consecutive full Trading Days ending on the Trading Day immediately preceding the applicable Conversion Date with respect to such distribution, appropriately adjusted to

take into account the occurrence during such period of any event described in Section 14.04.

"**Wholly-Owned Subsidiary**" means, with respect to any Person, any Subsidiary of such Person, 100% of the Capital Stock of which is owned by such Person (other than directors' qualifying shares or shares required by applicable law to be held by third persons).

Section 1.02 *References to Interest*. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.10 and Section 6.04 and PIK Interest if, in such context, PIK Interest is, was or would be payable pursuant to Section 2.03(c). Unless the context otherwise requires, any express mention of Additional Interest or PIK Interest, as applicable, in any provision hereof shall not be construed as excluding Additional Interest or PIK Interest, as applicable, in those provisions hereof where such express mention is not made.

ARTICLE 2.
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the "10.0% Convertible Senior Secured Notes due 2021." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to $290,000,000, subject to any PIK Payments permitted by this Indenture that are or were made pursuant to Section 2.03(c)(i) and Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02 *Form of Notes*. The Notes and the Trustee's certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company, the Guarantors, if any, and the Trustee, by their execution and delivery of this Indenture (or, with respect to the Guarantors, if any, a supplemental indenture to this Indenture substantially in the form of Exhibit C hereto), expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject pursuant to this Indenture or any applicable law.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as any Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to

conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject pursuant to this Indenture or any applicable law.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect

repurchases, cancellations, conversions, transfers, exchanges or issuances of any Additional Notes (to the extent such issuances are fungible with the Notes represented by such Global Note for U.S. federal income tax and securities law purposes) or any PIK Notes or PIK Payments permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon written instructions given by the Holder of such Notes or the Company in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and redemption price, if applicable) of, and accrued and unpaid Cash Interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts*.

(a) The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof; *provided* that after a PIK Payment, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months or, in the case of a partial month, the number of days elapsed over a 30-day month and shall be compounded monthly on the last day of each month. The Company shall pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained for such purposes in the continental United States of America, which shall initially be the Corporate Trust Office of the Trustee and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company through the Paying Agent, shall pay Cash Interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than $5,000,000, either by check mailed to each such Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's

account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c)

(i) Interest will be payable, at the Company's election (made by delivering a notice to the Trustee and the Holders prior to the beginning of the related Interest Period), (1) entirely in cash ("**Cash Interest**") or (2) entirely in kind ("**PIK Interest**"). In the absence of an interest payment election as set forth in the immediately preceding sentence, interest on the Notes will be payable in PIK Interest in the manner described in clause (2) of the immediately preceding sentence. The interest payment on the Notes to be made on January 1, 2016 will be payable in the form of PIK Interest. Notwithstanding anything to the contrary in this Indenture or the Notes, all interest payments with an Interest Payment Date on or after April 20, 2020 will be payable solely in the form of Cash Interest (and, for the avoidance of doubt, will not be payable in the form of PIK Interest).

(ii) At all times, PIK Interest on the Notes will be payable (1) with respect to Physical Notes, by issuing additional Notes under this Indenture on the same terms and conditions as the Notes, except interest will accrue on such additional Notes from the applicable Interest Payment Date that such additional Notes are required to be issued under this Indenture (the "**PIK Notes**") (each payment of PIK Interest pursuant to clause (1) or (2) of this Section 2.03(c)(ii), a "**PIK Payment**"), in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up), and the Trustee will, upon receipt of a Company Order, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant Regular Record Date, as shown in the register of the Note Registrar; and (2) with respect to Notes represented by one or more Global Notes registered in the name of or held by DTC or its nominee on the relevant Regular Record Date, by increasing the principal amount of the outstanding Global Note or Notes (or by issuing a new Global Note, if required pursuant to the applicable procedures of the Depositary) by an amount equal to the amount of PIK Interest for the

applicable Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up) as provided in a Company Order by the Company to the Trustee, and the Trustee, at the Company's written direction, shall record such increase in such Global Note or Notes. Following an increase in the principal amount of any outstanding Global Notes as a result of a PIK Payment, such Global Note will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. All PIK Notes issued pursuant to a PIK Payment will be governed by, and subject to the terms, provisions and conditions of, this Indenture and will have the same rights and benefits as the Initial Notes. Any certificated PIK Note will be issued with the description "**PIK**" on the face of such PIK Note.

(iii) Notwithstanding anything to the contrary in this Section 2.03(c), the payment of accrued interest shall be made solely in cash, (A) in connection with any redemption or repurchase of Notes as described under Section 13.01, Section 13.03, Section 15.01, Section 15.02 and Section 15.03, (1) with respect to all Notes, if the related redemption date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is after a Regular Record Date and on or prior to the Scheduled Trading Day immediately following the date on which the corresponding interest payment is made or (2) solely with respect to the Notes to be repurchased or redeemed, if the related Redemption Date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is on any other date, (B) with respect to all Notes, if any Notes are surrendered for conversion after the close of business on a Regular Record Date for the payment of interest and on or prior to the related Interest Payment Date and (C) on the final Interest Payment Date.

(d) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 calendar days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment, and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and in such notice, instruct the Trustee, in the name and at the expense of the Company, to deliver notice of the proposed payment of such Defaulted Amounts and the special record date therefor to each Holder not less than 10 calendar days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(d).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or

designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

(iii) The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the Defaulted Amounts, or with respect to the nature, extent, or calculation of the amount of the Defaulted Amounts owed, or with respect to the method employed in such calculation of the Defaulted Amounts.

Section 2.04 *Execution, Authentication and Delivery of Notes*. The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of any Officer.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 18.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary*.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the "**Note Register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into

written form within a reasonable period of time. The Trustee is hereby initially appointed the "**Note Registrar**" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this
Section 2.05, the Company shall execute, and the Trustee, upon receipt of any items required to be delivered hereunder, shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion (other than in

connection with a Change of Control prior to the Qualified IPO) shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and the Trustee and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed on the Holder by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion (in each case, other than in connection with a Change of Control prior to the Qualified IPO), (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes entitled to be redeemed by the Company in accordance with Article 13 (except in the case of Notes to be redeemed in part, the portion thereof not to be redeemed).

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) With respect to Notes issued prior to the date hereof, the Notes shall be initially issued as Physical Notes registered in the name of each Holder (or nominee thereof), and each such Note shall be issued in the aggregate principal amount specified in the Company Order that is delivered to the Trustee on the Issue Date. The Company and the Guarantors shall use commercially reasonable efforts to cause the Notes to be eligible for book-entry settlement with the Depositary and deposit one or more registered global notes representing the Notes in global form without interest coupons (each, a "**Global Note**") registered in the name of the Depositary or the nominee of the Depositary as promptly as practicable following the Lock-up Release Date, including effecting the placement of notations of guarantee in the form of Exhibit D attached hereto on each Note entitled to the benefits of one or more Note Guarantees. The Company shall notify the Holders and the Trustee in writing promptly following such eligibility and deposit, and after such time Physical Notes may be presented to the Trustee by Holders thereof in exchange for a beneficial interest representing an equivalent principal amount in a Global Note as described below. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor. At such time as any Physical Note has been converted, repurchased, exchanged or transferred (and, in the case of a transfer, another Note has been issued to the transferee or the transferee has received a beneficial interest in a Global Note), other than a conversion, repurchase, exchange or transfer in part, such Physical Note shall be, upon receipt thereof, cancelled by the Trustee in accordance with its applicable procedures. The exchange of a Physical Note for a Global Note shall follow the procedures set forth in the penultimate paragraph of Section 2.05(c). In the case of any such exchange, if a Global Note is outstanding prior to such exchange, the aggregate principal amount of such Global Note will be increased, pursuant to standing procedures between the Trustee and the Depositary, by an amount equal to the aggregate principal amount of Physical Notes so exchanged. If no Global Note is outstanding prior to such exchange, the Company will execute and deliver to the Trustee or any authenticating agent a Global Note representing an aggregate principal amount equal to the aggregate principal amount of Physical Notes so exchanged and bearing a restrictive legend if required under Section 2.05(c), together with a Company Order for authentication thereof and delivery to the Depositary or the Custodian, and any Officer's Certificate or Opinion of Counsel regarding such authentication and delivery required by the Trustee under Section 18.05, and upon receipt of such documents, the Trustee will promptly authenticate the Global Note and deliver it to the Depositary or the Custodian. The Company agrees to make any non-substantive changes to the terms of the Notes reasonably requested or required by the Trustee or the Depositary such that the Notes will be eligible for settlement through the Depositary. With respect to any Global Notes, any transfer and exchange of beneficial interests in such Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(c)

shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term "**transfer**" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) Until the date (the "**Resale Restriction Termination Date**") that is the later of (x) the date that is one year after the last date of original issuance of a Note, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (y) such other date as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THE OFFER AND SALE OF THIS NOTE AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS NOTE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; AND

(2) AGREES FOR THE BENEFIT OF THE BLOOM ENERGY CORPORATION (THE "COMPANY") THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;

(D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR 41

(E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked. For avoidance of doubt, the Resale Restriction

Termination Date has occurred with respect to the Notes issued on the Issue Date and at any other time prior to the date hereof.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms such that they may be transferred without volume or manner of sale limits under Rule 144 and any applicable state securities laws, (ii) that has been transferred pursuant to, and in accordance with, a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, and such that such Note is no longer a "restricted security" as defined under Rule 144 may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the immediately preceding sentence have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. If the Holder of a Physical Note that bears such a restrictive legend and is no longer required to bear such restrictive legend under this Section 2.05(c) surrenders such Note to the Note Registrar for exchange, the Note Registrar shall promptly so notify the Company in writing, and the Company shall promptly execute a Physical Note in the name of such Holder that does not bear such a restrictive legend, of like tenor and aggregate principal amount, and shall deliver such executed Physical Note to the Trustee, along with a Company Order and an Opinion of Counsel and an Officer's Certificate, for authentication and delivery of such Physical Note, and the Trustee shall promptly authenticate such Physical Note and deliver it to such Holder or otherwise in accordance with such Holder's instructions, and the Trustee shall promptly thereafter cancel the Physical Note bearing such restrictive legend. The Company shall promptly notify the Trustee upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the

Notes has been declared effective under the Securities Act. The Company shall complete any exchange process for the removal of a restrictive legend required by this Section 2.05(c) in accordance with the terms of this Indenture, the applicable procedures of the Depositary (in the case of a Global Note) and applicable securities laws.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to each Global Note, if any. Unless the Depositary is unwilling or unable to act as depositary for any issued and authenticated Global Note, any issued and authenticated Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Trustee as Custodian. The Trustee shall have no liability or responsibility for the action or inaction of the Depositary or any other clearing agency.

If after the issuance and authentication of a Global Note (i) the Depositary notifies the Company that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 calendar days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 calendar days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be exchanged for a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate, an Opinion of Counsel and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a

principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged

for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Collateral Agent, the Paying Agent or any agent of the Company, the Trustee, the Collateral Agent or the Paying Agent shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), when Physical Notes are presented to the Note Registrar with a written request: (x) to register the transfer of such Physical Notes; or (y) to exchange such Physical Notes for an equal principal amount of Physical Notes of other authorized denominations or for an equal principal amount of a Global Note, the Note Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided*, *however*, that the Physical Notes surrendered for transfer or exchange: (i) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Note Registrar, duly executed by the Holder thereof or its attorney duly authorized in writing; and (ii) so long as such Notes bear a restrictive legend, such Notes may only be transferred or exchanged in accordance with such restrictive legend and the Form of Assignment and Transfer, and if such Physical Notes are being transferred pursuant to an exemption from registration under the Securities Act, (1) a certification to that effect (in the Form of Assignment and Transfer, if applicable) and (2) if the Company or the Trustee so requests and to the extent contemplated by such restrictive legend, an Opinion of Counsel in form and substance reasonably satisfactory to the Company as to the compliance with the restrictions set forth in the legend thereon. In addition, prior to the Lock-up Release Date, in addition to the other requirements described herein, each transferee of Notes shall execute and deliver to the Company a Restriction Agreement prior to taking possession of the Notes. Neither the Trustee nor the Conversion agent shall have any duty to determine whether the Lock-Up Release Date has occurred or whether any transferee of the Notes has delivered a Restriction Agreement to the Company.

The Trustee and the Collateral Agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among participants of the Depositary or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any agent of the Trustee shall have any responsibility or liability for any action taken or not taken by

the Depositary.

(d) Legends on the Common Stock:

(i) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note that bears the legend set forth in Section 2.05(c) shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to, and in accordance with, a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has transferred pursuant to, and in accordance with, a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THE OFFER AND SALE OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT; AND

(2) AGREES FOR THE BENEFIT OF THE BLOOM ENERGY CORPORATION (THE "COMPANY") THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;

(D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR

(E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY AND THE TRANSFER AGENT RESERVE

THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

(ii) Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to, and in accordance with, a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any

similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(iii) Until the Lock-up Release Date, any stock certificate representing Common Stock issued upon conversion of a Note (other than in connection with a Change of Control prior to the Qualified IPO) shall bear a legend in substantially the following form:

THIS SECURITY MAY NOT BE TRANSFERRED OR OTHERWISE DISPOSED OF PRIOR TO THE DAY THAT IS ON OR AFTER THE EARLIEST TO OCCUR OF (1) THE DAY THAT IS 180 DAYS FOLLOWING THE DATE OF THE FINAL PROSPECTUS FOR THE QUALIFIED IPO, (2) IF ALL EXECUTIVE OFFICERS, DIRECTORS AND SHAREHOLDERS OF MORE THAN 1% OF THE COMMON EQUITY OF THE COMPANY ENTER INTO CUSTOMARY LOCK-UP AGREEMENTS WITH THE APPLICABLE UNDERWRITERS IN CONNECTION WITH THE QUALIFIED IPO, THE EARLIEST DAY ON WHICH ANY SUCH LOCK-UP AGREEMENTS EXPIRE, (3) IF LESS THAN ALL EXECUTIVE OFFICERS, DIRECTORS AND SHAREHOLDERS OF MORE THAN 1% OF THE COMMON EQUITY OF THE COMPANY ENTER INTO CUSTOMARY LOCK-UP AGREEMENTS WITH THE APPLICABLE UNDERWRITERS IN CONNECTION WITH THE QUALIFIED IPO, THE DAY THAT THE QUALIFIED IPO IS CONSUMMATED AND (4) SUCH DATE ON WHICH THE LOCK-UP AGREEMENTS OTHERWISE TERMINATE OR EXPIRE. "QUALIFIED IPO" MEANS A FIRMLY UNDERWRITTEN REGISTERED PUBLIC OFFERING OF COMMON STOCK, PAR VALUE $0.0001 PER SHARE, OF THE COMPANY (THE "COMMON STOCK") THAT RESULTS IN AGGREGATE GROSS PROCEEDS TO THE COMPANY OF AT LEAST $150.0 MILLION, AND AFTER WHICH THE COMMON STOCK IS LISTED FOR TRADING OR QUOTED ON THE NEW YORK STOCK EXCHANGE, THE NASDAQ GLOBAL SELECT MARKET OR THE NASDAQ GLOBAL MARKET (OR ANY OF THEIR RESPECTIVE SUCCESSORS).

(e) Notwithstanding the foregoing, the Company shall, upon a Holder's request, remove the foregoing legend on any stock certificate representing Common Stock issued upon conversion of a Note prior to the Lock-up Release Date to the extent contemplated in the lock-up agreement, if any, such Holder enters into pursuant to its Restriction Agreement. Any Note or Common Stock issued upon the conversion or exchange of a Note that is repurchased or owned by any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months preceding) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with Section 2.08.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to hold each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge

shall be imposed on the Holder by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for repurchase in accordance with Article 15 or redemption in accordance with Article 13 or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to hold each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall, upon receipt of a Company Order, authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc*. The Company shall cause all Notes surrendered for the purpose of payment, redemption, repurchase, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures, and, except for Notes surrendered for registration of transfer or exchange, no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such cancellation, shall deliver a certificate of such cancellation to the Company, at the Company's written request in a Company Order.

Section 2.09 *CUSIP Numbers*. The Company in issuing the Notes may use "**CUSIP**" numbers (if then generally in use), and, if so, the Trustee shall use "**CUSIP**" numbers in all notices issued to Holders as a convenience to such Holders; *provided,* that any

such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers

printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "**CUSIP**" numbers.

Section 2.10 *Additional Notes; Repurchases*. The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue Additional Notes hereunder with the same terms as the Notes initially issued hereunder (except for any differences in issue date, issue price and interest accrued, if any) in an aggregate principal amount that, when taken together with the Initial Notes and all other Additional Notes (for the avoidance of doubt, not including any PIK Notes), in each case, then outstanding, does not exceed $290,000,000; *provided* that if any such Additional Notes are not fungible with any other Notes that are then outstanding for U.S. federal income tax or for securities law purposes, such Additional Notes shall have a separate or no CUSIP number. Prior to the issuance of any such Additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to provide, in addition to those matters required by Section 18.05, that the Additional Notes have been duly authorized by the Company and are enforceable against the Company in accordance with their terms, subject to customary exceptions, including for bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith, fair dealing and unconscionability), regardless of whether considered in a proceeding in equity or law, and such other items as the Trustee may reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with
Section 2.08, and such Notes shall no longer be considered outstanding hereunder upon their repurchase

Section 2.11 *Special Provisions for Affiliate Notes*. Notwithstanding anything to the contrary in this Indenture:

(a) each Note that is an Affiliate Note will be issued only in the form of one or more Physical Notes, and no such Physical Notes may be exchanged for a beneficial interest in a Global Note unless and until the Notes represented thereby cease to be Affiliate Notes;

(b) each Note that is an Affiliate Note will bear a legend substantially in the form set forth in Section 2.05(c)(i) for so long as such Note continues to constitute an Affiliate Note;

(c) each share of Common Stock that is an Affiliate Share will bear a legend substantially in the form set forth in Section 2.05(d)(i) for so long as such share continues to constitute an Affiliate Share;

(d) each Affiliate Note will be identified by no CUSIP number or by a CUSIP number that is not the same as any CUSIP number assigned to any Note outstanding under this Indenture that is not an Affiliate Note;

(e) each Affiliate Share will be identified by no CUSIP number or by a CUSIP number that is not the same as any CUSIP number assigned to any share of Common Stock issued upon conversion of any Note that was not an Affiliate Note as of the time of such conversion; and

(f) Additional Interest will in no event accrue pursuant to Section 4.10 on any Note that is, or at any previous time was, an Affiliate Note or any Note issued in exchange of, or in substitution for, any Affiliate Note.

ARTICLE 3.
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge*. This Indenture and the Notes and the Note Guarantees, shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes and the Note Guarantees, when (a) (i) all outstanding Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Redemption Date, any Fundamental Change Repurchase Date, any Specified Repurchase Date, any Change of Control Repurchase Date, upon conversion or otherwise, cash or, solely to satisfy the Company's Conversion Obligation or Change of Control Conversion Obligation, as the case may be, shares of Common Stock and cash in lieu of fractional shares sufficient to pay all of the outstanding Notes or satisfy all outstanding conversions, as the case may be, and pay all other sums due and payable under this Indenture by the Company (for the avoidance of doubt, the Company will deliver any shares of common stock to be paid with respect to satisfying outstanding conversions directly to the applicable Holders); and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee and the Collateral Agent under Section 7.06 and Section 17.11 shall survive.

ARTICLE 4.
PARTICULAR COVENANTS OF THE COMPANY AND THE GUARANTORS

Section 4.01 *Payment of Principal and Interest*. The Company covenants and agrees that it will pay or cause to be paid the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Provisional

Redemption Price and Change of Control Redemption Price, if applicable) of, and accrued and unpaid interest (whether Cash Interest or PIK Interest) on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. PIK Interest will be considered paid on the date due if on such date (1) in the case of Physical Notes, PIK Notes in certificated form have been issued and authenticated in accordance with the terms of this Indenture and (2) in the case of Global Notes, the Company has directed the Trustee to increase the principal amount of the Notes then authenticated by the required amount (or, if required pursuant to the applicable procedures of the Depositary, authenticated additional Global Notes) in accordance with the terms of this Indenture.

Section 4.02 *Maintenance of Office or Agency*. The Company will maintain in the United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices in respect of the Notes and this Indenture may be delivered. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made at or delivered to the Corporate Trust Office or the office or agency of the Trustee in the United States of America so designated by the Trustee as a place where Notes may be presented for payment or for registration or transfer.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the United States of America where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion and where notices and demands in respect of the Notes and this Indenture may be delivered.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Capacity*. The Company, whenever necessary to avoid or fill a vacancy in the capacity of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent*.

(a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04(a):

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, and accrued and unpaid Cash Interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, and accrued and unpaid Cash Interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, or accrued and unpaid Cash Interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) or accrued and unpaid Cash Interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; provided that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, and accrued and unpaid Cash Interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) and accrued and unpaid Cash Interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, or accrued and unpaid Cash Interest on, the Notes when the same shall become due and payable.

(c) Anything in Section 4.04(a) to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by Section 4.04(a), such sums or

amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money or property deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable) of, accrued and unpaid Cash Interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Change of Control Redemption Price and Provisional Redemption Price, if applicable), Cash Interest or consideration due upon conversion has become due and payable shall, subject to applicable abandoned property laws, be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

(e) Upon any Event of Default pursuant to Section 6.01(h) or Section 6.01(i), the Trustee shall automatically be the Paying Agent.

(f) In the event that the Paying Agent receives funds in advance of any due date hereunder, the Paying Agent shall be entitled to invest such funds in the U.S. Bank Money Market Deposit Account or any substantially similar successor account, any earnings on which shall be for the account of the Company.

Section 4.05 *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and, subject to Article 16, the Company and the Guarantors shall do or cause to be done all things necessary to preserve and keep in full force and effect the corporate, partnership or other existence of the Guarantors.

Section 4.06 *Quarterly and Annual Reports and Rule 144A Information Requirement*.

(a) Prior to the consummation of the Qualified IPO, the Company shall prepare and deliver to the Trustee and the Holders of Notes the following information:

(i) within 120 days after the end of each fiscal year of the Company:

(A) annual consolidated financial statements and the notes thereto (which shall be audited if the Company prepares audited annual financial statements) of the Company in respect of its most recently completed fiscal year, which annual consolidated financial statements and notes thereto will include the Company's consolidated balance sheet as at the end of such fiscal year and its consolidated statements of income, stockholders' equity and changes in cash flow of the Company for such fiscal year, prepared in accordance with generally

accepted accounting principles consistently applied (and certified by independent public accountants if such financial statements and notes thereto are audited); and

(B) the Company's then-current consolidated capitalization table as of the end of such fiscal year; and

(ii) within 45 days after the end of each of the Company's first three fiscal quarters of each of the Company's fiscal years beginning with the fiscal quarter ending March 31, 2016, unaudited consolidated financial statements and the notes thereto of the Company in respect of its most recently completed fiscal quarter, which consolidated financial statements and notes thereto will include an unaudited consolidated balance sheet as at the end of such fiscal quarter and an unaudited consolidated statement of income for such fiscal quarter, each prepared in accordance with generally accepted accounting principles consistently applied, and an unaudited consolidated statement of changes in cash flow for such fiscal quarter, which the Company shall use its reasonable best efforts to prepare in accordance with generally accepted accounting principles consistently applied.

By receiving such information, each Holder shall be deemed to agree that as a condition to receiving such information that such information is confidential and may not be used, reproduced, disclosed or disseminated to any other Person (other than its directors, members, partners, officers, employees, accountants, attorneys and other agents having a need to know the contents of such information and who are bound by confidentiality obligations at least as restrictive as those set forth in this paragraph) unless such information (1) has been made available to the public generally by the Company, (2) was in the Holder's possession before receipt of such information pursuant to this Section 4.06(a), (3) is or becomes a matter of public knowledge through no action or inaction of such Holder that is prohibited by this paragraph, (4) is disclosed by the Company to a third party without a duty of confidentiality on such third party, (5) is required to be disclosed by such Holder (or its directors, members, partners, officers, employees, accountants, attorneys or other agents) under compulsion of law (whether by oral question, interrogatory, subpoena, civil investigative demand or otherwise) or by order or request of any court or governmental or regulatory body to whose supervisory authority such Holder, its directors, members, partners, officers, employees, accountants, attorneys or other agents, as the case may be, is subject; *provided* that, to the extent such Holder is subject to such compulsion of law or order and to the extent lawfully permitted to do so and other than in respect of any disclosure of such information made to any banking, financial, securities or similar supervisory or regulatory or governmental authority exercising its supervisory, examination or audit functions over such Holder, prior to providing such information, such Holder promptly provides the Company with written notice and, if the Company fail to obtain a protective order or other appropriate remedy with respect to the disclosure of such information, such Holder will furnish only that portion of the information that is so required to be disclosed, (6) is disclosed to a court, tribunal or any other applicable administrative agency or judicial authority in connection with the enforcement of such Holder's rights under this indenture or (7) is disclosed by such Holder with the Company's prior written consent. Notwithstanding the foregoing, Holders of Notes shall be permitted to share any information that the Company delivers pursuant to this Section 4.06(a) with prospective purchasers of the Notes so long as any such prospective purchaser (1) is not a Competitor of the Company, as reasonably determined by the Company, and (2) agrees in

writing to the Company to abide by the confidentiality provisions described in this Section 4.06(a).

(b) If, at any time, the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, upon the written request of any Holder, beneficial owner or prospective purchaser of Notes or any shares of Common Stock issuable upon the conversion of the Notes, promptly furnish such Holder, beneficial owner or prospective purchaser the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of the Notes or such shares of Common Stock pursuant to Rule 144A, as such rule may be amended from time to time. The Company shall take such further action as any Holder or beneficial owner of the Notes or any shares of Common Stock issuable upon conversion of the Notes may reasonably request to the extent from time to time required to enable such Holder or beneficial owner to sell the Notes or any shares of Common Stock issuable upon conversion of the Notes in accordance with Rule 144A, as such rule may be amended from time to time.

(c) On and after the consummation of the Company's first firmly underwritten registered public offering of Common Stock, the Company shall file with the Trustee, within 15 calendar days after the same are required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding, for the avoidance of doubt, any documents or reports (or portions thereof) that are subject to confidential treatment and any correspondence with the Commission). Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be delivered and filed with the Trustee for purposes of this Section 4.06(c) at the time such documents are filed via the EDGAR system (or any successor thereto); provided, however, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor).

(d) Delivery of reports, information and documents to the Trustee under this Indenture is for informational purposes only and the information and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, or determinable from information contained therein including the Company's compliance with any of its covenants thereunder (as to which the Trustee is entitled to rely exclusively on an Officer's Certificate).

(e) Within ten (10) Business Days following the Financial Statement Availability Date for a fiscal quarter, the Company shall deliver to the Trustee, and the Trustee shall provide to Holders upon request, a statement setting forth in reasonable detail the Company's calculation of Collateral Value as of the last day of such fiscal quarter. In addition, the Company shall deliver to each Holder of the Notes a statement setting forth in reasonable detail the Company's calculation of Investment Collateral Value with respect to a Significant Investment (or one or more Investments, which taken together would constitute a Significant

Investment, that were not

previously reported pursuant to this Section 4.06(e)) no later than ten (10) Business Days following the Calculation Date for such Significant Investment.

Section 4.07 *Stay, Extension and Usury Laws*. Each of the Company and the Guarantors, if any, covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company or any Guarantor from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and each of the Company and the Guarantors, if any, to the extent it may lawfully do so, hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee or the Collateral Agent, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08 *Compliance Certificate; Statements as to Defaults*. The Company shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2015) an Officer's Certificate stating whether the signer thereof knows of any Default or Event of Default that occurred during the previous fiscal year and, if so, specifying each such Default or Event of Default, its status and what actions the Company is taking or proposing to take with respect thereto.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 calendar days after becoming aware of any Event of Default or Default, written notice of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Section 4.09 *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.10 *Restrictive Legend*.

(a) Promptly following the Resale Restriction Termination Date of any Note that is not an Affiliate Note, the Company shall use its commercially reasonable efforts to remove the restrictive legend on such Note and assign an unrestricted CUSIP number to such Note.

(b) If, and for so long as, the restrictive legend on any Note (other than Affiliate Note) has not been removed, any Note (other than Affiliate Note) is assigned a restricted CUSIP number or any Note (other than Affiliate Note) is not eligible for resale under Rule 144 under the Securities Act (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) by Holders other than Affiliates of the Company or Holders that were Affiliates of the Company at any time during the three months preceding as of the later of (i) the 375th day after the last date of original issuance of such Note (with any PIK Notes deemed to have been issued on the date the underlying Note was originally issued) (or, if such 375th day is after a Regular Record Date and on or before the next Interest Payment Date, the Business Day after

such Interest Payment Date) and (ii) 5 Business Days following the consummation of the Company's first firmly underwritten registered public offering of common stock, the Company shall pay Additional Interest on such Note at a rate equal to 0.50% per annum of the principal amount of such Note outstanding until the restrictive legend has been removed from such Note, such Note is assigned an unrestricted CUSIP number and such Note is eligible for resale under Rule 144 under the Securities Act (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or such Note) as described above by Holders other than Affiliates of the Company (or Holders that were Affiliates of the Company at any time during the three months preceding).

(c) Additional Interest pursuant to Section 4.10(b) above will be payable in arrears on each Interest Payment Date following accrual in the same manner and to the same persons as regular interest on the Notes.

(d) Subject to the immediately succeeding sentence, Additional Interest that is payable in accordance with Section 4.10(b) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.04. However, in no event shall any Additional Interest (including any Additional Interest that may accrue as a result of the Company's election pursuant to Section 6.04) accrue at a rate per year in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(e) If Additional Interest is payable by the Company pursuant to Section 4.06 or Section 4.10(b), the Company shall deliver to the Trustee an Officer's Certificate to that effect setting forth (i) an identification of the Notes in respect of which such Additional Interest is payable; (ii) the amount of such Additional Interest that is payable and (iii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable, and the Trustee shall have no duty to verify the Company's calculation of Additional Interest. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 4.11 *Qualified IPO*. The Company shall provide notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of the consummation of the Qualified IPO no later than two Business Days following the consummation of the Qualified IPO.

Section 4.12 *Lock-up Release Date*. The Company shall notify Holders of the Notes (and use its commercially reasonable efforts to notify any person who previously received shares of Common Stock upon conversion of the notes other than in connection with a Change of Control prior to the Qualified IPO), the Trustee and the Conversion Agent (if other than the Trustee) of the occurrence of the Lock-up Release Date no later than two Business Days following the Lock-up Release Date.

Section 4.13 *Limitation on Investments*. Neither the Company nor any Guarantor shall, directly or indirectly, make any Restricted Investment.

Section 4.14 *Maintenance of Collateral*. If, as of the last day of any fiscal quarter of the Company, the Collateral Value does not equal or exceed the Threshold Amount as of such date, then the Company shall, solely to the extent assets not already pledged to secure the Notes are owned by one or more of its Subsidiaries that are not PPA Companies, Guarantors, Pledged Foreign Subsidiaries or Foreign Subsidiaries, and which assets would constitute Eligible Assets if such Subsidiary or Subsidiaries were Guarantors ("**Available Eligible Assets**"), promptly after the Financial Statement Availability Date in respect of such fiscal quarter, cause to be pledged to secure the Notes such Available Eligible Assets with a Book Value at least equal to the lesser of (i) the Book Value of all Available Eligible Assets and (ii) the amount sufficient to cause the Collateral Value to equal the Threshold Amount. Notwithstanding the foregoing, the Collateral Value as of September 30, 2015 will be deemed to be $381,849,290.

Section 4.15 *Adjustment to Conversion Rate*. Prior to the Qualified IPO, to the extent the Company (or any Subsidiary thereof) includes any price-based anti-dilution adjustment in an instrument governing convertible debt or preferred stock ("**Other Instrument**") of the Company (or exchangeable debt of a Subsidiary of the Company that is exchangeable into Common Stock) issued in a *bona fide* financing transaction for the purpose of raising capital that results in an adjustment to the conversion price or conversion rate of such Other Instrument as a result of issuances of Capital Stock below the conversion price or conversion rate of such Other Instrument that is in any material respect more favorable to the holder of such instrument than the price-based anti-dilution adjustments included in Section 14.05 hereof are to the Holders, the Company shall promptly after the effectiveness of such instrument prepare a supplement to this Indenture granting any such price-based anti-dilution adjustment to the Holders of Notes; *provided* that notwithstanding the foregoing, no adjustment shall be made on account of any anti-dilution adjustment applicable to the Company's preferred stock outstanding on the Issue Date (the "**Existing Preferred Stock**") or any anti-dilution adjustments applicable to future series of preferred stock that is substantially similar to the anti-dilution provisions applicable to the Existing Preferred Stock, in each case, as such provisions of the Existing Preferred Stock exist on the Issue Date.

Section 4.16 *Mortgages*. With respect to any real property (other than Non-Material Real Property) that is owned in fee

simple by the Company or any Guarantor (collectively, the "**Premises**"), the Company or such Guarantor shall use commercially reasonable efforts to, within 180 days of the later of (x) the Issue Date and (y) the acquisition thereof, as applicable:

(a) deliver to the Collateral Agent, as mortgagee, for the benefit of the Holders, fully executed counterparts of Mortgages, duly executed by the Company or the applicable Guarantor, as the case may be, and corresponding Uniform Commercial Code (or similar) fixture filings, together with evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgages and corresponding Uniform Commercial Code (or similar) fixture filings as may be necessary to create a valid, perfected Lien in favor of the Collateral Agent, subject to Permitted Liens, against the Premises purported to be covered thereby;

(b) deliver to the Collateral Agent, (i) mortgagee's title insurance policies in favor of the Collateral Agent in an amount equal to 100% of the fair market value of the Premises purported to be covered by the related Mortgages, insuring that title to such property is

marketable and that the interests created by the Mortgage constitute valid Liens in favor of the Collateral Agent thereon free and clear of all Liens, defects and encumbrances other than Permitted Liens, and such policies shall also include, to the extent available and issued at ordinary rates, customary endorsements or such endorsements as the Collateral Agent may reasonably request (excluding endorsements related to mechanics lien coverage, creditors' rights, environmental liens and survey matters (unless a satisfactory survey is made available) and shall be accompanied by evidence of the payment in full (or satisfactory arrangements for the payment in full)) of all premiums thereon and (ii) such affidavits, certificates, instruments of indemnification and other items (including a so-called "gap" indemnification) as shall be reasonably required to induce the title insurer to issue the title insurance policies and endorsements referenced herein with respect to each of the Premises;

(c) deliver to the Collateral Agent current (other than the Delaware Property) and future real property surveys of such Premises;

(d) deliver Opinions of Counsel to the Collateral Agent in the jurisdictions where such Premises are located that such Mortgage has been duly authorized, executed and delivered by the Company or such Guarantor, constitutes a legal, valid, binding and enforceable obligation of the Company or such Guarantor and creates a valid perfected Lien in favor of the Collateral Agent, subject to Permitted Liens, against the Premises purported to be covered thereby; and

(e) such other information, documentation, and certifications as may be reasonably required by the Collateral Agent or necessary in order to create valid, perfected and subsisting Liens in favor of the Collateral Agent, subject to Permitted Liens, against the Premises covered by the Mortgages.

Section 4.17 *Additional Guarantors*. The Company will cause each Subsidiary, other than any PPA Company or any Foreign Subsidiary, to, substantially concurrently with (i) the pledge by such Subsidiary pursuant to Section 4.14 or (ii) the guarantee by such Subsidiary of the Revenue Notes or any 2020 Financing Transaction debt facility, execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C attached hereto pursuant to which such Subsidiary shall unconditionally Guarantee, on a senior secured basis, all of the Company's Obligations under the Indenture Documents on the terms set forth in this Indenture and the Security Documents until the Note Guarantee of such Person has been released in accordance with the provisions of this Indenture.

Section 4.18 *Further Assurances*. Subject to the limitations set forth herein and in the Security Documents, the Company and the Guarantors shall execute and deliver such further instruments and do such further acts as may be necessary, desirable or proper, or that the Trustee or Collateral Agent may reasonably request, to carry out more effectively the provisions of this Indenture.

The Company shall, and shall cause each Guarantor to, at their sole cost and expense, (i) execute and deliver all such agreements and instruments as shall be necessary or as the Collateral Agent shall reasonably request to more fully or accurately describe the property intended to be Collateral or the Obligations intended to be secured by the Security Documents and (ii) file any such notice filings, financing statements or other agreements or instruments as

may be necessary, proper or desirable, or that the Collateral Agent may reasonably request, to attach and perfect (and maintain the attachment, perfection and priority) the Liens created by the Security Documents, subject to Permitted Liens and the Intercreditor Agreement, in each case subject to the terms of, and to the extent required by, the Security Documents.

Section 4.19 *Intercreditor Agreement*. Upon the incurrence by the Company of any *Pari passu* Obligations, the Company shall deliver to the Trustee and the Collateral Agent a written request that the Collateral Agent execute and deliver the Intercreditor Agreement in the form set forth as Exhibit E, accompanied by an Officer's Certificate and an Opinion of Counsel stating that the covenants and conditions precedent in this Indenture relating to the incurrence of such *Pari passu* Obligations and the execution and delivery of the Intercreditor Agreement have been satisfied and upon receipt of such document, the Collateral Agent shall execute and deliver such Intercreditor Agreement.

Section 4.20 *Use of Proceeds of Revenue Notes*. The Company shall not use, directly or indirectly, any of the net cash proceeds received by the Company from the issuance and sale of the Revenue Notes to make any Investment in any Subsidiary that is not a Guarantor. All of the net cash proceeds received by the Company from the issuance and sale of the Revenue Notes shall be deposited into a deposit account that is subject to a Deposit Account Control Agreement at the time of deposit upon or promptly after receipt thereof.

Section 4.21 *Delaware Property Security*. Within sixty (60) days after the Delaware Property Release Date, the Company shall deliver the Delaware Property Mortgage to the Trustee and file, register or record all documents and instruments, including Uniform Commercial Code financing statements, required by applicable law or reasonably requested by the Holders to be filed, registered or recorded to create the Liens intended to be created by the Delaware Property Mortgage and perfect such Liens to the extent required by, and with the priority required by, the Delaware Property Mortgage.

Section 4.22 *Repurchase or Redemption Upon Consummation of Certain Transactions*.

(a) If the Company or any Guarantor (i) consummates any Equity Offering, (ii) borrows, issues or otherwise incurs any Indebtedness for money borrowed (other than Excluded Debt), or (iii) sells or licenses any Intellectual Property in a transaction outside the ordinary course of business, in each case on or after the date hereof, the Company will apply an amount equal to the cash proceeds therefrom (net of any underwriting discount, OID, initial purchasers' discount, private placement fees, upfront fees, commitment fees and legal expenses incurred in connection therewith) as follows: (1) *first*, to repurchase the Notes owned (beneficially or of record) by CPP Investments within five Business Days of the receipt of such cash proceeds, at a purchase price payable in cash equal to 100% of the principal amount of the Notes repurchased, plus accrued and unpaid interest to, but excluding, the repurchase date, plus the Applicable Premium (if the Applicable Premium is greater than zero), until $70.0 million in aggregate principal amount of Notes owned by CPP Investments have been redeemed (pursuant to any redemption provision of this Indenture) or repurchased on or after the date hereof (and, for avoidance of doubt, this clause (1) shall be of no further force or effect at any time after $70.0 million in aggregate principal amount of Notes owned by CPP Investments have been so

redeemed or repurchased); and (2) *second*, 50% of the remaining amount will be applied to redeem the Notes pursuant to Section 4.22(c) at a redemption price payable in cash equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding the Redemption Date, plus the Applicable Premium (if the Applicable Premium is greater than zero), and 50% of the remaining amount may be used by the Company for any purpose and in any manner not otherwise prohibited by this Indenture. Notwithstanding the foregoing, if the Company offers to repurchase Notes owned by CPP Investments pursuant to clause (1) above but CPP Investments declines to consummate such repurchase for any reason, or if CPP Investments declines any redemption pursuant to Section 4.22(c), then for purposes of clause (1) above, such repurchase or redemption shall be deemed to have been made.

(b) If at least $70.0 million in aggregate principal amount of Indebtedness has been issued under any 2020 Financing Transaction debt facility, the Company will apply an amount equal to 100% of the cash proceeds (net of any underwriting discount,

OID, initial purchasers' discount, private placement fees, upfront fees, commitment fees and legal expenses incurred in connection therewith) from the next $80.0 million in aggregate principal amount of Indebtedness issued under the accordion, incremental facility or reopener provision, if any, of such 2020 Financing Transaction debt facility, to redeem the Notes pursuant to Section 4.22(c) at a redemption price payable in cash equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding the Redemption Date, plus the Applicable Premium (if the Applicable Premium is greater than zero).

(c) If the Company is required to redeem all or a portion of the Notes pursuant to Section 4.22(a) (excluding, for avoidance of doubt, repurchase of Notes from CPP Investments pursuant to clause (1) thereof) or 4.22(b), the Company shall follow the redemption procedures set forth in Section 13.03; *provided* that (i) the applicable notice of redemption shall state that any Holder (including, in the case of Global Notes, the beneficial owners thereof) may, by written notice to the Company within five Business Days of the redemption notice delivered by the Company pursuant to Section 13.03, decline their pro rata portion of the net cash proceeds being applied to make such redemption pursuant to the procedures stated in such redemption notice (which procedures may, at the Company's option, require that any Holder (or beneficial owner) that does not decline their pro rata portion of such net cash proceeds must deliver their Notes (or beneficial interest therein) to the Trustee pursuant to the applicable procedures of the Depositary) and (ii) the Redemption Date shall be no later than the 15th Business Day following the consummation of the applicable transaction which results in the requirement to redeem the Notes pursuant to this Section 4.22(c) (and no more than 15 days' notice of redemption will be required). The Company shall deliver a certification to the Trustee setting forth the procedures to be used in implementing the foregoing and a list of beneficial owners who have declined such net cash proceeds (and the participants at the Depositary through whom such beneficial owners hold the Notes), together with such information as shall be reasonably required by the Trustee or the Depositary to effect to the foregoing. For the avoidance of doubt, to the extent any redemption pursuant this 4.22(c) is conducted through DTC (whether through DTC redemption procedures or other DTC procedures used to implement the provisions of Section 4.22(a) or (b), as the case may be), such redemption shall be conducted in accordance with DTC's applicable procedures. Any net cash proceeds that are declined by the Holders (or beneficial owners) may be used by the Company for any purpose and in any manner not otherwise prohibited by this Indenture. Any net cash proceeds that are declined by CPP Investments will be deemed to have

been applied to repurchase Notes owned by CPP Investments pursuant to clause (1) above but CPP Investments declines to consummate such repurchase for any reason, then for purposes of clause (1) above, such repurchase shall be deemed to have been made.

Section 4.23 *Limitation on Payments With Respect to Indebtedness*. The Company shall not (i) make any cash payment on, or cash repurchase of, its outstanding 5% Convertible Notes, prior to the six-month anniversary of the date hereof or (ii) repay or prepay for cash the principal amount of any other Indebtedness (other than (i) a repayment of Existing Noteholder Debt from the proceeds of other Existing Noteholder Debt or (ii) Excluded Debt described in clause (iv) of the definition thereof incurred under a revolving line of credit), prior to the repayment of at least $70.0 million in aggregate principal amount of Notes owned (beneficially or of record) by CPP Investments. Notwithstanding the foregoing, if the Company offers to repurchase or redeem Notes owned by CPP Investments but CPP Investments declines to consummate such repurchase or redemption for any reason, then for purposes of clause (ii) above, such repurchase or redemption shall be deemed to have been made.

Section 4.24 *Limitation on Restricted Payments*. The Company shall not (i) declare or pay any cash dividend or make any cash distribution on account of the Company's Capital Stock, or purchase or otherwise acquire or retire for cash or cash equivalents any of the Company's Capital Stock, in each case other than in connection with a Permitted Bond Hedge or Warrant Transaction or (ii) make any Investment consisting of cash, cash equivalents or other assets in any Subsidiary that is not a Guarantor except pursuant to intercompany agreements that are in existence on the date hereof, which agreements may not be amended in a manner materially adverse to the Holders following the date hereof without the prior written consent of CPP Investments (or, if CPP Investments does not beneficially own any Notes (which shall be based solely on a certificate of CPP Investments upon which the Trustee may conclusively rely), without the prior written consent of Holders representing a majority in aggregate principal amount of the Notes).

Section 4.25 *Limitation on Liens on, and Transfers of, Intellectual Property*.

(a) The Company shall not (i) create, incur, assume or permit to exist any Lien (such Lien, the "**Initial Lien**"), other than Permitted Intellectual Property Liens, on any Intellectual Property of the Company or any of its Subsidiaries unless the Notes are equally and ratably secured thereby, and (ii) shall not transfer any Intellectual Property to any Subsidiary that is not a Guarantor.

(b) Notwithstanding the foregoing, any Lien to secure the Notes pursuant to Section 4.25(a)(i) shall be automatically and unconditionally released and discharged upon the release of the Initial Lien on such Intellectual Property (including any deemed release upon payment in full of all obligations secured by such Liens).

Section 4.26 *Additional Information Rights*. If the Company does not make payment in full of the outstanding principal amount of the Notes on or prior to the one-year anniversary of the date hereof, (i) CPP Investments, so long as its beneficially owns any Notes, or (ii) any beneficial owner or owners of at least 50% in aggregate principal amount of the Notes may receive, upon written request to the Company, any of the following information: (i) weekly

or monthly cash balances, (ii) monthly unaudited financial statements and (iii) copies of all notices, minutes, consents, and other materials that it provides to the Board of Directors or any committee of the Board of Directors, at the same time and in the same manner as such information is delivered to the Board of Directors (collectively, "**Board Materials**"); *provided that* the Company shall have no obligation to provide any Board Materials or portion(s) thereof if the Company concludes, acting in good faith, that (i) such exclusion is reasonably necessary to preserve the attorney-client or work product privilege between the Company or its affiliates and its counsel; (ii) such Board Materials or discussion relates to the Notes or to the Company's or its affiliates' relationship, contractual or otherwise, with any beneficial owner of the Notes or any actual or potential transactions between or involving the Company or its affiliates and any beneficial owner of the Notes or its affiliates; (iii) such exclusion is necessary to avoid a conflict of interest or disclosure that is restricted by any agreement to which the Company or any of its affiliates is a party or otherwise bound; or (iv) such exclusion is necessary to protect competitively sensitive information of the Company or any of its affiliates. If less than $70.0 million in aggregate principal amount of Notes owned (beneficially or of record) by CPP Investments have been repurchased or redeemed (pursuant to any redemption provision of this Indenture) on or after the date hereof by September 1, 2020, the Company shall provide the following to CPP Investments to the extent requested in writing: (i) weekly or monthly cash balances, (ii) monthly unaudited financial statements and (iii) conference calls with senior management of the Company not more than once a calendar month.

The Trustee shall have no obligation to monitor the beneficial ownership of the Notes for purposes of the Company's compliance with this Section 4.26.

Section 4.27 *The Requisite Stockholder Approval*. The Company will use its commercially reasonable efforts to obtain the Requisite Stockholder Approval, including by seeking such approval, if not previously obtained, at each future regular annual meeting of its stockholders and endorsing its approval in the related proxy materials.

ARTICLE 5.
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee and the Paying Agent, semi-annually, not more than 15 calendar days after each June 1 and December 1 in each year beginning with May 1, 2016, and at such other times as the Trustee may request in writing, within 30 calendar days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 calendar days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained

by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6.
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. Each of the following events shall be an "**Event of Default**" with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 calendar days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any Redemption Date, any Specified Repurchase Date, any Fundamental Change Repurchase Date, any Change of Control Repurchase Date, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right where such failure continues for a period of three Business Days;

(d) failure by the Company to issue a Notice of Redemption in accordance with Section 13.04, a notice of a Change of Control in accordance with Section 14.01, a Fundamental Change Company Notice, a Specified Repurchase Date Right Notice or a Change of Control Company Notice in accordance with Section 15.01(b), Section 15.02(b) or Section 15.03(b), notice of a Make-Whole Fundamental Change in accordance with Section 14.04(b), notice of the consummation of the Qualified IPO in accordance with Section 4.11 or notice of the occurrence of the Lock-up Release Date in accordance with Section 4.12, in each case, when due, and such failure continues for two Business Days after the due date for such notice;

(e) failure by the Company or any Guarantor to comply with its obligations under Article 11 or Section 4.13, 4.22, 4.23, 4.24 or 4.25;

(f) failure by the Company or any Guarantor for 60 calendar days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any other covenants and obligations of the Company or any Guarantor contained in the Indenture Documents (other than those covenants and obligations referred to in clauses (a) through (e) above);

(g) default by the Company, any Guarantor or any Significant Subsidiary with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed of $15.0 million (or the foreign currency equivalent thereof) or more in the aggregate of the Company and/or any such Guarantor or Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable, (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise and in the cases of clauses (i) and (ii) such acceleration shall not have been rescinded

or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness is not paid or discharged, as the case may be, within 30 calendar days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of Notes then outstanding determined in accordance with Section 18.03 has been received, or (iii) prior to the consummation of the Qualified IPO, entitling any creditor or creditors of the Company, any Guarantor or any Significant Subsidiary after expiration of any applicable cure period to accelerate such indebtedness;

(h) the Company, any Guarantor or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Guarantor or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Guarantor or Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors;

(i) an involuntary case or other proceeding shall be commenced against the Company or any Guarantor or Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Guarantor or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Guarantor or Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a

period of 60 consecutive calendar days;

(j) any of the Guarantees by a Guarantor ceases to be in full force and effect or any of such Guarantees is declared by a court of competent jurisdiction to be null and void and unenforceable or any of such Guarantees is found by a court of competent jurisdiction to be invalid or any Guarantor denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of this Indenture) and such event continues for ten (10) Business Days;

(k) (A) failure by the Company or any Guarantor to comply with any of its covenants or other obligations under any of the Security Documents for 15 calendar days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company, (B) any of the Security Documents shall cease for any reason to be in full force and effect (other than in accordance with its terms or the terms of this Indenture), or the Company or a Guarantor, in each case that is a party to any of the Security Documents shall so assert in writing, or (C) the Lien created by any of the Security Documents, shall cease to be, or shall be asserted in writing by the Company or any Guarantor not to be, perfected (to the extent required by this Indenture or the Security Agreement) and enforceable in accordance with its terms or of the same effect as to perfection and priority purported to be created thereby with respect to any significant portion of the Collateral (other than in connection with any termination of such Lien in respect of any Collateral as permitted by this Indenture or by any of the Security Documents);

(l) K.R. Sridhar resigns from, is unable to perform as, or ceases to serve in his current position as Chief Executive Officer of the Company at any time, unless, in each case, such event is due to illness, incapacity or death;

(m) the Company has not redeemed, repurchased or otherwise repaid at least $70.0 million of Notes beneficially owned by CPP Investments on or before June 1, 2021, in the case of repurchase at a purchase price of 100% of the principal amount of the Notes to be
repurchased, plus accrued and unpaid interest to but excluding the date of repurchase, plus the Applicable Premium (if the Applicable Premium is greater than zero) (and in the case of redemption, at the applicable redemption price pursuant to the applicable provisions of this Indenture), such that CPP Investments has been repaid at least $70.0 million after the date hereof in respect of its Notes held as of the date hereof from all repurchases, redemptions or other repayments after the date hereof; or

(n) the Company fails to comply with its obligations pursuant to Section 4(h) of the Support Agreement.

For avoidance of doubt, (i) the conversion of any Notes by CPP Investments pursuant to the conversion provisions hereof or the transfer of any Notes by CPP Investments to another Person other than the Company shall not constitute a repayment of such Notes, (ii) it will not be an Event of Default pursuant to Section 6.01(m), and no breach, Default or Event of Default will arise as a result of any requirement herein that the Company has repurchased or redeemed at least $70.0 million of Notes beneficially owned by CPP Investments, if, in each case, it is not possible for the Company to repurchase such amount because CPP Investments has transferred Notes to another Person, converted such Notes pursuant to the conversion provisions hereof or the necessary amount of Notes are no longer held by CPP Investments for any other reason and (iii) the requirements herein to repay at least $70.0 million of Notes held by CPP Investments shall only apply to the extent such Notes are held by CPP Investments.

Section 6.02 *Acceleration; Rescission and Annulment*. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, in each case, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal amount of, and accrued and unpaid interest, if any, on all the Notes to be due and payable in cash immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal amount of, and accrued and unpaid interest, if any, on, all Notes shall automatically become and be immediately due and payable in cash without any declaration or other act on the part of the Trustee or any Holder.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable (or have become immediately due and payable), and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, if (1) the Company shall have paid or deposited with the Trustee a sum sufficient to pay all matured installments of accrued and unpaid interest upon the Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on such principal and, to the extent that such payment is enforceable under applicable law, on overdue installments of accrued and unpaid interest, at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, (2) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (3) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall not have become due by their terms, shall have been remedied or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of the Minimum Principal Amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price, if applicable) of, or accrued and unpaid interest, if any, on, any Notes, (ii) a failure to repurchase any Notes when required under this Indenture, or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 *Payments of Notes on Default; Suit Therefor*. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee hereunder. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such

other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.03, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims,

and to distribute the same after the deduction of any amounts due to the Trustee hereunder; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, reasonable expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee hereunder, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, reasonable expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to

Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.04 *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06 shall (i) for the first 90 calendar days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes outstanding for each day during such 90-calendar day period on which such an Event of Default is continuing and (ii) for the period from, and including, the 91st calendar day after the occurrence of such an Event of Default to, and including, the 180th calendar day after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding for each day during such additional 90-calendar day period on which such an Event of Default is continuing. Subject to the last paragraph of this Section 6.04, Additional Interest payable pursuant to this Section 6.04 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.10. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 181st calendar day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06 is not cured or waived prior to such 181st calendar day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this Section 6.04 will not affect the rights of Holders of Notes in the event of the occurrence of any other Event of Default. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.04 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in

Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 calendar days after the occurrence of any Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06 described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent (if other than the Trustee) of such election prior to the beginning of such 180-calendar day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02. Neither the Trustee nor the Paying Agent shall at any time be under any duty or responsibility to any Holder to determine the Additional Interest, or with respect to the nature, extent, or calculation of the amount of Additional Interest owed, or with respect to the method employed in such calculation of the Additional Interest.

In no event shall Additional Interest payable in the event the Company elects to pay Additional Interest in respect of an Event of Default relating to its failure to comply with its obligations under Section 4.06 as set forth in this Section 6.04 (together with Additional Interest

payable under Section 4.10(b)) accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 6.05 *Application of Monies Collected by Trustee*. Subject to the terms of the Intercreditor Agreement, any monies or property collected by the Trustee pursuant to this Article 6 or by the Collateral Agent pursuant to the Security Documents, or any money or other property distributable in respect of the Company's or the Guarantors' obligations under the Indenture Documents after an Event of Default shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies or property, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee (in any capacity), the Collateral Agent and their respective agents hereunder;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price, Redemption Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company or the applicable Guarantor, as the case may be.

Section 6.06 *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable,

the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and redemption price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder shall have any right by virtue of or by availing of any provision of this Indenture to

institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity, in each case, satisfactory to the Trustee against all losses, liabilities and expenses to be incurred therein or thereby;

(d) the Trustee for 60 calendar days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that is inconsistent with such written request shall have been given to the Trustee by the Holders of the Minimum Principal Amount of the Notes then outstanding within such 60-calendar day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein); it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders. For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to bring suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee*. In case of an Event of Default, the Trustee may proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in

equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing*. Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any

Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Holders*. Subject to the Trustee's right to receive indemnity or security satisfactory to it from the relevant Holders as described herein, the Holders of the Minimum Principal Amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; *provided, however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such directions are unduly prejudicial to such Holder) or that would involve the Trustee in personal liability. The Holders of the Minimum Principal Amount of the Notes at the time outstanding determined in accordance with Section 8.04, by notice to the Trustee, may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (1) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price, any Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (2) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes, (3) a failure by the Company to repurchase any Notes when required under this Indenture, (4) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected or (5) a failure by the Company to redeem any Notes upon redemption of any Notes. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and

to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults*. The Trustee shall, within 90 calendar days after it receives notice of the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, mail (or send electronically) to each Holder notice of all Defaults known to a Responsible Officer, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, Specified Repurchase Date Price, Change of Control Repurchase Price and Redemption Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs*. All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided,* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price, Specified

Repurchase Date Price, Change of Control Repurchase Price and Redemption Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

ARTICLE 7.
CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee*. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity satisfactory to the Trustee against all losses, liabilities and

expenses that might be incurred by it in compliance with such request or direction. Prior to taking any action hereunder at the Company's instruction, the Trustee shall be entitled to indemnification by the Company satisfactory to the Trustee against all losses, liabilities and expenses caused by taking or not taking such action.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than the Minimum Principal Amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company;

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Collateral Agent or transfer agent hereunder, the rights, privileges, immunities, benefits and protections (including, without limitation, its right to be indemnified) afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent, Collateral Agent or transfer agent;

(i) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(j) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(k) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee indemnity satisfactory to the Trustee against all losses, liabilities and expenses which might be incurred by it in compliance with such request or direction;

(l) the Trustee makes no representation as to the validity or adequacy of the Notes;

(m) the Trustee is not accountable for the Company's use or application of the proceeds from the Notes or for any funds received and disbursed in accordance with the Indenture;

(n) the Trustee shall not be liable for the obligations evidenced by the Notes;

(o) the Trustee, in its capacity as Trustee or Collateral Agent, as applicable, is hereby authorized and directed to execute and deliver each Indenture Document or Security Document to which it is a party, binding the Holders to the terms thereof;

(p) the Trustee is not responsible for any statement in the Notes other than its certificate of authentication; and

(q) the Trustee shall have no obligation to monitor or confirm whether any purported beneficial holder of the Notes is a beneficial holder for any purpose under the Indenture Documents.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc*. Except as otherwise provided in Section 7.01:

(a) the Trustee and the Collateral Agent may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon, other evidence of indebtedness or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee and Collateral Agent may consult with counsel of its selection and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action

taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee and Collateral Agent shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, other evidence of indebtedness or other paper or document, but the Trustee and Collateral Agent may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee and Collateral Agent shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company and the Guarantors, personally or by agent or attorney at the expense of the Company and the Guarantors and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(f) the Trustee and Collateral Agent may request that the Company and the Guarantors deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture; and

(g) the permissive rights of the Trustee and Collateral Agent enumerated herein shall not be construed as duties.

In no event shall the Trustee and Collateral Agent be liable for any consequential, special, indirect or punitive loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee and Collateral Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any Holder of the Notes at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

Section 7.03 *No Responsibility for Recitals, Etc*. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee and Collateral Agent assume no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 7.04 *Trustee, Paying Agents, Conversion Agents, Collateral Agent or Note Registrar May Own Notes*. The Trustee, any Paying Agent, any Conversion Agent, Collateral Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent, Collateral Agent or Note Registrar.

Section 7.05 *Monies to Be Held in Trust*. All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 7.06 *Compensation and Expenses of Trustee*. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith (in each case, as determined by a final order of a court of competent jurisdiction not subject to further appeal). The Company and the Guarantors also, jointly and severally, covenant to indemnify the Trustee (or any predecessor Trustee) in any capacity under this Indenture and any other document or transaction entered into in connection herewith

and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income

of the Trustee) incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be (in each case, as determined by a final order of a court of competent jurisdiction not subject to further appeal), and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim or liability (whether asserted by the Company, or any Holder or any other Person). The obligations of the Company and the Guarantors under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.04, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company or any Guarantor. The obligation of the Company and the Guarantors under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal or the Trustee. The Company and the Guarantors need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

The provisions of this Section 7.06 shall survive the satisfaction and discharge or termination of this Indenture and the resignation or removal of the Trustee. "**Trustee**" for the purposes of this Section 7.06 shall include any predecessor Trustee and the Trustee in each of its capacities hereunder and each agent, custodian and other person employed to act hereunder; *provided, however*, that the gross negligence or willful misconduct of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

Section 7.07 *Officer's Certificate as Evidence*. Whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence, willful misconduct and bad faith (in each case, as determined by a final order of a court of competent jurisdiction not subject to further appeal) on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence, willful misconduct and bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee*. There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at

least $50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee*.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by delivering notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 calendar days after the delivery of such notice of resignation to the Holders, the resigning Trustee may, at the Company's expense petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a *bona fide* holder of a Note or Notes for at least six months (or since the Issue Date) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a *bona fide* holder of a Note or Notes for at least six months (or since the Issue Date) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 calendar days after the delivery of such notice of resignation to the Holders, the resigning Trustee may, at the Company's expense, petition any court of competent jurisdiction for the appointment of a successor trustee.

(c) The Holders of the Minimum Principal Amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee by so notifying the Trustee and the Company in writing not less than 30 days prior to the effective date of such removal and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten calendar days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided at the expense of the Company, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10. The Trustee shall have no liability or responsibility for the action or inaction of any successor trustee.

Section 7.10 *Acceptance by Successor Trustee*. Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a

senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice (or cause such notice to be delivered) within ten calendar days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11 *Succession by Merger, Etc*. Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate

trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; provided, however, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company or any Guarantor (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company or any Guarantor has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8.
CONCERNING THE HOLDERS

Section 8.01 *Action by Holders*. Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor

executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders

of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen calendar days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders*. Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners*. The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded*. In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, any Guarantor, by any Subsidiary thereof or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided,* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, any Guarantor, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the

account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound*. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9.
HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings*. A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee*. The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine in consultation with the Company or the Holders, as the case may be. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be mailed to the Company. Such notices shall be delivered or mailed, as the

case may be, not less than 20 nor more than 90 calendar days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders*. In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed or delivered, as the case may be, the notice of such meeting within 20 calendar days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing or delivering, as the case may be, notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting*. To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to

speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations*. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee may, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of the Minimum Principal Amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the

provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of the Minimum Principal Amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed or delivered, as the case may be, as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

Nothing contained in this Article 9 shall be deemed or construed to limit any Holder actions pursuant to the applicable procedures of the Depositary so long as the Notes are Global Notes.

ARTICLE 10.
SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. The Company and the Trustee and/or the Collateral Agent, as the case may be, at the Company's expense, may from time to time and at any time amend, supplement or waive any provision of the Indenture Documents without the consent of any Holder for one or more of the following purposes:

(a) to cure any ambiguity, omission, defect or inconsistency in a manner that does not adversely affect holders of the Notes;

(b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11 or to provide for the

assumption by a successor entity of the obligations of a Guarantor under this Indenture and its Note Guarantee pursuant to Article 16;

(c) to add guarantees with respect to the Notes;

(d) to release any Guarantor from its obligations under its Note Guarantee or this Indenture in accordance with the terms of the Indenture Documents;

(e) to add additional assets as Collateral or to enter into additional or supplemental Security Documents;

(f) to release Collateral in accordance with the terms of this Indenture and the Security Documents;

(g) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or any of the Security Documents or any release of Liens in favor of the Collateral Agent in the Collateral in accordance with the terms of this Indenture or the Security Documents;

(h) to allow any Guarantor to execute a supplemental indenture and/or a Note Guarantee with respect to the Notes;

(i) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company under the Indenture;

(j) to make any change that does not adversely affect the rights of any Holder;

(k) to adjust the Conversion Rate as provided in Article 14;

(l) to provide for the issuance of Additional Notes and PIK Payments in accordance with the limitations set forth in this Indenture;

(m) to provide for the acceptance or appointment by a successor trustee or facilitate the administration of the trusts under this Indenture by more than one trustee;

(n) in connection with any Specified Corporate Event, to provide that the Notes are convertible into Reference Property, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.08;

(o) amend the provisions of this Indenture solely to facilitate (a) the deposit of one or more registered notes in global form with DTC, (b) the qualification of one or more Global Notes for settlement through the facilities of DTC and / or (c) the exchange of Physical Notes for beneficial interests representing an equivalent principal amount in a Global Note, registered in the name of DTC, or its nominee, in each case, in a manner that does not adversely affect Holders of the Notes; or

(p) to supplement the Indenture in accordance with Section 4.15. 86

Upon the written request of the Company, the Trustee and/or the Collateral Agent, as the case may be, is hereby authorized to, and shall join with the Company in the execution of any such document reflecting the amendment, supplement or waiver to the applicable Indenture Document, to make any further appropriate agreements and stipulations that may be therein contained, except that the Trustee and/or the Collateral Agent shall not be obligated to, but may enter into any such amendment, supplement or waiver

that affects the Trustee's and/or Collateral Agent's own rights, duties or immunities under this Indenture or otherwise.

Any such document reflecting the amendment, supplement or waiver to the applicable Indenture Document authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders*. With the consent (evidenced as provided in Article 8) of the Holders of at least the Minimum Principal Amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company and the Trustee and/or Collateral Agent, as the case may be, at the Company's expense, may from time to time and at any time enter into amendments, supplements or waivers to the Indenture Documents for the purpose of adding any provisions to or changing in any manner, waiving or eliminating any of the provisions of the Indenture Documents or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such amendment, supplement or waiver shall:

(a) reduce the consideration due upon conversion of the Notes;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal of or change the Maturity Date of any Note;

(d) except as set forth in Section 14.08, make any change that adversely affects the conversion rights of any Notes;

(e) reduce the Redemption Price, Fundamental Change Repurchase Price, Specified Repurchase Date Price or Change of Control Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in currency other than that stated in the Note and in this Indenture;

(g) change the ranking of the Notes in a manner adverse to Holders;

(h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(i) to release any Guarantor from any of its obligations under its Note Guarantee or this Indenture, except in accordance with the terms of this Indenture; or

(j) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee and/or Collateral Agent, as the case may be, of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee and/or the Collateral Agent shall join with the Company in the execution of such amendment, supplement or waiver to the Indenture Documents unless such amendment, supplement or waiver affects the Trustee's and/or the Collateral Agent's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee and/or the Collateral Agent may, but shall not be obligated to, enter into such amendment, supplement or waiver.

Holders do not need under this Section 10.02 to approve the particular form of any proposed amendment, supplement or waiver. It shall be sufficient if such Holders approve the substance thereof. After any such amendment, supplement or waiver becomes effective, the Company shall mail (or send electronically) to the Holders (with a copy to the Trustee) a notice briefly describing such amendment, supplement or waiver. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the amendment, supplement or waiver.

Section 10.03 *Effect of Amendments, Supplements Or Waivers*. Upon the execution of any amendment, supplement or waiver

pursuant to the provisions of this Article 10, the applicable Indenture Document shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under the Indenture Documents of the Trustee, the Collateral Agent, the Company, the Guarantors and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such amendment, supplement or waiver shall be and be deemed to be part of the terms and conditions of the applicable Indenture Document for any and all purposes.

Section 10.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any amendment, supplement or waiver pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation as to any matter provided for in such amendment, supplement or waiver. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Board of Directors, to any modification of an Indenture Document contained in any such amendment, supplement or waiver may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 18.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Amendment, Supplement Or Waiver to Be Furnished Trustee*. In addition to the documents required by Section 18.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any amendment, supplement or waiver executed pursuant hereto complies with the requirements of

this Article 10, is permitted or authorized by this Indenture and is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE 11.
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 11.02, the Company shall not consolidate with or merge with or into, or sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of the consolidated properties or assets of the Company and its Subsidiaries, taken as a whole, in one transaction or any series of transactions, to another Person, unless:

(a) the resulting, surviving or transferee Person (if other than the Company) (the "**Successor Company**") shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(b) the Successor Company unconditionally assumes all of the Company's obligations under the Notes and this Indenture (including, for the avoidance of doubt, the obligation to pay Additional Interest pursuant to Section 4.10) and applicable Security Documents pursuant to a supplemental indenture in a form reasonably satisfactory to the Trustee and/or the Collateral Agent;

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture; and

(d) in any transaction where the Company is not the surviving or transferee Person, the Company, the Successor Company or the transferee Person, as applicable, shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that the consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition and such supplemental indenture complies with this Indenture and all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person that is not the Company or a Subsidiary of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease by the Company of all or substantially all of its consolidated properties and assets to another Person.

Section 11.02 *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance,

assignment, transfer, lease or other disposition and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of

all or substantially all of the consolidated properties or assets of the Company and its Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the Issue Date. In the event of any such consolidation, merger, sale, conveyance, assignment, transfer or other disposition (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "**Company**" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 12.
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any Guarantor in this Indenture or in any supplemental indenture or in any Note or in any Note Guarantee, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company, any Guarantor or of any successor entity of the Company or any Guarantor, either directly or through the Company, any Guarantor or any successor entity of the Company or any Guarantor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes and the Note Guarantees.

ARTICLE 13.
REDEMPTION

Section 13.01 *Provisional Redemption*. Except as provided in this Article 13, the Notes are not subject to redemption at the Company's option. On or after the date that is two calendar

years after the consummation of the Qualified IPO, the Company may redeem, at its option, all or part of the Notes if the Last Reported Sale Price of the Common Stock has been at least 150% of the Qualified IPO Price then in effect for at least 20 Trading

Days (whether or not consecutive) during a period of 30 consecutive Trading Days ending within three Trading Days immediately preceding the date on which the Company provides written notice of redemption (a "**Provisional Redemption**") to the Holders of Notes on the redemption date specified in the Notice of Redemption in accordance with Section 13.04 (the "**Provisional Redemption Date**"). The Company shall redeem the Notes pursuant to a Provisional Redemption, if any, at a redemption price payable in cash equal to 100% of the principal amount of the Notes to be redeemed, *plus* accrued and unpaid interest to, but excluding, the Provisional Redemption Date (the "**Provisional Redemption Price**"). Neither the Trustee nor the Paying Agent shall have any responsibility to determine whether or not the condition to calling Notes for Provisional Redemption has been satisfied.

Section 13.02 *Optional Redemption.*

(a) *Right of Optional Redemption.* Subject to the terms of this Section 13.02, the Company has the right, at its election, to redeem all, or any portion in an authorized denomination, of the Notes, at any time and from time to time, on an Optional Redemption Date before the Maturity Date, for a cash purchase price equal to the Optional Redemption Price (any such redemption pursuant to this Section 13.02, an "**Optional Redemption**").

(b) *Optional Redemption Date*. The "**Optional Redemption Date**" for any Optional Redemption will be a Business Day of the Company's choosing that is no more than sixty (60), nor less than thirty (30), calendar days after the Redemption Notice Date for such Redemption.

(c) *Optional Redemption Price*. The "**Optional Redemption Price**" for any Note called for Optional Redemption is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Optional Redemption Date for such Optional Redemption plus the Applicable Premium (if the Applicable Premium is greater than zero); *provided*, *however*, that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the close of business on such Regular Record Date will be entitled, notwithstanding such Optional Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Optional Redemption Date is before such Interest Payment Date); and (ii) the Optional Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Optional Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day and such Optional Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid on the next Business Day to Holders as of the close of business on the immediately preceding Regular Record Date; and (y) the Optional Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date.

(d) *Payment of Applicable Premium upon Conversion*. If a Holder converts any portion of a Note after receiving a Notice of Redemption related to an Optional Redemption, then such Holder will be entitled to receive, on or, at the Company's election, before the Redemption Date for such Optional Redemption, the Applicable Premium that would have been payable, on such Optional Redemption Date, on such portion being converted notwithstanding such conversion.

Section 13.03 *Change of Control Redemption*. On or before the second Business Day after the effectiveness of a Change of Control Redemption Right Event, the Company shall provide the Change of Control Redemption Notice. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. If the Company elects to effect a Change of Control Redemption in such Change of Control Redemption Notice, subject to Holders' rights pursuant to Section 14.01 and Section 15.03, the Company may redeem on a date that is no earlier than the later to occur of (i) the 36th Business Day following the Change of Control Effective Date and (ii) the Fundamental Change Repurchase Date, at its option, all or part of the Notes as to which the Holders have not made an election to (a) convert such Notes pursuant to Section 14.01 and 14.03 or (b) tender such Notes for repurchase pursuant to Sections 15.01 or 15.03 and Section 15.07 (a "**Change of Control Redemption**") on a redemption date specified in the Notice of Redemption in accordance with Section 13.04 (the "**Change of Control Redemption Date**"). The Company shall redeem the Notes pursuant to a Change of Control Redemption at the Change of Control Redemption Price. Neither the Trustee nor the Paying Agent shall have any responsibility to determine whether or not the conditions to calling Notes for a Change of Control Redemption has been satisfied. For the avoidance of doubt, no Change of Control Redemption shall be effected with respect to any Holder's Notes if such Holder has elected to convert such Notes in accordance with Section 14.01 or to tender such Notes for repurchase in accordance with

Section 15.01 or 15.03.

Section 13.04 *Redemption Procedures*.

(a) The Company shall provide not less than 30 nor more than 60 calendar days' written notice before a Redemption Date relating to a Provisional Redemption under
Section 13.01, an Optional Redemption under 13.02 or a Change of Control Redemption under Section 13.03 to the Trustee, the Conversion Agent (if other than the Trustee), the Paying Agent (if other than the Trustee) and each Holder (each, a "**Notice of Redemption**" and the date of any such Notice of Redemption, the "**Redemption Notice Date**") (in each case, with written notice to the Trustee no less than five calendar days (or such shorter period as agreed by the Trustee) prior to the sending of such redemption notice in the event the Trustee is engaged by the Company to send such notice or cause such notice to be sent, in each case, in the Company's name and at the Company's expense). The Redemption Date for a Provisional Redemption under Section 13.01, an Optional Redemption under 13.02 or a Change of Control Redemption under Section 13.03 must be a Business Day. Notwithstanding the foregoing, if the Company sets a Redemption Date between a Regular Record Date and the corresponding Interest Payment date, the Company will not pay accrued interest to any Holder of Notes to be redeemed, and will instead pay the full amount of the relevant interest payment in Cash Interest on such Interest Payment Date to the Holder of record on such a Regular Record Date.

(b) The Notice of Redemption shall identify the Notes to be redeemed and shall state:

(i) the Redemption Date;

(ii) the Optional Redemption Price, Provisional Redemption Price or Change of Control Redemption Price, as the case may be;

(iii) the current Conversion Rate;

(iv) the name and address of the Paying Agent and Conversion Agent;

(v) that Holders who want to convert Notes must satisfy the requirements set forth in the Notes and Article 14 of this Indenture;

(vi) that Notes called for redemption must be surrendered to the Paying Agent in order to collect the Redemption Price therefor, together with accrued but unpaid interest thereon;

(vii) if fewer than all the outstanding Notes are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Notes to be redeemed;

(viii) that, unless the Company defaults in paying the Redemption Price, interest on Notes called for redemption will cease to accrue on and after the Redemption Date and the Notes called for redemption will cease to be outstanding; and

(ix) the CUSIP number of the Notes called for redemption.

(c) If, in the case of a Provisional Redemption, Optional Redemption or Change of Control Redemption, the Company decides to redeem fewer than all of the outstanding Notes, the Notes to be redeemed will be selected according to DTC's applicable procedures, in the case of Notes represented by a Global Note, or, in the case of Physical Notes, the Trustee shall select Notes to be redeemed in whole or in part, pro rata, by lot or by such other method as the Trustee shall deem fair and appropriate. If the Trustee selects a portion of a Holder's Notes for partial redemption and such Holder converts a portion of such Notes, the converted portion will be deemed to be from the portion selected for redemption. In the event of any redemption in part, the Company shall not be required to register the transfer of or exchange any Note so selected for redemption, in whole or in part, except the unredeemed portion of any such Note being redeemed in part.

(d) No Notes may be redeemed if the principal amount of the Notes has been accelerated, and such acceleration has not

been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the redemption price with respect to such Notes).

Section 13.05 *No Sinking Fund*. The Company is not required to make sinking fund payments with respect to the Notes.

ARTICLE 14.
CONVERSION OF NOTES

Section 14.01 *Conversion upon Change of Control prior to the Qualified IPO*. Prior to the Qualified IPO, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof (or, if a PIK Payment has been made, if the portion to be converted is $1.00 principal amount or an integral multiple thereof)) of such Note on or after the time that is ten (10) Business Days prior to the anticipated effective date of a Change of Control until the close of business on the 35th Business Day following the actual date such Change of Control becomes effective (the "**Change of Control Effective Date**"), into shares of Common Stock (or, if such Holder exercises such conversion right following the effective date of such Change of Control, such Reference Property pursuant to Section 14.08 in lieu of such Common Stock), together with a cash payment in lieu of delivering any fractional share as set forth below under Section 14.03(c), at a conversion rate equal to (a), if no PIK Payment has been made since the Issue Date, the greater of (i) the Change of Control Maximum Conversion Rate and (ii) the quotient (rounded to eight decimal places) of (A) $1,000 and (B) 80% of the Transaction Price per share of Common Stock in such transaction (such greater rate, the "**Change of Control Conversion Rate**") per $1,000 principal amount of Notes or (b), if a PIK Payment has been made, the quotient of (i) the Change of Control Conversion Rate and (ii) $1,000, per $1.00 principal amount of Notes (subject, in each case, to, and in accordance with, the settlement provisions of Section 14.03, the "**Change of Control Conversion Obligation**"). The Company shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of any Change of Control prior to the Qualified IPO no later than fifteen (15) Business Days prior to the anticipated effective date of a Change of Control (or if such anticipated effective date is not known prior to such date, promptly following knowledge of such anticipated effective date but in any event no later than two (2) Business Days after the Change of Control Effective Date). In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. No failure of the Company to give the foregoing notice and no defect therein shall limit the Holders' conversion rights or affect the validity of the proceedings for the conversion of the Notes pursuant to this Section 14.01. In the event such Change of Control is a Change of Control Redemption Right Event, the right of the Holders to elect to convert their Notes pursuant to this Section 14.01 shall continue until the later of (i) the applicable Change of Control Effective Date and (ii) the 10th Business Day after Holders receive the Change of Control Redemption Notice.

Section 14.02 *Conversion on or after the earlier to occur of the Qualified IPO and September 1, 2020*. Prior to the earlier of the Qualified IPO and September 1, 2020, the Notes may not be converted other than as provided above in Section 14.01 upon the occurrence of a Change of Control. Subject to and upon compliance with the provisions of this Article 14 (and, for the avoidance of doubt, subject to Section 13.02), each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is $1,000 principal amount or an integral multiple thereof (or, if a PIK Payment has been made, if the portion to be converted is $1.00 or an integral multiple thereof)) of such Note on or after the earlier to occur of the Qualified IPO and September 1, 2020 until the close of business on the Business Day immediately preceding the Maturity Date at an initial conversion rate of (a), if no

PIK Payment has been made, 125.0000 (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") shares of Common Stock per $1,000 principal amount of Notes or (b), if a PIK Payment has been made, the quotient of (i) the Conversion Rate and (ii) $1,000, per $1.00 principal amount of Notes (subject, in each case, to, and in accordance with, the settlement provisions

of Section 14.03, the "**Conversion Obligation**"); *provided that* if a Change of Control Effective Date occurs on or after September 1, 2020 and prior to the Qualified IPO, Holders' option to convert their Notes on or after such Change of Control Effective Date and until the earlier to occur of the Qualified IPO and the close of business on the 35th Business Day after such Change of Control Effective Date shall be pursuant to Section 14.01 and not this Section 14.02.

Section 14.03 *Conversion Procedure; Settlement Upon Conversion*.

(a) Subject to Section 14.01, Section 14.02, this Section 14.03, Section 14.04(b) and Section 14.08(a), upon conversion of any Note pursuant to (i) Section 14.01, the Company shall deliver to the converting Holder shares of Common Stock, together with a cash payment in lieu of delivering any fractional share as set forth below under Section 14.03(c), at a conversion rate in accordance with Section 14.01 (as adjusted pursuant to Section 14.05, as applicable); or (ii) Section 14.02 (subject to the final proviso thereto), the Company shall deliver to the converting Holder shares of Common Stock, together with a cash payment in lieu of delivering any fractional share as set forth below under Section 14.03(c), at a conversion rate in accordance with Section 14.02 (as adjusted pursuant to Section 14.05, as applicable), in each case (i) and (ii), on the third Business Day following the relevant Conversion Date. A Holder may convert fewer than all of such Holder's Notes.

(b) Before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time (allowing for sufficient time to comply) and, if required, (1) pay funds to the Conversion Agent equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.03(h) and (2) pay all transfer and similar taxes as set forth in Section 14.03(d) and Section 14.03(e); and (ii) in the case of a Physical Note, (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation or the Change of Control Conversion Obligation, as the case may be, to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay all transfer and similar taxes as set forth in Section 14.03(d) and Section 14.03(e) and (5) if required, pay funds to the Conversion Agent equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.03(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice, a Specified Repurchase Date Notice or a Change of

Control Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice, Specified Repurchase Date Notice or Change of Control Repurchase Notice in accordance with Section 15.04.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation or the Change of Control Conversion Obligation, as the case may be, with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in subsection (b) above. On the third (3rd) Business Day immediately following the relevant Conversion Date, the Company shall issue or cause to be issued, and deliver to such Holder, or such Holder's nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company's Conversion Obligation or the Change of Control Conversion Obligation, as the case may be.

(d) [Reserved].

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests any such shares to be issued in a name other than the Holder's name, in which case the Holder must pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.05, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Subject to Sections 14.01 and 14.02, upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation or Change of Control Conversion Obligation, as applicable, shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant

Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. For the avoidance of doubt, a Holder will be entitled to any Applicable Premium

payable pursuant to Section 13.02 as a separate cash payment. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period beginning after the close of business on any Regular Record Date and ending at the open of business on the immediately following Interest Payment Date must be accompanied by cash funds equal to the amount of interest payable on the Notes so converted; provided that no such payment shall be required (1) for Notes surrendered for conversion after the close of business on the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the Business Day immediately following the date on which the corresponding interest payment is made; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (4) if the Company has specified a Change of Control Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; (5) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note; or (6) if the Specified Repurchase Date is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date, any Specified Repurchase Date, any Fundamental Change Repurchase Date described in clause (3), any Change of Control Repurchase Date described in clause (4) and any Redemption Date described in clause (2) of the immediately preceding sentence shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date regardless of whether their Notes have been converted or repurchased, as applicable, following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon a conversion of Notes shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon a conversion based on (A) if the Conversion Date occurs prior to the consummation of a Qualified IPO, the fair market value on the relevant Conversion Date of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the

Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such Conversion Date) and (B) otherwise, the Last

Reported Sale Price of the Common Stock on the relevant Conversion Date. The Company shall pay such cash amount on or before the third (3rd) Business Day following the Conversion Date, or, if the fair market value of the Company's Common Stock is in dispute pursuant to clause (A) of this Section 14.03(j), then the Company shall pay such cash amount to the applicable Holders on or before the third (3rd) Business Day following determination of such fair market value.

Section 14.04 *Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change on or after the Qualified IPO or a Provisional Redemption*.

(a) If, (i) on or after the Qualified IPO and prior to the Maturity Date, a Make-Whole Fundamental Change Effective Date occurs, or (ii) the Company calls the Notes for Provisional Redemption pursuant to Section 13.01 (excluding, for the avoidance of doubt, an Optional Redemption pursuant to Section 13.02), and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or Provisional Redemption, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the "**Additional Shares**"), as described in this Section 14.04 conversion of Notes shall be deemed for these purposes to be "in connection with" (x) such Make-Whole Fundamental Change if the relevant Notice of Conversion for such Notes is received by the Conversion Agent from, and including, the Make-Whole Fundamental Change Effective Date up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the close of business on the 35th Trading Day immediately following the Make-Whole Fundamental Change Effective Date) or (y) such Provisional Redemption if the relevant Notice of Conversion for such Notes is received by the Conversion Agent on or after the date the Company sends a Notice of Redemption pursuant to Section 13.04 in respect of such Provisional Redemption and prior to the close of business on the Scheduled Trading Day immediately preceding the related Redemption Date (the "**Redemption Conversion Period**") (any such period referred to in clause (x) or (y), the "**Make-Whole Fundamental Change Period**").

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change on or after the Qualified IPO and prior to the Maturity Date or a Provisional Redemption pursuant to Section 13.01, the Company shall deliver shares of Common Stock, including the Additional Shares, in accordance with Section 14.03; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Make-Whole Fundamental Change Effective Date, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per $1,000 (or if a PIK Payment has been made, $1.00) principal amount of converted Notes equal to the number of shares of Common Stock into which $1,000 (or if a PIK Payment has been made, $1.00) principal amount of the Notes would be convertible at the Conversion Rate (including any adjustment as described in this Section 14.04) (or if a PIK Payment has been made, the quotient of (1) the Conversion Rate (including any adjustment as described in this Section 14.04) and (2) $1,000), *multiplied by* such Stock Price. The Company shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of any

Make-Whole Fundamental Change Effective Date and issue a press release announcing such effective date no later than five Business Days after such Make-Whole Fundamental Change Effective Date. No failure of the Company to give the foregoing notice and no defect therein shall limit the Holders' conversion rights or affect the validity of the Make-Whole Fundamental Change Effective Date pursuant to this Section 14.04(b).

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the Make-Whole Table, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Make-Whole Fundamental Change Effective Date**") or the Redemption Notice Date, as applicable, and the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or on the stock price on the Redemption Notice Date, as applicable (the "**Stock Price**"). If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and

including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date. The Stock Price in connection with a Provisional Redemption shall be the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Redemption Notice Date. In the event that a conversion in connection with a Provisional Redemption would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of the Notes to be converted shall be entitled to a single increase to the Conversion Rate with respect to the first to occur of the applicable Redemption Notice Date or the Make-Whole Fundamental Change Effective Date of the applicable Make-Whole Fundamental Change, and the later event will be deemed not to have occurred for purposes of this Section 14.04. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs during such five consecutive Trading Day period.

(d) Within two Business Days following the consummation of the Qualified IPO, the Company shall deliver an Officer's Certificate to the Trustee and a notice to the Holders setting forth the "Make-Whole Table" and related provisions (collectively with the Make-Whole Table, the "**Make-Whole Provisions**"). The Make-Whole Provisions will be consistent in all material respects with make-whole provisions that are customary for indentures governing convertible notes issued in market registered offerings as of the Issue Date, as determined in good faith by Morgan Stanley & Co. LLC in a commercially reasonable manner. Morgan Stanley & Co. LLC shall determine the Make-Whole Table consistent with the following methodology and inputs: maturity, coupon, conversion premium (as calculated using the relationship between the Qualified IPO Price and the adjusted conversion price), assuming L + 600 bps credit spread, 1.75% 5-year swap rate, 40% volatility and 0.25% borrow cost in the Kynex convertible bond model. On or after April 20, 2020, notwithstanding anything to the contrary in Section 14.04, this Indenture or the Notes, all Additional Shares, if any, by which the Conversion Rate shall be increased will be determined by reference to the Updated Make-Whole Table attached hereto as Exhibit G.

(e) Nothing in this Section 14.04 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.05 in respect of a Make-Whole Fundamental Change.

Section 14.05 *Adjustment of Conversion Rate*. The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination, (y) a tender or exchange offer or (z) Qualified IPO, in each case, that would result in an adjustment to the Conversion Rate pursuant to Section 14.05(a) or Section 14.05(e) below), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.05, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder. The Conversion Rate, as adjusted pursuant to this Section 14.05, in effect immediately prior to the Qualified IPO is referred to as the "**Maximum Initial Conversion Rate**". The Conversion Rate, as adjusted pursuant to this Section 14.05, in effect immediately prior to a Change of Control Effective Date is referred to as the "**Change of Control Maximum Conversion Rate**" in respect of any conversions that take place on or after such Change of Control Effective Date until the close of business on the 35th Business Day following such Change of Control Effective Date (for the avoidance of doubt, each Change of Control may have a different Change of Control Maximum Conversion Rate associated with it).

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as

applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable; and

OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.05(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after

the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.05(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than (i) with respect to an issuance for which the announcement of such issuance occurs on or before the 10th Trading Day immediately following the Qualified IPO, the average of the fair market value on each applicable Trading Day of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) for the 10 consecutive Trading Day period ending on, and including the Trading Day immediately preceding the date of announcement of such issuance or (ii) with respect to an issuance for which the announcement of such issuance occurs after the 10th Trading Day immediately following the Qualified IPO, the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* (i) with respect to an issuance for which the announcement of such issuance occurs on or before the 10th Trading Day immediately following the Qualified IPO, the average of the fair market value on each applicable Trading Day of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) over the 10 consecutive Trading Day period ending on, and including the Trading Day immediately preceding the date of announcement of such issuance and (ii) with respect to an issuance for which the announcement of such issuance occurs after the 10th Trading Day immediately following the Qualified IPO, the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 14.05(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.05(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price per share that is less than such average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance or such average of the fair market value on each applicable Trading Day of one share of Common Stock over the 10 consecutive Trading Day period ending on, and including the Trading Day immediately preceding the date of announcement of such issuance, as the case may be, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount

payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the

Company or rights, options or warrants to acquire shares of its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.05(a), Section 14.05(b) or Section 14.05(e), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.05(d), (iii) any dividends or distributions of Reference Property in exchange for Common Stock in connection with any transaction described in Section 14.08, (iv) except as otherwise provided in Section 14.12, rights issued pursuant to a shareholder rights plan adopted by the Company and (v) Spin-Offs as to which the provisions set forth below in this Section 14.05(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire shares of Capital Stock or other securities, the "**Distributed Property**"), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

SP_0 = (i) with respect to a distribution that has an Ex-Dividend Date that occurs on or before the 10th Trading Day immediately succeeding the Qualified IPO, the average of the fair market value on each applicable Trading Day of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) over the 10 consecutive Trading Day period ending on, and including the Trading Day immediately preceding the Ex-Dividend Date for such distribution or (ii) with respect to a distribution that has an Ex-Dividend

Date that occurs after the 10th Trading Day immediately succeeding the Qualified IPO, the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined in good faith by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.05(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each $1,000 (or if a PIK Payment has been made, $1.00) principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for the distribution (or if a PIK Payment has been made, the quotient of (1) the Conversion Rate then in effect on the Record Date for such distribution and (2) 1,000). If the Board of Directors determines the "FMV" (as defined above) of any distribution for purposes of this Section 14.05(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 14.05(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such Spin-Off;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such Spin-Off;

FMV_0 = the average of the Last Reported Sale Prices of the shares of Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = (i) with respect to a distribution that has an Ex-Dividend Date that occurs before the Qualified IPO, the average of the fair market value on each applicable Trading Day of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) over the Valuation Period or (ii) with respect to a distribution that has an Ex-Dividend Date that occurs on or after the Qualified IPO, the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall be determined by the Company on the last Trading Day of the Valuation Period, but shall be given effect at the open of business on the Ex-Dividend Date for such Spin-Off. Notwithstanding the foregoing, in respect of any conversion of Notes during the Valuation Period, references in the portion of this Section 14.05(c) related to Spin-Offs with respect to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, but excluding, the Conversion Date in determining the Conversion Rate. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Observation Period in respect of any conversion of Notes, references in the preceding paragraph to 10 consecutive Trading Days will be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last Trading Day of such Observation Period. If such Spin-Off does not occur, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared, effective as of the date on which the Board of Directors determines not to consummate such Spin-Off.

For purposes of this Section 14.05(c) (and subject in all respects to Section 14.12), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common

Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.05(c) (and no adjustment to the Conversion Rate under this Section 14.05(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate

adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.05(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Issue Date, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding
sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.05(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated (or deemed to have expired or been terminated pursuant to the immediately preceding sentence) without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued (to the extent any adjustment to the Conversion Rate was made in connection with such issuance).

For purposes of Section 14.05(a), Section 14.05(b) and this Section 14.05(c), if any dividend or distribution to which this Section 14.05(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.05(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.05(b) is applicable (the "**Clause B Distribution**"),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.05(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 14.05(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to

immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.05(a) and Section 14.05(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Ex-Dividend Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date" within the meaning of Section 14.05(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 14.05(b).

(d) If the Company makes any cash dividend or distribution to all or substantially all
holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or

distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP_0 = (i) with respect to a dividend or distribution that has an Ex-Dividend Date on or prior to the Qualified IPO, the fair market value of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution or (ii) with respect to a dividend or distribution that has an Ex-Dividend Date after the Qualified IPO, the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase made under this Section 14.05(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1,000 (or if a PIK Payment has been made, $1.00) principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution (or if a PIK Payment has been made, the quotient of (1) the Conversion Rate in effect on the Record Date for such cash dividend or distribution and (2) 1,000).

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock, other than an odd lot tender offer, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds (i) with respect to a tender or exchange offer for which the last date on which tenders or exchanges may be made occurs prior to the Trading Day immediately preceding the Qualified IPO, the fair market value of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer or (ii) with respect to a tender or exchange offer for which the last date on which

tenders of exchanges may be made occurs on or after the Trading Day immediately preceding the Qualified IPO, the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;

CR' = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the date such tender or exchange offer is consummated (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS' = the number of shares of Common Stock outstanding immediately after the open of business on the date such tender or exchange offer is consummated (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP' = (i) with respect to a tender or exchange offer for which the last date on which tenders or exchanges may be made occurs prior to the Trading Day immediately preceding the Qualified IPO, the average of the fair market value of one share of Common Stock (as determined in good faith by the Board of Directors after consultation with a reputable independent investment bank, independent valuation firm or other qualified financial institution selected by the Company, except that to the extent Disputing Holders dispute such fair market values in writing to the Company (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) on or before the 20th Business Day after receipt of such good faith determination of the Board of Directors, such fair market values shall be mutually determined by the Company and the Disputing Holders, and if the Company and the Disputing Holders are unable to reach agreement, such fair market values shall be determined by an independent nationally recognized investment bank selected by the Company and the Disputing Holders and delivered to the Trustee and the Conversion Agent (if other than the Trustee) within 30 Business Days following such issuance) over the 10 consecutive Trading Day period ending on, and including on the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires or (ii) with respect to a tender or exchange offer for which the last date on which tenders of exchanges may be made occurs on or after the Trading Day immediately preceding the Qualified IPO, the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 14.05(e) shall be determined at the close of business on the 10th Trading Day immediately following, and including, the Trading

Day next succeeding the date such tender or exchange offer expires, but shall be given effect at the open of business on the Trading Day next succeeding the date such tender or exchange offer expires. Notwithstanding the foregoing, in respect of any conversion of Notes within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.05(e) with respect to "10 consecutive Trading Days" shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and the Conversion Date in determining the Conversion Rate. In addition, if the Trading Day next succeeding the expiration date for such tender or exchange offer is less than 10 Trading Days prior to, and including, the end of the Observation Period (if applicable) in respect of any conversion of Notes, references in the preceding paragraph to "10 consecutive Trading Days" shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date for such tender or exchange offer to, and including, the last Trading Day of such Observation Period. For the avoidance of doubt, no adjustment pursuant to this Section 14.05(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

If the Company is obligated to purchase shares of the Common Stock pursuant to any such tender or exchange offer described in this Section 14.05(e) but is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the applicable Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) [Reserved].

(g) Notwithstanding this Section 14.05 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.03(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.05, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(h) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(i) In addition to those adjustments required by clauses (a), (b), (c), (d), and (e) of this Section 14.05, and to the extent permitted by applicable law and subject to the applicable listing standards of the Relevant Stock Exchange on which the Common Stock is then listed or admitted for trading, the Company from time to time may increase the Conversion Rate by any

amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, to the extent permitted by applicable law and subject to the applicable listing standards of the Relevant Stock Exchange on which the Common Stock is then listed or admitted for trading, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least 15 calendar days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) except as set forth in Section 14.05(b) or Section 14.05(c), upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection;

(iv) solely for a change in the par value (or lack of par value) of the Common Stock;

(v) upon the repurchase of any shares of the Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the kind described in Section 14.05(e); or

(vi) for accrued and unpaid interest, if any.

All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share.

(k) Notwithstanding anything in this Article 14 to the contrary, the Company shall not be required to adjust the Conversion Rate unless the adjustment would result in a change of at least 1% in the then effective Conversion Rate. However, the Company shall carry forward any adjustments to the Conversion Rate that are less than 1% of the Conversion Rate and make all such carried-forward adjustments (i) when the cumulative net effect of all adjustments not yet made will result in a change of at least 1% of the Conversion Rate or (ii) regardless of whether

the adjustment (or such cumulative net effect) is less than 1%, (a) on the Conversion Date for any Notes, (b) upon the occurrence of any Change of Control that occurs prior to the Qualified IPO, (c) upon the occurrence of any Make-Whole Fundamental Change or Fundamental Change that occurs on or after the Qualified IPO or (d) upon the Company's issuance of any Notice of Redemption.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 14.05, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.06 *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices or the Transaction Price over a span of multiple days (including, if applicable, the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Board of Directors shall make appropriate adjustments (to the extent no corresponding adjustment is otherwise made pursuant to Section 14.05) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date, Record Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices or the Transaction Price are to be calculated.

Section 14.07 *Shares to Be Reserved*. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of shares, all such Notes would be converted by a single Holder).

Section 14.08 *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) Subject to Section 13.03, Section 14.01, Section 15.01, Section 15.02 and Section 15.03, in the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety, or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (each, a "**Specified Corporate Event**"), then the Company or the Successor Company, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(n) without the consent of the Holders providing that, at and after the effective time of such Specified Corporate Event, the right to convert each $1,000 principal amount of Notes (or if a PIK Payment has been made, each $1.00 principal amount of Notes) shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock into which $1,000 (or if a PIK Payment has been made, $1.00) principal amount of the Notes is convertible at the Conversion Rate immediately prior to such Specified Corporate Event (which will be the applicable Change of Control Maximum Conversion Rate if such Specified Corporate Event is also a Change of Control) (or if a PIK Payment has been made, the quotient of (1) the Conversion Rate (which will be the applicable Change of Control Maximum Conversion Rate if such Specified Corporate Event is also a Change of Control) immediately prior to such Specified Corporate Event and (2) 1,000) would have owned or been entitled to receive (the "**Reference Property,**" with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon the occurrence of such Specified Corporate Event.

If the Specified Corporate Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Specified Corporate Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Specified Corporate Event (A) the consideration due upon conversion of each $1,000 principal amount of Notes (or if a PIK Payment has been made, the consideration due upon conversion of each $1.00 principal amount of Notes) shall be solely cash in an amount equal to (1) if no PIK Payment has been made, the Conversion Rate in effect on the Conversion Date (as may be

increased by any Additional Shares pursuant to Section 14.04) or (2) if a PIK Payment has been made, the quotient of (a) the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.04) and (b) 1,000, in each case, *multiplied by* the price paid per share of Common Stock in such Specified Corporate Event and (B) the Company shall satisfy the Conversion Obligation by paying such cash amount to converting Holders on the third Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

If the Reference Property in respect of any such transaction includes shares of Common Equity, such supplemental indenture described in the second immediately preceding paragraph providing that the Notes will be convertible into reference property shall

provide for anti-dilution and other adjustments that shall be as nearly equivalent as practicable to the adjustments provided for in this Article 14. If, in the case of any Specified Corporate Event, the Reference Property includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a Person that is a party to the transaction other than the Company or the Successor Company, as the case may be, in such Specified Corporate Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the repurchase rights set forth in Article 15.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.08, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Specified Corporate Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with and an Opinion of Counsel stating that all conditions precedent to the execution and delivery of such supplemental indenture have been complied with, and shall promptly deliver notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) None of the foregoing provisions shall affect the right of a Holder to convert its Notes into shares of Common Stock, as set forth in Section 14.01, Section 14.02 and Section 14.03, prior to the effective date of such Specified Corporate Event.

(d) The above provisions of this Section shall similarly apply to successive Specified Corporate Events.

Section 14.09 *Certain Covenants*.

(a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.10 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained herein. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.08 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.08 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in

relying upon, the Officer's Certificate and an Opinion of Counsel (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 14.01 or 14.02 has occurred that makes the Notes eligible for conversion until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 14.01 or 14.02 or 14.11, as the case may be, with respect to the commencement of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 14.01, Section 14.02 and Section 14.11.

Section 14.11 *Notice to Holders Prior to Certain Actions*. In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.05 or Section 14.12;

(b) Specified Corporate Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture) and to the extent applicable, the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, a notice stating the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company no later than the earlier of the date notice of such date is required to be provided under Rule 10b-17 of the Exchange Act or applicable rules of the Relevant Stock Exchange and such date is publicly announced by the Company. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Specified Corporate Event, dissolution, liquidation or winding-up.

Section 14.12 *Shareholder Rights Plans*. If the Company has a shareholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such shareholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable shareholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.05(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.13 *Cash Settlement of Conversions to Satisfy Stock Exchange Listing Requirements*. Notwithstanding anything to the contrary in this Indenture or the Notes, if the issuance or delivery of any share of Common Stock otherwise issuable or deliverable, pursuant to this Article 14, upon conversion of any Note (or portion thereof) would require the approval of the stockholders of the Company under the applicable listing standards of the New York Stock Exchange (each such stockholder approval, collectively, the "**Requisite Stockholder Approval**"), and such stockholder approval has not been obtained as of the Conversion Date for such conversion, then, in lieu of issuing or delivering such share of Common Stock, the Company will instead deliver an amount of cash equal to the VWAP Market Price per share of Common Stock on such Conversion Date.

ARTICLE 15.
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 *Repurchase at the Option of Holders on the Specified Repurchase Date.*

(a) If the Qualified IPO has not occurred before December 15, 2019, each Holder will have the right, at such Holder's option, after such date to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof so long as the amount of such Holder's Notes submitted for repurchase equals $1,000 or an integral multiple of $1,000 (or if a PIK Payment has been made, $1.00 or an integral multiple of $1.00) in excess thereof, on the 90th calendar day (or earlier, if the Company and such Holder agree) (any such date of required repurchase, a "**Specified Repurchase Date**") after such Holder has properly delivered and not withdrawn a Specified Repurchase Date Notice, at a repurchase price to be paid in cash in an amount equal to 110% of the principal amount of the Notes being repurchased, plus accrued and unpaid interest, if any, to, but excluding, the Specified Repurchase Date (the "**Specified Repurchase Date Price**"). If the Specified Repurchase Date Price with respect to a Note for which a Holder has properly delivered and not withdrawn a Specified Repurchase Date Notice is not paid on the related Specified Repurchase Date, interest shall accrue on the principal amount of, and interest on, such Note at an interest rate of 8.00% per year. For the avoidance of doubt, the occurrence of any transaction described in Section 14.08, a result of which the Notes become convertible into shares of common stock that are listed or quoted on any Permitted Exchange or will be listed or quoted on any Permitted Exchange following such transaction, shall not affect any Holder's right to have the Company repurchase for cash such Holder's Notes pursuant to this Section 15.01.

(b) On or before November 15, 2019, the Company shall provide to all Holders of Notes, the Trustee, the Paying Agent (in the case of a Paying Agent other than the Trustee) and to beneficial owners of Notes as required by applicable law, a written notice (the "**Specified Repurchase Date Right Notice**") of the repurchase right of the Holders that will arise under Section 15.01(a) if the Qualified IPO is not consummated on or before December 15, 2019. The Specified Repurchase Date Right Notice shall:

(i) describe the repurchase right of the Holders under Section 15.01(a) of this Indenture;

(ii) explain that such repurchase right will not arise until after December 15, 2019 and only if the Qualified IPO has not been consummated by such date;

(iii) the Specified Repurchase Date Price;

(iv) the name and address of the Paying Agent; and

(v) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.01.

At the Company's written request (with written notice to the Trustee no less than five (5) calendar days (or such shorter period as agreed by the Trustee) prior to the sending of such notice), the Trustee shall give such notice in the Company's name and at the Company's

expense; *provided, however*, that, in all cases, the text of such Specified Repurchase Date Right Notice shall be prepared by the Company.

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change on or after the Qualified IPO.*

(a) If a Fundamental Change occurs at any time on or after the Qualified IPO and prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof that is equal to $1,000 (or if a PIK Payment has been made, $1.00) or an integral multiple thereof, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price in cash in an amount equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon, if any, to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be paid in cash in an amount equal to 100% of the

principal amount of Notes to be repurchased pursuant to this Section 15.02.

(b) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee and the Conversion Agent (if other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) a notice (the "**Fundamental Change Company Notice**") of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

(i) the events causing the Fundamental Change;

(ii) the date of the Fundamental Change;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

(vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;

(viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's written request delivered at least five (5) Business Days (or such shorter time as the Trustee may agree) prior to the date of the sending of such notice, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided*, *however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

Simultaneously with providing such notice, the Company shall publish the information on the Company's website or through such other public medium as the Company may use at that time.

Section 15.03 *Repurchase at Option of Holders Upon a Change of Control Prior to the Qualified IPO*.

(a) If a Change of Control occurs at any time prior to the Qualified IPO, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof that is equal to $1,000 (or if a PIK Payment has been made, $1.00) or an integral multiple thereof, on the date (the "**Change of Control Repurchase Date**") that is the later of the Change of Control Effective Date and the 10th Business Day after such Holder receives the Change of Control Company Notice at a repurchase price in cash in an amount equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon, if any, to, but excluding, the Change of Control Repurchase Date (the "**Change of Control Repurchase Price**"), unless the Change of Control Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Change of Control Repurchase Price shall be paid in cash in an amount equal to 100% of the principal amount of Notes to be repurchased pursuant to this Section 15.03; *provided that* in the event such Change of Control is a Change of Control Redemption Right Event, (i) the right of each Holder to elect to require the Company to repurchase such Holder's Notes pursuant to this Section 15.03 shall continue until the later of (A) the applicable Change of Control Effective Date and (B) the 10th Business Day after

Holders receive the Change of Control Redemption Notice, and (ii) the Change of Control Repurchase Date shall be the later of the applicable Change of Control Effective Date and the 10th Business Day after such Holder receives the Change of Control Redemption Notice, if such Holder elects to require the Company to effect a repurchase pursuant to this Section 15.03; *provided*, *further*, that the Company may postpone the

Change of Control Repurchase Date by one (1) Business Day if such Holder's written election to require the Company to effect a repurchase pursuant to this Section 15.03 is made less than one (1) Business Day before such Change of Control Repurchase Date without giving effect to such postponement.

(b) On or before the second Business Day after the effectiveness of a Change of Control prior to the Qualified IPO, the Company shall provide to all Holders of Notes, the Trustee and the Conversion Agent (if other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) a notice (the "**Change of Control Company Notice**") of the occurrence of the Change of Control and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Change of Control Company Notice shall specify:

(i) the events causing the Change of Control;

(ii) the date of the Change of Control;

(iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;

(iv) the Change of Control Repurchase Price;

(v) the Change of Control Repurchase Date;

(vi) whether or not the Change of Control constitutes a Change of Control Redemption Right Event affording the Company a redemption right pursuant to Section 13.03;

(vii) the name and address of the Paying Agent and the Conversion Agent, if applicable;

(viii) the Change of Control Conversion Rate and the date until which Holders may convert their Notes pursuant to Section 14.01;

(ix) the Transaction Price Notice;

(x) that the Notes with respect to which a Change of Control Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Change of Control Repurchase Notice in accordance with the terms of this Indenture; and

(xi) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's written request delivered at least five (5) Business Days (or such shorter time as the Trustee may agree) prior to the date of the sending of such notice, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided,*
however, that, in all cases, the text of such Change of Control Company Notice shall be prepared by the Company.

Simultaneously with providing such notice, the Company shall publish the information on the Company's website or through such other public medium as the Company may use at that time.

Section 15.04 *Withdrawal of Fundamental Change Repurchase Notice, Specified Repurchase Date Notice or Change of Control Repurchase Notice*. (a) Holders of Physical Notes may withdraw (in whole or in part) a Fundamental Change Repurchase Notice, a Specified Repurchase Date Notice or Change of Control Repurchase Notice by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 15.04 at any time prior to the Fundamental Change Repurchase Expiration Time, the close of business on the Business Day immediately preceding the Specified Repurchase Date that relates to such Specified Repurchase Date Notice, or the Change of Control Repurchase Expiration Time, as applicable, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

(ii) if Physical Notes have been issued, the certificate number(s) of the Note(s) in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, Specified Repurchase Date Notice or the Change of Control Repurchase Notice, as the case may be, which portion must be in principal amounts of $1,000 (or if a PIK Payment has been made, $1.00) or an integral multiple thereof;

If the Notes are Global Notes, Holders must withdraw the Notes they have elected to require the Company to repurchase in accordance with appropriate procedures of the Depositary.

Section 15.05 *Deposit of Fundamental Change Repurchase Price, Specified Repurchase Date Price and Change of Control Repurchase Price*.

(a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04(a)) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date, Specified Repurchase Date or Change of Control Repurchase Date, as applicable, an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price, Specified Repurchase Date Price or Change of Control Repurchase Price, as applicable. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not validly withdrawn in accordance with Section 15.04) will be made on the later of (i) the Specified Repurchase Date (*provided* the Holder has satisfied

the conditions in Section 15.01), the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) or the Change of Control Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.03), as applicable, and (ii) the delivery of such Notes to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof or the time of book-entry transfer, in the manner required by Section 15.07 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price, the Specified Repurchase Date Price or Change of Control Repurchase Price, as applicable.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Specified Repurchase Date or Change of Control Repurchase Date, as applicable, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, such Specified Repurchase Date or such Change of Control Repurchase Date, as applicable, then, with respect to the Notes that have been properly surrendered for repurchase and not validly withdrawn in accordance with Section 15.04, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price, the Specified Repurchase Date Price and the Change of Control Repurchase Price (and default interest specified in this Indenture on overdue amounts, if any), as the case may be, and, if the Fundamental Change Repurchase Date, the Specified Repurchase Date or Change of Control Repurchase Date falls after a Regular Record Date but on or prior to the related Interest Payment Date, the right of the Holder of record on such Regular Record Date to receive the related interest payment).

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 15.01, Section 15.02 or Section 15.03, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 15.06 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer pursuant to a Fundamental Change Repurchase Company Notice, a Specified Repurchase Date Right Notice or Change of Control Repurchase Company Notice, as applicable, the Company will, if required:

(a) comply with any tender offer rules under the Exchange Act that may then be applicable;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes,

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15; provided that to the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, on a Specified Repurchase Date or upon a Change of Control, the Company shall comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions of this Indenture by virtue of such conflict.

Section 15.07 *Repurchase Procedures*.

(a) Repurchases of Notes under Sections 15.01, 15.02 and 15.03, as applicable, shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of (x) a duly completed notice substantially in the form of the Form of Specified Repurchase Date Notice (the "**Specified Repurchase Date Notice**"), (y) a duly completed notice substantially in the form of the Form of Fundamental Change Repurchase Notice (the "**Fundamental Change Repurchase Notice**") or (z) a duly completed notice substantially in the form of the Form of Change of Control Repurchase Notice (the "**Change of Control Repurchase Notice**"), if the Notes are Physical Notes, or in compliance with the Depositary's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case, on or before the close of business on the Business Day immediately preceding (x) with respect to a repurchase pursuant to Section 15.01, the consummation of the Qualified IPO, (y) with respect to a repurchase pursuant to Section 15.02, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Expiration Time**") or (z) with respect to a repurchase pursuant to Section 15.03, the Change of Control Repurchase Date (the "**Change of Control Repurchase Expiration Time**"), as applicable; and

(ii) delivery of the Notes, with respect to a repurchase pursuant to Section 15.01, prior to the close of business on the Business Day immediately preceding the Qualified IPO, with respect to a repurchase pursuant to Section 15.02, prior to the Fundamental Change Repurchase Expiration Time or, with respect to a repurchase pursuant to Section 15.03, prior to the Change of Control Repurchase Expiration Time, as applicable, (x) if the Notes are Physical Notes, by physical delivery to the Paying Agent at any time after delivery of the Specified Repurchase Date Notice, the Fundamental Change Repurchase Notice or the Change of Control Repurchase Notice, as the case may be, (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or (y) if the Notes are Global Notes, by book-entry transfer of the Notes in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Specified Repurchase Date Price, the Fundamental Change Repurchase Price or the Change of Control Repurchase Price, as applicable, therefor.

(b) The Fundamental Change Repurchase Notice, the Specified Repurchase Date Notice or the Change of Control Repurchase Notice, as applicable, in respect of any Notes to be repurchased shall state:

(i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be $1,000 (or if a PIK Payment has been made, $1.00) or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture.

If the Notes are Global Notes, Holders must tender their Notes in accordance with appropriate Depositary procedures.

(c) Notwithstanding anything herein to the contrary, any Holder electing to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof, as contemplated by this Article 15, shall have the right to withdraw, in whole or in part, such notice at any time prior to, with respect to a repurchase pursuant to Section 15.01, the close of business on the Business Day immediately preceding the related Specified Repurchase Date, with respect to a repurchase pursuant to Section 15.02, the Fundamental Change Repurchase Expiration Time or, with respect to a purchase pursuant to Section 15.03, the Change of Control Repurchase Expiration Time, by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 15.04 hereof, in the case of Physical Notes, and in accordance with appropriate Depositary procedures, in the case of Global Notes.

(d) The Paying Agent shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice, Specified Repurchase Date Notice, Change of Control Repurchase Notice or notice of withdrawal thereof.

(e) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change, Change of Control or on the Specified Repurchase Date, as applicable, if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price, Change of Control Repurchase Price or Specified Repurchase Date Price, as the case may be, with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price, Change of Control Repurchase Price or Specified Repurchase Date Price, as the case may be, with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice, Change of Control Repurchase Price or Specified Repurchase Date Notice with respect thereto shall be deemed to have been withdrawn.

ARTICLE 16.
GUARANTEES

Section 16.01 *Note Guarantees*. Subject to the limitations set forth in Section 16.06, the Guarantors hereby, jointly and severally, unconditionally and irrevocably Guarantee, as primary obligor and not merely as surety, to each Holder, the Trustee, the Collateral Agent and their respective successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations of the Company hereunder or thereunder, that: (a) the principal of and premium, if any, and interest, if any, on the Notes (including interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceedings), shall be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption, required purchase or repurchase or otherwise, and interest on the overdue principal of and interest on premium, if any, and interest, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee and the Collateral Agent hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration, redemption, required purchase or repurchase or otherwise. Failing payment when due, subject to any applicable grace period, of any amount so Guaranteed or any performance so Guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. The Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, legality, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any

judgment against the Company or any Guarantor, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives, to the fullest extent permitted by applicable law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company or another Guarantor, protest, notice and all demands whatsoever and covenant that the Note Guarantees shall not be discharged except by payment in full or conversion in full of the Notes in accordance with this Indenture. If any Holder or the Trustee is required by any court or otherwise to return to the Company or any of the Guarantors, or any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law or other similar official acting in relation to either the Company or any of the Guarantors, any amount paid either to the Trustee or to such Holder, the Note Guarantees, to the extent theretofore discharged, shall be reinstated in full force and effect. Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations Guaranteed hereby until payment in full of all obligations Guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations Guaranteed hereby may be accelerated as provided in Article 6 for the purposes of the Note Guarantees, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations Guaranteed hereby and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of the Note Guarantees. The Guarantors shall have the right to seek contribution

from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Trustee or the Holders under the Note Guarantees.

Section 16.02 *Execution and Delivery of Note Guarantee*. Each Guarantor hereby agrees that its execution and delivery of this Indenture or, if applicable, any supplemental indenture substantially in the form of Exhibit C shall evidence its Note Guarantee set forth in Section 16.01 without the need for notation on the Notes.

Section 16.03 *Guarantors may Consolidate, etc., on Certain Terms*. Except as otherwise provided in Section 16.04, no Guarantor (other than a Guarantor whose Note Guarantee is to be released in accordance with Section 16.04) may sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of its assets, in one transaction or any series of transactions to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person unless:

(a) the Successor Company shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(b) immediately after giving effect to that transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture;

(c) the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger (if other than the Guarantor) unconditionally assumes all the Obligations of that Guarantor under its Note Guarantee and the Indenture Documents pursuant to a supplemental indenture and applicable Security Documents in form satisfactory to the Trustee and/or the Collateral Agent; and

(d) in any transaction where such Guarantor is not the surviving or transferee Person, the Company, the Successor Company or the transferee Person, as applicable, shall have delivered to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel, each stating that the consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition and such supplemental indenture complies with this Indenture and all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

For purposes of this Section 16.03, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of a Guarantor to another Person that is not such Guarantor or a Subsidiary of such Guarantor, which properties and assets, if held by such Guarantor instead of such Subsidiaries, would constitute all or substantially all of the consolidated properties and assets of such Guarantor and its Subsidiaries, taken as a whole, shall be deemed to be the sale, conveyance, transfer or lease by such Guarantor of all or substantially all of its consolidated properties and assets to another Person.

In case of any such consolidation, merger, sale or conveyance and, if required by this Indenture, upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the

Note Guarantee and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for such

Guarantor with the same effect as if it had been named herein as a Guarantor. All the Note Guarantees so evidenced will in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter executed in accordance with the terms of this Indenture as though all of such Note Guarantees had been executed at the Issue Date.

Except as set forth in Articles 4 and 11, and notwithstanding Section 16.03(b), nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

Section 16.04 *Release of Note Guarantees*. In the event of:

(a) the satisfaction and discharge of this Indenture in accordance with Article 3;

(b) a sale, disposition or other transfer of all or a portion of the Capital Stock of a Guarantor, including by way of merger, consolidation, amalgamation or otherwise, to a Person that is not (either before or after giving effect to such transaction) the Company or a Guarantor; or

(c) the liquidation or dissolution of any Guarantor,

such Guarantor (and any of its Subsidiaries that are Guarantors) shall be automatically and unconditionally released and relieved of any obligations under its Note Guarantee and the Indenture Documents. In the event that any Guarantor is not required to remain as a Guarantor for the Company to be in compliance with its obligations under Section 4.13 (treating for this purpose such release as an Investment) and Section 4.14 (on a *pro forma* basis to give effect to such release), such Guarantor shall be released upon delivery by the Company of an Officer's Certificate to the Trustee to that effect. Upon delivery by the Company to the Trustee and the Collateral Agent of an Officer's Certificate and an Opinion of Counsel to the effect that such satisfaction and discharge or such sale or other disposition, transfer (including by way of merger, consolidation, amalgamation or otherwise), liquidation or dissolution (in each case, to the extent applicable) permitted by this Indenture has occurred, or such Guarantor is not required to remain as a Guarantor for the Company to be in compliance with its obligations under Section 4.13 (treating for this purpose such release as an Investment) and Section 4.14 (on a *pro forma* basis to give effect to such release), the Trustee or the Collateral Agent, as applicable, shall execute any documents reasonably requested by the Company in order to evidence the release of any Guarantor from its obligations under its Note Guarantee and the Indenture Documents.

Any Guarantor not released from its obligations under its Note Guarantee shall remain liable for the full amount of principal of, premium, if any, and interest, if any, on the Notes and for the other obligations of any Guarantor under the Indenture Documents as provided in this Article 16.

Section 16.05 *Limitation on Guarantor Liability*. For purposes hereof, each Guarantor's liability shall be that amount from time to time equal to the aggregate liability of such Guarantor under its Note Guarantee, but shall be limited to the lesser of (a) the aggregate amount of the

Obligations of the Company under the Indenture Documents and (b) the amount, if any, which would not have (A) rendered such Guarantor "insolvent" (as such term is defined in the federal Bankruptcy Law and in the Debtor and Creditor Law of the State of New York), (B) left it with unreasonably small capital at the time its Note Guarantee was entered into, or at the time such Guarantor incurred liability thereunder, after giving effect to the incurrence of existing Indebtedness immediately prior to such time or (C) left such Guarantor with debts beyond such Guarantor's ability to pay as such debts mature; *provided,* that it shall be a presumption in any lawsuit or other proceeding in which such Guarantor is a party that the amount Guaranteed pursuant to its Note Guarantee is the amount set forth in subsection (a) above unless any creditor, or representative of creditors of such Guarantor, or debtor in possession

or trustee in bankruptcy of such Guarantor, otherwise proves in such a lawsuit or other proceeding that the aggregate liability of such Guarantor is limited to the amount set forth in subsection (b) above. In making any determination as to the solvency or sufficiency of capital of a Guarantor in accordance with the previous sentence, the right of such Guarantor to contribution from other Guarantors and any other rights such Guarantor may have, contractual or otherwise, shall be taken into account.

Section 16.06 *"Trustee" to Include Paying Agent*. In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 16 shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully and for all intents and purposes as if such Paying Agent were named in this Article 16 in place of the Trustee.

ARTICLE 17.
COLLATERAL AND SECURITY

Section 17.01 *Security Documents*. The due and punctual payment of the principal of, premium, if any, and interest on the Notes and amounts due hereunder and under the Note Guarantees when and as the same shall be due and payable, subject to any applicable grace period, whether on an interest payment date, by acceleration, purchase, repurchase, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on the Notes and the performance of all other Obligations of the Company and the Guarantors to the Holders, the Collateral Agent or the Trustee under the Indenture Documents shall be secured by the Security Documents. The Security Documents shall provide for the grant by the Company and the Guarantors party thereto to the Collateral Agent of security interests in the Collateral subject to Permitted Liens and the terms of the Intercreditor Agreement.

Section 17.02 *Recording and Opinions*.

(a) The Company shall, and shall cause each of the Guarantors to, at its sole cost and expense, take or cause to be taken such actions as may be required by the Security Documents, to perfect, maintain (with the priority required under the Security Documents), preserve and protect the valid and enforceable, perfected (except as expressly provided herein or therein) security interests in and on all the Collateral granted by the Security Documents in favor of the Collateral Agent for the benefit of the Holders as security for the Obligations contained in this Indenture, the Notes, any Note Guarantees and the Security Documents, superior to and prior to the rights of all third Persons (other than Permitted Priority Liens, third Persons holding Liens securing

Pari passu Obligations and as set forth in the Intercreditor Agreement), and subject to no other Liens (other than Permitted Liens); *provided*, that, notwithstanding anything to the contrary under this Indenture, the Security Agreement or any Indenture Document, the Company and the Guarantors shall not be required (A) to perfect the Security Interests and/or Liens granted by the Security Documents by any means other than by (1) filings pursuant to the Uniform Commercial Code in the office of the secretary of state (or similar filing office) of the jurisdiction of incorporation or formation of the Company or such Guarantor, (2) filings in United States government offices with respect to registered and applied for United States Intellectual Property owned by the Company or any Guarantor, (3) delivery to the Collateral Agent to be held in its possession of all Collateral consisting of certificated securities, Chattel Paper, promissory notes or Instruments as required by the Security Agreement, (4) entry into Deposit Account Control Agreements (as defined in the Security Agreement) and securities account control agreements (in each case other than with respect to Excluded Deposit Accounts (as defined in the Security Agreement)) in accordance with Section 4.09 of the Security Agreement, and (5) entry into the Mortgages contemplated by Section 4.16 of this Indenture, (B) to perfect the security interest granted under the Security Documents in Letter-of-Credit Rights (as defined in the Security Agreement) other than pursuant to the filings under the Uniform Commercial Code and (C) to complete any filings or other action with respect to the perfection of the security interests, including of any Intellectual Property, created under the Security Documents in any jurisdiction outside of the United States other than the use of commercially reasonable efforts to obtain a perfected security interest in respect of any Capital Stock of a Material Pledged Foreign Subsidiary constituting Collateral in the jurisdiction of formation of such Material Pledged Foreign Subsidiary in accordance with Section 4.10 of the Security Agreement. The Company shall from time to time promptly pay all financing and continuation statement recording and/or filing fees, charges and recording and similar taxes relating to this Indenture, the Security

Documents and any amendments hereto or thereto and any other instruments of further assurance required pursuant hereto or thereto.

(b) The Company shall furnish to the Collateral Agent, at such times as would be required by Section 314(b) of the Trust Indenture Act if this Indenture were qualified thereunder, commencing December 15, 2016, an Opinion of Counsel to the effect that, either (i) other than actions that have been taken, no further action was necessary to maintain the perfection of the security interest in the Collateral described in both the applicable UCC-1 financing statement and the Security Agreement and for which perfection under the UCC of the Company's or applicable Guarantor's jurisdiction of organization may occur by the filing of a UCC-1 financing statement with the appropriate filing office of the applicable party's jurisdiction of organization or (ii) if any actions are so required to be taken, to specify such actions.

(c) The Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and the Company will, and will cause each Guarantor to, do or cause to be done all such acts and things as may be required by the provisions of the Security Documents to assure and confirm to the Trustee that the Collateral Agent holds for the benefit of the Trustee and the Holders duly created, enforceable and perfected Liens to the extent required by this Indenture and the Security Documents, as from time to time constituted.

Section 17.03 *Release of Collateral*.

(a) Subject to the Intercreditor Agreement, the Liens of the Collateral Agent created by the Security Documents shall not at any time be released on all or any portion of the Collateral from the Liens created by the Security Documents unless such release is in accordance with the provisions of this Indenture and the applicable Security Documents.

(b) The release of any Collateral from the Liens created by the Security Documents shall not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Collateral is released pursuant to this Indenture, the Security Documents and the Intercreditor Agreement. The Company and the Guarantors shall not be required to comply with Section 314(d) of the Trust Indenture Act in connection with any release of Collateral. For the avoidance of doubt, the automatic release of any current assets constituting Collateral in connection with the sale, lease or other similar disposition of such inventory of the Company and the Guarantors in the ordinary course of business shall not require delivery of any reports, certificates, opinions or other formal documentation.

(c) Notwithstanding anything to the contrary in any Indenture Documents, concurrently with any 2020 Financing Transaction, any Lien created by any Indenture Documents in respect of the 2020 Transaction Collateral applicable to such 2020 Financing Transaction shall be automatically released and the Trustee and/or the Collateral Agent shall concurrently with the consummation of such 2020 Financing Transaction (and the Holders party to this Indenture hereby authorize the Trustee and the Collateral Agent or any of them to), and upon notice by the Company to the Trustee or the Collateral Agent, take such action and execute any such documents as may be reasonably requested by the Company to evidence such release, including without limitation, any amendments to the UCC financing statements related thereto. Neither the Trustee nor the Collateral Agent have any duty to investigate the validity or sufficiency of any such request by the Company.

Section 17.04 *Specified Releases of Collateral*.

(a) Collateral shall be released from the Liens created by the Security Documents at any time or from time to time in accordance with the provisions of the Security Documents and the Intercreditor Agreement or as provided in this Indenture. The Liens securing the Collateral shall be automatically released without the need for further action by any Person under any one or more of the following circumstances:

(i) in part, as to any property that is sold, transferred, disbursed or otherwise disposed of by the Company or any Guarantor (other than to the Company or any Guarantor) in a transaction not prohibited by this Indenture at the time of such sale, transfer, disbursement or disposition;

(ii) in whole or in part, with the consent of the Holders of the requisite percentage of Notes in accordance with the provisions in Section 10.02;

(iii) in whole with respect to the Collateral of any Guarantor, upon the release of the Note Guarantee of such Guarantor in accordance with this Indenture;

(iv) in whole or in part, as applicable, as to all or any portion of the Collateral which has been taken by eminent domain, condemnation or similar circumstances;

(v) upon the request of the Company pursuant to an Officer's Certificate at any time after the Qualified Capital Raise, all Intellectual Property constituting Collateral; and

(vi) in part, in accordance with the applicable provisions of the Security Documents.

(b) Upon the request of the Company pursuant to an Officer's Certificate and Opinion of Counsel confirming that all conditions precedent hereunder and under the Security Documents, if any, have been met, and any instruments of termination, satisfaction or release prepared by the Company or the Guarantors, as the case may be, the Collateral Agent, without the consent of any Holder or the Trustee and at the expense of the Company or the Guarantors, shall execute, deliver or acknowledge such instruments or releases (in form reasonably satisfactory to the Collateral Agent) reasonably requested by the Company in order to evidence the release from the Liens created by the Security Documents of any Collateral permitted to be released pursuant to this Indenture, the Security Documents or the Intercreditor Agreement, any such release to be made without any recourse, representation or warranty of the Collateral Agent.

Section 17.05 *Release upon Satisfaction and Discharge or Amendment*.

(a) The Liens on all Collateral that secure the Notes and the Note Guarantees shall be automatically terminated and released without the need for further action by any Person:

(i) upon the full and final payment and performance of the Company's and the Guarantors' respective Obligations under this Indenture, the Notes and the Note Guarantees (other than contingent obligations that have yet to accrue);

(ii) upon satisfaction and discharge of this Indenture as described under Section 3.01; or

(iii) with the written consent of Holders at least (x) from September 20, 2016 through March 31, 2017, at least 75% in aggregate principal amount of the outstanding Notes and (y) on and after April 1, 2017, at least 66-2/3% in aggregate principal amount of the outstanding Notes.

(b) Upon the request of the Company contained in an Officer's Certificate and Opinion of Counsel confirming that all conditions precedent hereunder and under the Security Documents have been met, any instruments of termination, satisfaction or release prepared by the Company or the Guarantors, as the case may be, the Collateral Agent, without the consent of any Holder or the Trustee and at the expense of the Company or the Guarantors, shall execute, deliver or acknowledge such instruments or releases to evidence the release from the Liens created by the Security Documents of any Collateral permitted to be released pursuant to this Indenture, or the Security Documents, any such release to be made without any recourse, representation or warranty of the Collateral Agent and to be in a form reasonably acceptable to the Collateral Agent.

Section 17.06 *Form and Sufficiency of Release and Subordination*. In the event that the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell,

exchange or otherwise dispose of any portion of the Collateral that may be sold, exchanged or otherwise disposed of by the Company or such Guarantor to any Person other than the Company or a Guarantor, and the Company or such Guarantor requests, pursuant to an Officer's Certificate and Opinion of Counsel confirming that all conditions precedent hereunder and under the Security Documents to the release of such Collateral have been met, that (a) the Trustee or Collateral Agent furnish a written disclaimer, release or quit-claim of any interest in such property under this Indenture and the Security Documents, or, (b) to the extent applicable to such Collateral, take all action that is necessary or reasonably requested by the Company in writing (in each case at the expense of the Company) to release and reconvey to the Company or such Guarantor, without recourse, such Collateral or deliver such Collateral in its possession to the Company or such Guarantor, the Trustee and the Collateral Agent, as applicable, shall execute, acknowledge (without any recourse, representation and warranty) and deliver to the Company or such Guarantor (in the form prepared by the Company at the Company's sole expense) such an instrument (in form reasonably satisfactory to the Collateral Agent) promptly or take such other action so requested after satisfaction of the conditions set forth herein for delivery of any such release.

Section 17.07 *Purchaser Protected*. No purchaser or grantee of any property or rights purported to have been released from the Lien of this Indenture or of the Security Documents shall be bound to ascertain the authority of the Trustee or the Collateral Agent, as applicable, to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority; nor shall any purchaser or grantee of any property or rights permitted by this Indenture to be sold or otherwise disposed of by the Company be under any obligation to ascertain or inquire into the authority of the Company to make such sale or other disposition.

Section 17.08 *Authorization of Actions to be Taken by the Collateral Agent Under the Security Documents*. (a) Subject to the provisions of the applicable Security Documents, each Holder, by acceptance of the Notes, appoints U.S. Bank National Association as Collateral Agent consents to the terms of and agrees that the Collateral Agent shall, and the Collateral Agent is hereby authorized and directed to, execute and deliver the Security Documents to which it is a party and all agreements, documents and instruments incidental thereto, binding the Holders to the terms thereof, and act in accordance with the terms thereof. For the avoidance of doubt, the Collateral Agent shall have no discretion under this Indenture, the Intercreditor Agreement or the Security Documents and whenever reference is made in this Indenture to any action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression or satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood in all cases that the Collateral Agent shall not be required to make or give and shall be fully protected in not making or giving any determination, consent, approval, request or direction without the written direction of the Holders of the Minimum Principal Amount of the then outstanding Notes, the Trustee or the Company, as applicable. This provision is intended solely for the benefit of the Collateral Agent and its successors and permitted assigns and is not intended to and will not entitle the other parties hereto to any defense, claim or counterclaim, or confer any rights or benefits on any party hereto. Further, the Collateral Agent shall be under no obligation to exercise any of its rights and powers under this Indenture at the request or direction of any Holders, unless such Holder shall

have offered to the Collateral Agent security and indemnity satisfactory to the Collateral Agent against any loss, cost, liability or expense which might be incurred by the Collateral Agent in compliance with such direction or request and then only to the extent required by the terms of this Indenture.

(b) No provision of the Indenture Documents shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders or the Trustee if it shall have reasonable grounds for believing that repayment of such funds is not assured to it. Notwithstanding anything to the contrary contained in the Indenture Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(c) So long as an Event of Default is not continuing, the Company may direct the Collateral Agent in writing in connection with any action required or permitted by this Indenture, the Security Documents or the Intercreditor Agreement. During the continuance of an Event of Default, the Trustee, or the requisite Holders pursuant to Section 6.09, may, subject to the terms of the Intercreditor Agreement, direct the Collateral Agent in connection with any action required or permitted by this Indenture, the Security Documents or the Intercreditor Agreement.

(d) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee, a Holder or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default." The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee or the Holders of the Minimum Principal Amount of the Notes subject to this Article 17.

Section 17.09 *Authorization of Receipt of Funds by the Trustee Under the Security Documents*. The Collateral Agent is

authorized to receive any funds for the benefit of itself, the Trustee and the Holders distributed under the Security Documents or the Intercreditor Agreement and, to the extent not prohibited under the Intercreditor Agreement, to make further distributions of such funds to itself, the Trustee and the Holders in accordance with the provisions of
Section 6.05 and the other provisions of this Indenture. Such funds shall be held on deposit by the Trustee without investment (unless otherwise provided in this Indenture), and the Trustee shall have no liability for interest or other compensation thereon.

Section 17.10 *Action by the Collateral Agent*. Beyond the exercise of reasonable care in the custody thereof, the Collateral Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Collateral Agent in good faith and with reasonable care.

Neither the Trustee nor Collateral Agent shall be responsible for (i) the existence, genuineness or value of any of the Collateral; (ii) the validity, perfection, priority or enforceability of the Liens intended to be created by this Indenture or the Security Documents in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder (except to the extent such action or omission constitutes gross negligence or willful misconduct on the part of the Collateral Agent (as determined by a final non-appealable order of a court of competent jurisdiction not subject to appeal)); (iii) the sufficiency of the Collateral; (iv) the validity of the title of the Company and the Guarantors to any of the Collateral; (v) insuring the Collateral; (vi) any action taken or omitted to be taken by it under or in connection with this Indenture or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a final nonappealable order of a court of competent jurisdiction) or (vii) any recital, statement, representation, warranty, covenant or agreement made by the Company or any Affiliate of the Company, or any officer or Affiliate thereof, contained in the Indenture Documents or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, the Indenture Documents. The Company and the Guarantors shall be responsible for the maintenance of the Collateral and for the payment of taxes, charges or assessments upon the Collateral. For the avoidance of doubt, nothing herein shall require the Collateral Agent or the Trustee to file financing statements or continuation statements, or be responsible for maintaining the security interests purported to be created and described herein (except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder or under any other Indenture Document) and such responsibility shall be solely that of the Company. The Collateral Agent shall not be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, the Indenture Documents or to inspect the properties, books, or records of the Company or any of its Affiliates.

Section 17.11 *Compensation and Indemnity*.

(a) The Company shall pay to the Collateral Agent from time to time compensation as shall be agreed to in writing by the Company and the Collateral Agent for its acceptance of this Indenture, the Intercreditor Agreement, the Security Documents and services hereunder. The Company shall reimburse the Collateral Agent promptly upon request for all reasonable disbursements, advances and reasonable and documented out-of-pocket expenses incurred or made by it in connection with Collateral Agent's duties under the Indenture Documents, including the reasonable compensation, disbursements and expenses of the Collateral Agent's

agents and counsel, except any disbursement, advance or expense as may be attributable to the Collateral Agent's willful misconduct or gross negligence.

(b) The Company and the Guarantors shall, jointly and severally, indemnify the Collateral Agent and any predecessor Collateral Agent and each of their agents, employees, officers and directors for, and hold them harmless against, any and all losses, liabilities, claims, damages or expenses (including the fees and expenses of counsel to the Collateral Agent and any environmental liabilities) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, the Intercreditor Agreement and the Security Documents, including, without limitation (i) any claim relating to the grant to the Collateral Agent of any Lien in any property or assets of the Company or the Guarantors and (ii) the costs and expenses of enforcing this Indenture, the Intercreditor Agreement and the Security Documents against the Company and the Guarantors (including this Section 17.11) and defending itself against or investigating any claim (whether asserted by the Company, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder or thereunder, except to the extent any such loss, liability, claim, damage or expense shall have been determined by a court of competent jurisdiction to have been attributable to its willful misconduct or gross negligence. The Collateral Agent shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Collateral Agent to so notify the Company shall not relieve the Company or the Guarantors of their obligations hereunder, except to the extent the Company or the Guarantors are materially prejudiced thereby. At the Collateral Agent's sole discretion, the Company and the Guarantors shall defend any claim or threatened claim asserted against the Collateral Agent, with counsel reasonably satisfactory to the Collateral Agent, and the Collateral Agent shall cooperate in the defense at the Company's and the Guarantors' expense. The Collateral Agent may have one separate U.S. counsel (and one separate foreign counsel in each applicable non-U.S. jurisdiction) and the Company and the Guarantors shall pay the reasonable fees and expenses of such counsel. The Company and the Guarantors need not pay for any settlement made without their consent, which consent shall not be unreasonably withheld.

(c) The Collateral Agent shall be entitled to all rights, privileges, immunities and protections of the Trustee set forth in this Indenture whether or not expressly stated therein, including but not limited to the right to be compensated, reimbursed and indemnified under Section 7.06, in the acceptance, execution, delivery and performance of the Security Documents as though fully set forth therein. Notwithstanding any provision to the contrary contained elsewhere in the Indenture Documents, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth in the Indenture Documents to which the Collateral Agent is a party, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with the Trustee, any Holder or the Company, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Indenture Documents or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(d) The obligations of the Company and the Guarantors under this Section 17.11 shall survive the satisfaction and discharge of this Indenture and the resignation, removal or replacement of the Collateral Agent.

Section 17.12 *Post-Closing Collateral*. To the extent the Company and the Guarantors are not able to execute and deliver all Security Documents required in connection with the creation and perfection of the Liens of the Collateral Agent on the Collateral (to the extent required by the Indenture Documents) on or prior to the Issue Date, the Company and the Guarantors will use their commercially reasonable efforts to have all security interests in the Collateral duly created and enforceable and perfected, to the extent required by the Indenture Documents, within the time period required by the Security Agreement.

ARTICLE 18.
MISCELLANEOUS PROVISIONS

Section 18.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 18.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 18.03 *Addresses for Notices, Etc*. Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company or any Guarantor shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a

post office letter box addressed (until another address is filed by the Company with the Trustee) to Bloom Energy Corporation, 4353 North First Street, San Jose, California 95134, Attention: General Counsel, or send electronically in.pdf format. Any notice, direction, request or demand hereunder to or upon the Trustee or Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office, or sent electronically in.pdf format, whether sent by mail or electronically, upon actual receipt by the Trustee.

The Trustee and Collateral Agent, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the applicable procedures of the Depositary and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of repurchase) to a Holder (whether by mail or otherwise), such notice shall be sufficiently given (in the case of a Global Note) if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depositary.

Section 18.04 *Governing Law; Jurisdiction*. THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Each of the Company and the Guarantors, if any, irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

Each of the Company and the Guarantors, if any, irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 18.05 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee or the Collateral Agent to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee or the Collateral Agent, as the case may be, an Officer's Certificate and Opinion of Counsel stating that the conditions precedent and covenants, if any, provided for in this Indenture relating to such action have been satisfied.

Each Officer's Certificate or Opinion of Counsel, provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee or Collateral Agent with respect to compliance with this Indenture (other than the Officer's Certificates provided for in
Section 4.08) shall include (i) a statement that the person signing such certificate or opinion has

read such covenant or condition precedent and is familiar with the requested action and this Indenture; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate or opinion is based; (iii) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not the covenants and conditions precedent to such action have been satisfied; and (iv) a statement as to whether or not, in the opinion of such person, such covenants and conditions precedent have been satisfied.

Notwithstanding anything to the contrary in this Section 18.05, if any provision in this Indenture specifically provides that the Trustee or the Collateral Agent shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee, the Collateral Agent or the Company hereunder, the Trustee or Collateral Agent, as the case may be, shall be entitled to such Opinion of Counsel.

Section 18.06 *Legal Holidays*. In any case where any Interest Payment Date, Fundamental Change Repurchase Date, Change of Control Repurchase Date, Specified Repurchase Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue or be paid in respect of the delay.

Section 18.07 *Intercreditor Agreement*. Notwithstanding anything herein to the contrary, the lien and security interest granted pursuant to the Indenture Documents and the exercise of any right or remedy thereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement, and the Indenture Documents, the terms of the Intercreditor Agreement shall govern and control.

If any conflict or inconsistency exists between this Indenture, the Notes, and any Security Document (other than the Intercreditor Agreement), this Indenture shall govern.

Section 18.08 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 18.09 *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 18.10 *Authenticating Agent*. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.05 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and

deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an

authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 18.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall mail notice of such appointment to all Holders as the names and addresses of such Holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such authenticating agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 7.06, Section 8.03 and this Section 18.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 18.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

,
as Authenticating Agent, certifies that this is one of the Notes described
in the within-named Indenture.

By:
Authorized Signatory

Section 18.11 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original

Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 18.12 *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 18.13 *Waiver of Jury Trial*. EACH OF THE COMPANY, THE GUARANTORS, IF ANY, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 18.14 *Force Majeure*. In no event shall the Trustee or Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control,

including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 18.15 *Calculations*. The Company shall be responsible for making all calculations called for under the Notes and the Trustee (acting in any capacity) shall have no liability or responsibility for any calculation hereunder or any bid, quotation, data or information in connection therewith. These calculations include, but are not limited to, determinations of the Stock Price, Last Reported Sale Prices of the Common Stock, the Transaction Price, accrued interest payable on the Notes, determination of how whether interest shall be payable as PIK Interest or Cash Interest, Additional Interest, Book Value, the Collateral Value, the Investment Collateral Value, the Threshold Amount and the Conversion Rate (including the Change of Control Conversion Rate and the Maximum Initial Conversion Rate) of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent and the Conversion Agent, and each of the Trustee, the Paying Agent and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder upon the written request of that Holder at the sole cost and expense of the Company.

Section 18.16 *USA PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the

Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

BLOOM ENERGY CORPORATION

By: /s/ Shawn M. Soderberg

Name: Shawn M. Soderberg
Title: EVP, General Counsel and Secretary

RYE CREEK LLC, as Guarantor

By: Bloom Energy Corporation, its sole member

By: /s/Shawn Soderberg

Name: Shawn M. Soderberg
Title: EVP, General Counsel and Secretary

[Bloom Energy — Signature Page to Indenture]

By: /s/Bradley E. Scarbrough
Name: Bradley E. Scarbrough
Title. Vice President

U.S. BANK NATIONAL ASSOCIATION, as
Trustee and Collateral Agent

EXHIBIT A

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), THIS NOTE AND ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO BLOOM ENERGY CORPORATION (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A) (1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT IS ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE NOTES OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

WITH RESPECT TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), PRIOR TO THE RESALE RESTRICTION TERMINATION DATE, THE COMPANY AND THE NOTE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

Bloom Energy Corporation

10.0% Convertible Senior Secured Note due 2021

[PIK][1]

No. [ ] [Initially][2] $[ ]

CUSIP No. [ ]

Bloom Energy Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (the "Company," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.][3] [ ][4], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][5] [of $[ ]][6], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $1[ ],000,000 in aggregate at any time, [in accordance with the rules and procedures of the Depositary,] on December 1, 2021, and interest thereon as set forth below.

This Note shall bear interest at the Applicable Rate from April [ ], 2020, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until December 1, 2021; *provided* that with respect to the first interest payment, this Note shall bear interest from April 1, 2020 to April [ ], 2020 at the rate of 6% per annum and from April [ ], 2020 to the first Interest Payment Date at the Applicable Rate. Interest is payable monthly in arrears on each January 1, February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, November 1 and December 1, commencing on [ ], to Holders of record at the close of business on the preceding December 15, January 15, February 15, March 15, April 15, May 15, June 15, July 15, August 15, September 15, October 15 and November 15 (whether or not such day is a Business Day), respectively. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months or, in the case of a partial month, the number of days elapsed over a 30-day month and shall be compounded monthly on the last day of each month.

Additional Interest will be payable as set forth in Section 4.10 and Section 6.04 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 4.10 and Section 6.04, and any express mention of the payment of

1 Insert on any certificated PIK Notes.

2 Include if a Global Note.

3 Include if a Global Note.

4 Include if a Physical Note.

5 Include if a Global Note.

6 Include if a Physical Note.

Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Interest will be payable, at the election of the Company (made by delivering a notice to the Trustee prior to the beginning of the related Interest Period), (1) entirely in Cash Interest or (2) entirely in PIK Interest. In the absence of an interest payment election, interest on the Notes will be payable in PIK Interest. Notwithstanding anything to the contrary, the payment of accrued interest shall be made solely in cash, (A) in connection with any redemption or repurchase of Notes as described under Section 13.01, Section

13.02, Section 15.01, Section 15.02 and Section 15.03 of the Indenture, (1) with respect to all Notes, if the related Redemption Date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is after a Regular Record Date and on or prior to the Scheduled Trading Day immediately following the date on which the corresponding interest payment is made or (2) solely with respect to the Notes to be repurchased or redeemed, if the related Redemption Date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is on any other date, (B) with respect to all Notes, if any Notes are surrendered for conversion after the close of business on a Regular Record Date for the payment of interest and on or prior to the related Interest Payment Date and (C) on the final Interest Payment Date.

Following an increase in the principal amount of any outstanding Global Notes as a result of a PIK Payment, such Global Note will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. All PIK Notes issued pursuant to a PIK Payment will be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as the Notes issued on the Issue Date.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(d) of the Indenture.

The Company shall pay the principal of and interest (other than PIK Interest) on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent, Note Registrar, Custodian and Conversion Agent in respect of the Notes and its agency in the continental United States of America as a place where Notes may be presented for payment, repurchase, or conversion or for registration of transfer and exchange.

At all times, PIK Interest on the Notes will be payable (x) with respect to Notes represented by one or more Global Notes registered in the name of, or held by, DTC or its nominee on the relevant Regular Record Date, by increasing the principal amount of the outstanding Global Note by an amount equal to the amount of PIK Interest for the applicable

Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up), or by issuing a new Global Note, if required pursuant to the applicable procedures of the Depositary, in each case, as provided in writing by the Company in a Company Order to the Trustee, and the Trustee, at the written request of the Company, will record such increase in such Global Note and (y) with respect to Notes represented by Physical Notes, by issuing PIK Notes in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up), and the Trustee will, at the written request of the Company in a Company Order, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant Regular Record Date, as shown in the register of the Note Registrar.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into shares of Common Stock on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have

been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

BLOOM ENERGY CORPORATION

By:
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By:
Authorized Signatory

Dated:

[FORM OF REVERSE OF NOTE]

Bloom Energy Corporation
10.0% Convertible Senior Secured Note due 2021

This Note is one of a duly authorized issue of Notes of the Company, designated as its 10.0% Convertible Senior Secured Notes due 2021 (the "**Notes**"), limited to the aggregate principal amount of $290,000,000 (subject to additional amounts paid as PIK Interest) all issued or to be issued under and pursuant to an Indenture dated as of December 15, 2015 (the "**Indenture**"), between the Company and U.S. Bank National Association, a national banking association, as trustee (the "**Trustee**") and collateral agent (the "**Collateral Agent**"), as amended and restated on April 20, 2020, to which Indenture and all other indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price, Change of Control Repurchase Price or the Specified Repurchase Date Price on the Fundamental Change Repurchase Date, Change of Control Repurchase Date or the Specified Repurchase Date, as applicable, and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company, the Trustee and the Collateral Agent in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than the Minimum Principal Amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of the Minimum Principal Amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase Price, Change of Control Repurchase Price or the Specified Repurchase Date Price, if applicable)

of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money or shares of Common Stock, as the case may be, herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral

multiples thereof; *provided* that after a PIK Payment, the Notes shall be in minimum denominations of $1.00 and any integral multiple of $1.00 in excess thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are subject to redemption at the Company's option, in whole or in part, on or after the date that is two calendar years after the consummation of the Qualified IPO if the Last Reported Sale Price of the Common Stock has been at least 150% of the Qualified IPO Price then in effect for at least 20 Trading Days (whether or not consecutive) during a period of 30 consecutive Trading Days ending within three Trading Days immediately preceding the date on which the Company provides written notice of redemption. The Notes are not subject to any sinking fund. In certain circumstances, the Notes are also redeemable at the Company's option, in whole or in part, including in connection with a Change of Control at the Change of Control Redemption Price, as set forth in Article 13 of the Indenture.

On or after a Qualified IPO, and upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option and subject to the provisions of the Indenture, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 (or, if a PIK Payment has been made, in principal amounts of $1.00) or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

If the Qualified IPO has not occurred before December 15, 2019, the Holder has the right, at such Holder's option and subject to the provisions of the Indenture, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 (or, if a PIK Payment has been made, in principal amounts of $1.00) or integral multiples thereof) on the Specified Repurchase Date at a price equal to the Specified Repurchase Date Price.

If a Change of Control occurs at any time prior to the Qualified IPO, the Holder has the right, at such Holder's option and subject to the provisions of the Indenture, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of $1,000 (or, if a PIK Payment has been made, in principal amounts of $1.00) or integral multiples thereof) on the Change of Control Repurchase Date at a price equal to the Change of Control Repurchase Price.

The Notes are convertible into Common Stock in accordance with the terms of the Indenture.

The payment of the principal of, premium, if any, and interest, if any, on the Notes, is unconditionally guaranteed, jointly and severally, by the Guarantors, if any, to the extent set forth in and subject to the provisions of the Indenture.

Subject to the terms of the Intercreditor Agreement, if any, the Obligations of the Company and the Guarantors, if any, under the Notes and the Note Guarantees, if any, are secured by Liens on the Collateral pursuant to the terms of the Security Documents.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE A7

SCHEDULE OF EXCHANGES OF NOTES

Bloom Energy Corporation
10.0% Convertible Senior Secured Notes due 2021

The initial principal amount of this Global Note is DOLLARS ($[ ]). The following increases or decreases in this Global Note have been made:

Date of exchange	Amount of decrease in principal amount of this Global Note

Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

Bloom Energy Corporation
10.0% Convertible Senior Secured Notes due 2021

To: Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

U.S. BANK NATIONAL ASSOCIATION
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Bloom Energy Corporation Convertible Senior Secured Notes due 2021

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is $1,000 principal amount (or if a PIK Payment has been made, $1.00 principal amount) or an integral multiple thereof) below designated pursuant to:

☐ Section 14.01 [Only permitted prior to a Qualified IPO and for a period after a Change of Control specified in the Indenture]; or

☐ Section 14.02 [Only permitted on or after the earlier to occur of a Qualified IPO and September 1, 2020],

in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or Preferred Stock, as the case may be, or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.03(d) and Section 14.03(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated:

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed
by an eligible Guarantor Institution
(banks, stock brokers, savings and
loan associations and credit unions)
with membership in an approved
signature guarantee medallion program
pursuant to Securities and Exchange
Commission Rule 17Ad-15 if shares
of Common Stock are to be issued, or
Notes are to be delivered, other than
to and in the name of the registered holder.

Fill in for registration of shares if
to be issued, and Notes if to
be delivered, other than to and in the
name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):
$,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer Identification Number

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

Bloom Energy Corporation
10.0% Convertible Senior Secured Notes due 2021

To: Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

U.S. BANK NATIONAL ASSOCIATION
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Bloom Energy Corporation Convertible Senior Secured Notes due 2021

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Bloom Energy Corporation (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount (or if a PIK Payment has been made, $1.00 principal amount) or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the Scheduled Trading Day immediately following the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):
$,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 3

[FORM OF SPECIFIED REPURCHASE DATE NOTICE]

To: Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

U.S. BANK NATIONAL ASSOCIATION
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Bloom Energy Corporation Convertible Senior Secured Notes due 2021

The undersigned registered owner of this Note hereby acknowledges receipt of a Specified Repurchase Date Company Notice from Bloom Energy Corporation (the "**Company**") and specifying the Specified Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this

Note the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount (or if a PIK Payment has been made, $1.00 principal amount) or an integral multiple thereof) below designated and accrued and unpaid interest, if any, thereon to, but excluding, such Specified Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repurchased by the
Company(if less than all): $,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 4

[FORM OF CHANGE OF CONTROL REPURCHASE NOTICE]

Bloom Energy Corporation
10.0% Convertible Senior Secured Notes due 2021

To: Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

U.S. BANK NATIONAL ASSOCIATION
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Bloom Energy Corporation Convertible Senior Secured Notes due 2021

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Bloom Energy Corporation (the "**Company**") as to the occurrence of a Change of Control with respect to the Company and specifying the Change of Control Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.03 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is $1,000 principal amount (or if a PIK Payment has been made, $1.00 principal amount) or an integral multiple thereof) below designated, and (2) if such Change of Control Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the Scheduled Trading Day immediately following the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Change of Control Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated:

Signature(s)

Social Security or Other Taxpayer Identification Number

Principal amount to be repaid (if less than all):
$,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written

upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ATTACHMENT 5

[FORM OF ASSIGNMENT AND TRANSFER]

Bloom Energy Corporation

10.0% Convertible Senior Secured Notes due 2021

For value received hereby sell(s), assign(s) and transfer(s) unto

(Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To Bloom Energy Corporation or a subsidiary thereof; or

☐ Pursuant to, and in accordance with, a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to any other available exemption from the registration requirements of the Securities Act of 1933, as amended (including, if available, the exemption provided by Rule 144 under the Securities Act of 1933, as amended).

Dated:

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

EXHIBIT B

[FORM OF RESTRICTION AGREEMENT]

[DATE]

Via Facsimile: [•]

Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

Ladies and Gentlemen:

In connection with the receipt by the undersigned (the "**Investor**") of $[•] principal amount of 10.0% Convertible Senior Secured Notes due 2021 (the "**Notes**") issued by Bloom Energy Corporation (the "**Company**") pursuant to the terms of the Amended and Restated Indenture, dated April 20, 2020 (the "**Indenture**"), by and among the Company, the guarantors party thereto and U.S. Bank, National Association, as trustee and collateral agent, the Investor hereby acknowledges and agrees that, if all of the Company's executive officers, directors and shareholders of more than 1% of the Common Equity of the Company enter into lock-up agreements (the "**Lock-up Agreements**") with the applicable underwriters in connection with the filing of a registration statement including a prospectus setting forth an estimated offering price range with the Securities and Exchange Commission (the "**SEC**") that is reasonably anticipated at the time of such filing to result in a Qualified IPO, upon the Company's request, it will enter into a lock-up agreement with the underwriters of such Qualified IPO and upon such underwriters' request, it will agree, effective no later than one week prior to the distribution of a preliminary prospectus in connection with the commencement of marketing activities in respect of such contemplated Qualified IPO, not to (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase or otherwise

transfer or dispose of, directly or indirectly, any shares of Common Equity of the Company or any securities convertible into or exercisable or exchangeable for Common Equity of the Company (whether such shares or any such securities are then owned by the Investor or are thereafter acquired) or (b) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Equity of the Company, whether any such transaction described in clause (a) or (b) above is to be settled by delivery of Common Equity or such other securities, in cash or otherwise, without the prior written consent of the Company or such underwriters, as the case may be; *provided* that such lock-up agreement shall not restrict the ability of such Holder of Notes to convert such Notes pursuant to the Indenture, is not more restrictive in any material respect than the Lock-up Agreements, and includes provisions for the *pro rata* release from such lock-up agreement entered into by the Investor of shares of Common Equity or other securities subject thereto upon the release of such shares or other securities from the Lock-up Agreements and contains provisions otherwise at least as favorable to such Investor as those contained in the Lock-up Agreements, in each case no less favorable than the lock-up provisions included in the Registration Rights Agreement as it exists on the Issue Date; *provided, further* that, (1) the pro rata release provision shall not apply (a) unless the underwriters have first waived more than 1%,

in the aggregate, of the Common Equity of the Company from such prohibitions or (b)(i) if the release or waiver is effected solely to permit a transfer not for consideration and (ii) the transferee has agreed in writing to be bound by the same terms described in this letter agreement, and (2) if the release or waiver is granted solely to allow a holder of Common Equity of the Company to participate as a selling stockholder in a follow-on public offering of such Common Equity of the Company pursuant to a registration statement that is filed with the SEC, the pro rata release provision shall apply only to the extent necessary to allow an Investor to participate in such follow-on offering with respect to securities sold by the Investor in such offering. The underwriters in connection with the Company's Qualified IPO are intended third party beneficiaries of this letter agreement and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each Investor agrees that the Company may instruct its transfer agent to place stop-transfer notations in its records to enforce the provisions of this letter agreement until the end of lock-up period.

Defined terms used but not defined herein have the meaning assigned to them in the Indenture.

Sincerely,

[*Investor*]

By:
Name:
Title:

[*For any Investor requiring a second signature line*]

By:
Name:
Title:

EXHIBIT C

[FORM OF SUPPLEMENTAL INDENTURE]

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of [˜], between (the "New Guarantor"), a direct or indirect subsidiary of Bloom Energy Corporation (or its successor), a Delaware corporation (the "Company"), the Company, and U.S. Bank National Association, as trustee and collateral agent under the Indenture referred to below (the "Trustee").

W I T N E S E T H

WHEREAS, the Company and the Guarantors (as defined in the Indenture) have heretofore executed and delivered to the Trustee an Amended and Restated Indenture (as amended or supplemented, the "Indenture"), dated as of April 20, 2020, providing for the issuance of 10.0% Convertible Senior Secured Notes due 2021 (the "Notes");

WHEREAS, the Company may cause the New Guarantor to execute and deliver to the Trustee a supplemental indenture pursuant to which the New Guarantor shall unconditionally guarantee all of the Company's obligations under the Indenture Documents pursuant to a Note Guarantee on the terms and conditions set forth herein; and

WHEREAS, Section 10.01(h) of the Indenture provides, among other things, that the Company, the Guarantors and the Trustee may amend or supplement the Indenture Documents without the consent of any Holder to add Note Guarantees with respect to the Notes.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the New Guarantor, the Company and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. AGREEMENT TO GUARANTEE. The New Guarantor hereby agrees, jointly and severally with all other Guarantors, to guarantee the Company's Obligations under the Notes and the Indenture on the terms and subject to the conditions set

forth in Article 16 of the Indenture and to be bound by all other applicable provisions of the Indenture.

3. EFFECTIVENESS. This Supplemental Indenture shall be effective upon execution by the parties hereto. Upon effectiveness of this Supplemental Indenture, the New Guarantor will be a Guarantor under the Indenture.

4. RECITALS. The recitals contained herein shall be taken as the statements of the Company and the Guarantors and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity of this Supplemental Indenture.

5. NEW YORK LAW TO GOVERN. THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE.

6. COUNTERPARTS. The parties hereto may sign any number of copies of this Supplemental Indenture (including by electronic transmission). Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or portable document format transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or portable document format shall be deemed to be their original signatures for all purposes.

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

8. ACCEPTANCE BY THE TRUSTEE. The Trustee assumes no responsibility for the correctness of the recitals contained herein, which shall be taken as the statements of the Company and the New Guarantor and the Trustee shall not be responsible or accountable in any way whatsoever for or with respect to the validity, execution or sufficiency of this Supplemental Indenture and make no representation with respect thereto.

9. SEVERABILITY. In case any provision in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

10. RATIFICATION OF INDENTURE; SUPPLEMENTAL INDENTURES PART OF INDENTURE. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder of Notes heretofore or hereafter authenticated and delivered shall be bound hereby.

(signature pages follow)

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

BLOOM ENERGY CORPORATION:

By:
Name:
Title:

[Insert Name of New Guarantor]

By:
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee and Collateral Agent

By:
Name:
Title:

EXHIBIT D

[Form of Notation of Guarantee]

Each Guarantor (capitalized terms used herein have the meanings given such terms in the Indenture referred to in the Note upon which this notation is endorsed) signing below hereby unconditionally, jointly and severally, guarantees (such guarantee being referred to herein as the "Guarantee"), to the extent set forth in the Indenture and subject to the provisions in the Indenture, the due and punctual payment of the principal of, premium, if any, and interest (if such Note provides for the payment of interest) on the Notes to which this notation is affixed and all other amounts due and payable under the Indenture and the Notes to which this notation is affixed by the Company.

The terms of the Guarantee evidenced by this Notation of Guarantee include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S. Code Sections 77aaa-77bbbb), as amended. For the avoidance of doubt, the terms of Article 16 of the Indenture are incorporated by reference into this Notation of Guarantee as if set forth herein.

The Guarantee evidenced by this Notation of Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Notes upon which this Notation of Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

The Guarantee evidenced by this Notation of Guarantee shall be governed by and construed in accordance with the laws of the State of New York.

The Guarantee evidenced by this Notation of Guarantee is subject to release upon the terms set forth in the Indenture.

[˜]

By:

Name:

Title:

EXHIBIT E

[FORM OF INTERCREDITOR AGREEMENT]

INTERCREDITOR AGREEMENT, dated as of [•], 20[•] (as amended, restated, supplemented or otherwise modified from time to time, this "**Agreement**"), is made by and among U.S. Bank National Association, in its capacity as collateral agent pursuant to the Indenture (as hereinafter defined) (in such capacity and together with any successors in such capacity, the "**Notes Collateral Agent**"), [•] ("**Credit Collateral Agent**"), and Bloom Energy Corporation, a Delaware corporation (the "**Company**"), and the other Grantors party hereto in respect of the acknowledgement hereto.

RECITALS

Reference is made to that certain Indenture, dated as of December [•], 2015 (as amended by the First Amendment to Security Agreement dated as of June 29, 2017, the Second Amendment to Security Agreement dated as of [•], 2020 and as further amended, modified, supplemented or restated and in effect from time to time, the "**Indenture**", which term shall also include and refer to any additional issuance of notes under the Indenture) by and among the Company, each Notes Guarantor, U.S. Bank National Association, as trustee (together with its successors in such capacity, the "**Trustee**") and the Notes Collateral Agent, pursuant to which the Company issued $[•],000,000 aggregate principal amount of its 10.0% Convertible Senior Secured Notes due 2021 (together with any additional notes issued under the Indenture, the "**Senior Secured Notes**").

Reference is made to that certain Security Agreement, dated as of December [•], 2015 (as amended, modified, supplemented or restated and in effect from time to time, the "**Notes Security Agreement**"), among the Company, the Notes Guarantors from time to time party thereto and the Notes Collateral Agent pursuant to which the Company and such Notes Guarantors granted a security interest in their assets described therein to secure the Senior Secured Notes and the other Notes Obligations (as defined below).

Reference is made to that certain [Credit Agreement], dated as of [•] (as amended, modified, supplemented or restated and in effect from time to time, the "**Credit Agreement**") among the Company, the lenders from time to time party thereto (the "**Lenders**") and the Credit Collateral Agent pursuant to which the Lenders have made extensions of credit to the Company.

Reference is made to that certain [Security] Agreement, dated as of [•] (as amended, modified, supplemented or restated and in effect from time to time, the "**Credit Agreement Security Agreement**"), among the Company [, the other Grantors from time to time party thereto] and the Credit Collateral Agent pursuant to which the Company [and such Grantors] granted a security interest in the Credit Agreement Collateral described therein to secure the Credit Obligations (as defined below).

Each of the Credit Collateral Agent (on behalf of the Credit Agreement Secured Parties) and the Notes Collateral Agent (on behalf of the Notes Secured Parties) and, by their acknowledgment hereof, the Grantors, desire to agree to the relative priority of Liens on the Common Collateral and certain other rights, priorities and interests as provided herein.

AGREEMENT

NOW THEREFORE, or good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, he parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

"**Agreement**" has the meaning assigned to such term in the preamble hereto.

"**Affiliate**" means, with respect to a specified Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by or is under common Control with the Person specified.

"**Bailee Secured Party**" has the meaning assigned to such term in Section 4.01. "**Bankruptcy Code**" means Title 11 of the

United States Code, as amended.

"**Bankruptcy Law**" means the Bankruptcy Code and any similar Federal, state or foreign law for the relief of debtors.

"**Capital Stock**" means, as to any Person that is a corporation, the authorized shares of such Person's capital stock, including all classes of common, preferred, voting and nonvoting capital stock, and, as to any Person that is not a corporation or an individual, the membership or other ownership interests in such Person, including the right to share in profits and losses, the right to receive distributions of cash and other property, and the right to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether or not such interests include voting or similar rights entitling the holder thereof to exercise Control over such Person, collectively with, in any such case, all warrants, options and other rights to purchase or otherwise acquire, and all other instruments convertible into or exchangeable for, any of the foregoing.

"**Collateral**" shall mean all property now owned or hereafter acquired by any Grantor, whether real, personal or mixed,

which constitutes Credit Agreement Collateral or Notes Collateral.

"**Collateral Agent**" shall mean the Credit Collateral Agent and the Notes Collateral Agent.

"**Common Collateral**" means, at any time, Intellectual Property (and proceeds (as defined in the Uniform Commercial Code) thereof) that constitutes Collateral in which a Lien is granted or purported to be granted both Secured Parties (including as a result of the agreements set forth in Section 4.01).

"**Company**" has the meaning assigned to such term in the preamble hereto.

"**Control**" means the possession, directly or indirectly, of the power (a) to vote more than 50% of the securities having ordinary voting power for the election of directors (or any similar governing body) of a Person, or (b) to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power or by contract. The terms "**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Credit Agreement**" has the meaning assigned to such term in the Recitals hereto.

"**Credit Agreement Collateral**" means all "**Collateral**" as defined in the Credit Agreement Security Agreement as in effect on the date hereof.

"**Credit Agreement Secured Parties**" means the Credit Collateral Agent and the Lenders [and any Affiliate of a Lender that has provided [Bank Products (as defined in the Credit Agreement) or Cash Management Services (as defined in the Credit Agreement).]

"**Credit Agreement Security Agreement**" has the meaning assigned to such term in the Recitals hereto.

"**Credit Collateral Agent**" has the meaning assigned to that term in the preamble to this Agreement and shall include any successor thereto.

"**Credit Collateral Documents**" means all "**Security Documents**" as defined in the Credit Agreement, and all other security agreements and other collateral documents executed and delivered in connection with the Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**Credit Documents**" means the Credit Agreement, the Credit Collateral Documents and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any Grantor or any of its respective Subsidiaries or Affiliates, and delivered to the Credit Collateral Agent in connection with any of the foregoing or the Credit Agreement, in each case as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof.

"**Credit Obligations**" means all obligations of every nature of each Grantor from time to time owed to any Credit Agreement Secured Party under any Credit Document [or under any agreement in respect of Bank Products or Cash Management Services], whether for principal, interest (including interest, fees and expenses which, but for the filing of a petition in bankruptcy with respect to such Grantor, would have accrued on any Credit Agreement Obligation, whether or not a claim is allowed against such Grantor for such interest, fees or expenses in the related bankruptcy proceeding), reimbursement of amounts drawn under letters of credit, fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of the Credit Agreement Documents [or under any agreement in respect of Bank Products or Cash Management Services], as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof and

including, in any event, all "**Obligations**" (as defined in the Credit Agreement as in effect on the date hereof).

"**Discharge**" means, with respect to any Obligations, (a) payment in full in cash of the principal of and interest on (including interest accruing during the pendency of any Insolvency or Liquidation Proceeding, regardless of whether allowed or allowable in such Insolvency or Liquidation Proceeding), and premium, if any, on, all Obligations outstanding under the applicable Secured Credit Documents, and (b) payment in full of all other Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid.

"**Excess Credit Obligations**" means any and all Credit Obligations that are in excess of $150.0 million.

"**Grantors**" means, at any time, the Company and each Subsidiary of the Company that, at such time, pursuant to the Credit Documents or the Notes Documents, as applicable, have granted a Lien on any of its assets to secure any Obligations.

"**Impairment**" has the meaning assigned to such term in Section 2.02. "**Insolvency or Liquidation Proceeding**" means:

(a) any case commenced by or against any Grantor under any Bankruptcy Law, any other proceeding for the reorganization, receivership, recapitalization or adjustment or marshalling of the assets or liabilities of any Grantor, any receivership or assignment for the benefit of creditors relating to any Grantor or its assets or any similar case or proceeding relative to the Company or its creditors or its assets, as such, in each case whether or not voluntary;

(b) any liquidation, dissolution, marshalling of assets or liabilities, assignment for the benefit of creditors or other winding up of or relating to any Grantor or its assets, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency and whether or not in a court supervised proceeding; or

(c) any other proceeding of any type or nature in which substantially all claims of creditors of any Grantor are determined and any payment or distribution is or may be made on account of such claims.

"**Intellectual Property**" means, with respect to any Person, all patents, patent applications and like protections, including improvements divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of

business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"**Intervening Creditor**" has the meaning assigned to such term in Section 2.02. "**Intervening Lien**" has the meaning

assigned to such term in Section 2.02.

"**Lenders**" has the meaning assigned to such term in the Recitals to this Agreement and shall include any successor thereto.

"**Lien**" means, with respect to any asset, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, hypothecation, encumbrance, collateral assignment, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

"**Notes Collateral**" has the meaning assigned to that term in the Notes Security Agreement.

"**Notes Collateral Agent**" has the meaning assigned to that term in the preamble to this Agreement and shall include any successor thereto as well as any Person designated as the "Notes Collateral Agent" or "Collateral Agent" under the Indenture.

"**Notes Credit Parties**" means the Company and each Notes Guarantor.

"**Notes Documents**" means the Indenture, the Senior Secured Notes, the Notes Security Documents and those other ancillary agreements as to which the Notes Collateral Agent or any other Notes Secured Party is a party or a beneficiary (including any intercreditor or joinder agreements) and all other agreements, instruments, documents and certificates, now or hereafter executed by or on behalf of any Notes Credit Party or any of its respective Subsidiaries or Affiliates, and delivered to the Notes Collateral Agent or the Trustee, in connection with any of the foregoing or any Notes Document, in each case as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time in accordance with the terms thereof.

"**Notes Guarantor**" has the meaning set forth in the Indenture.

"**Notes Obligations**" means all obligations outstanding under the Senior Secured Notes and the other Notes Documents, and shall, in any event, include all "Secured Obligations" (as defined in the Notes Security Agreement as in effect on the date hereof). "Notes Obligations" shall include all obligations of every nature of each Notes Credit Party from time to time owed to the Notes Collateral Agent, the Notes Secured Parties or any of them under any Notes
Document, whether for principal, interest (including interest, fees and expenses which, but for the filing of a petition in bankruptcy with respect to such Notes Credit Party, would have accrued on any Notes Obligation, whether or not a claim is allowed against such Notes Credit Party for such interest, fees or expenses in the related bankruptcy proceeding), fees, expenses, indemnification or otherwise, and all other amounts owing or due under the terms of any Notes Documents, as amended, restated, modified, renewed, refunded, replaced or refinanced in whole or in part from time to time in accordance with the terms thereof.

"**Notes Secured Parties**" means (i) so long as the Senior Secured Notes are outstanding, the Trustee and the holders of the Senior Secured Notes (including any additional Senior Secured Notes subsequently issued under and in compliance with the terms of the Indenture), (ii) the Notes Collateral Agent and (iii) the holders from time to time of any other Notes Obligations.

"**Notes Security Agreement**" has the meaning assigned to such term in the Recitals hereto.

"**Notes Security Documents**" means the Notes Security Agreement and all other "Security Documents" as defined in the Indenture and all other security agreements, mortgages, deeds of trust and other collateral documents executed and delivered in connection with the Indenture, in each case as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time in accordance with the terms thereof.

"**Obligations**" means the Credit Obligations and/or the Notes Obligations, as applicable.

"**Person**" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

"**Proceeds**" has the meaning assigned to such term in Section 2.01.

"**Secured Parties**" means, collectively, the Notes Secured Parties and the Credit Secured Parties.

"**Subsidiary**" means with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity (a) of which Capital Stock representing more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, Controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

SECTION 1.02. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as

referring to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, but shall not be deemed to include the subsidiaries of such Person unless express reference is made to such subsidiaries, (c) the words "herein," "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles and Sections shall be construed to refer to Articles, and Sections of this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

ARTICLE II.

LIEN PRIORITIES; PROCEEDS

SECTION 2.01. Relative Priorities.

(a) Notwithstanding (i) the date, time, method, manner, or order of grant, attachment, or perfection (including any defect or deficiency or alleged defect or deficiency in any of the foregoing) of any Liens granted to the Credit Collateral Agent or the Lenders in respect of all or any portion of the Collateral or of any Liens granted to the Notes Collateral Agent or the other Notes Secured Parties in respect of all or any portion of the Collateral and regardless of how any such Lien was acquired (whether by grant, statute, operation of law, subrogation or otherwise), (ii) the order or time of filing or recordation of any document or instrument for perfecting the Liens in favor of the Credit Collateral Agent or the Notes Collateral Agent (or Lenders or Notes Secured Parties) in any Collateral, (iii) any provision of the Uniform Commercial Code, the Bankruptcy Code or any other applicable law, or of the Credit Documents or the Notes Documents, (iv) whether the Credit Collateral Agent or the Notes Collateral Agent, in each case, either directly or through agents, holds possession of, or has control over, all or any part of the Collateral, (v) the fact that any such Liens in favor of the Credit Collateral Agent or the Lenders or the Notes Collateral Agent or the Notes Secured Parties securing any of the Credit Agreement Obligations or Notes Obligations, respectively, are (x) subordinated to any Lien securing any obligation of any Grantor other than the Notes Obligations or the Credit Obligations, respectively, or (y) otherwise subordinated, voided, avoided, invalidated or lapsed, or (vi) any other circumstance of any kind or nature whatsoever (but, in each case, subject to Section 2.01 and Section 2.02), each Secured Party agrees that Liens on any Common Collateral securing the Credit Obligations and the Notes Obligations shall be of equal priority.

(b) Each Secured Party agrees that, notwithstanding (x) any provision of any Credit Document or Notes Document to the contrary (but subject to Section 2.02) and (y) the date, time, method, manner or order of grant, attachment or perfection of any Lien on any Common Collateral securing any Credit Obligation or Notes Obligation, and notwithstanding any provision of the Uniform Commercial Code of any jurisdiction, any other applicable law or any Credit Document or Notes Document, or any other circumstance whatsoever (but, in each case, subject to Section 2.02), if (i) such Secured Party takes any action to enforce rights or exercise remedies in respect of any Common Collateral (including any such action referred to in Section 3.01), or (ii) any distribution (whether in cash, securities or other property) is made in respect of any Common Collateral in any Insolvency or Liquidation Proceeding of the Company or any other Grantor, then the proceeds of any sale, collection or other liquidation of any Common Collateral obtained by such Secured Party on account of such enforcement of rights or exercise of remedies, and any such distributions or payments received by such Secured Party (all such proceeds, distributions and payments being collectively referred to as "**Proceeds**"), shall be applied as follows:

(i) FIRST, to the payment of reasonable costs and expenses, including all amounts expended to preserve the value of the Common Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability and advances, including reasonable legal expenses and attorneys'

fees, incurred or made under any Credit Document or Notes Document by any Secured Party;

(ii) SECOND, subject to Section 2.02, to the payment in full of all other Credit Obligations (other than Excess Credit Obligations) and Notes Obligations secured by a Lien on such Common Collateral at the time due and payable (the amounts so applied to be distributed, as among such Credit Obligations and Notes Obligations ratably in accordance with the amounts of the Credit Obligations (other than Excess Credit Obligations) and Notes Obligations outstanding on the date of such application);

(iii) THIRD, after payment in full of the Credit Obligations (other than Excess Credit Obligations) and Notes

Obligations, to the payment in full of the Excess Credit Obligations in accordance with the applicable Credit Documents;

(iv) FOURTH, after payment in full of all the Excess Credit Obligations, to the Company or its successors or assigns, as their interests may appear, or as a court of competent jurisdiction may direct.

(c) It is acknowledged that the Credit Obligations and the Notes Obligations may, subject to the limitations set forth in the then extant Credit Documents or Notes Documents, as applicable, be increased, extended, renewed, replaced, restated, supplemented, restructured, repaid, refunded, refinanced or otherwise amended or modified from time to time, all without affecting the priorities set forth in Section 2.01 or the provisions of this Agreement defining the relative rights of the Secured Parties.

(d) Neither Collateral Agent shall be required to marshal any present or future collateral security (including, but not limited to, the Common Collateral) for, or other assurances of payment of, the Credit Obligations or the Notes Obligations, as applicable, or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the extent it may lawfully do so, each Grantor agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of any Secured Party's rights and remedies under any Secured Credit Document, and to the extent it lawfully may, each Grantor hereby irrevocably waives the benefit of such laws.

(e) The Credit Collateral Agent, for and on behalf of itself and the Lenders, acknowledges and agrees that, prior hereto, Notes Collateral Agent, for the benefit of itself and the Notes Secured Parties, has been granted Liens upon all of the Common Collateral in which the Credit Collateral Agent has also been granted Liens and the Credit Collateral Agent hereby consents thereto. The Notes Collateral Agent, for and on behalf of itself and the Notes Secured Parties, acknowledges and agrees that, concurrently herewith, the Credit Collateral Agent, for the benefit of itself and the Credit Secured Parties, has been granted Liens upon all of the Common Collateral in which the Notes Collateral Agent has been granted Liens and the Notes Collateral Agent hereby consents thereto.

SECTION 2.02. Impairments. It is the intention of the parties hereto that each Secured Party bears the risk of any determination by a court of competent jurisdiction that (i) any Obligations held by such Secured Party are unenforceable under applicable law or are

subordinated to any other obligations, (ii) such Secured Party does not have a Lien on any of the Common Collateral and/or (iii) any Person (other than any Secured Party) has a Lien on any Common Collateral that is senior in priority to the Lien of such Secured Party on such Common Collateral, but junior to the Lien of the other Secured Party on such Common Collateral (any such Lien being referred to as an "**Intervening Lien**", and any such Person being referred to as an "**Intervening Creditor**") (any condition with respect to Obligations of such Secured Party being referred to as an "**Impairment**"). In the event an Impairment exists with respect to the Obligations of any Secured Party, the results of such Impairment shall be borne solely by such Secured Party, and the rights of such Secured Party (including the right to receive distributions in respect of Obligations pursuant to Section 2.01) set forth herein shall be modified to the extent necessary so that the results of such Impairment are borne solely by such Secured Party. In furtherance of the foregoing, in the event Obligations of any Secured Party shall be subject to an Impairment in the form of an Intervening Lien of any Intervening Creditor, the value of any Common Collateral or Proceeds that are allocated to such Intervening Creditor shall be deducted solely from the Common Collateral or Proceeds to be distributed in respect of Obligations owing to such Secured Party.

SECTION 2.03. Payment Over. Each Secured Party agrees that if such Secured Party shall at any time obtain possession of any Common Collateral or receive any Proceeds (other than as a result of any application of Proceeds pursuant to Section 2.01), (i) such Secured Party shall promptly inform the other Secured Parties thereof, (ii) such Secured Party shall hold such Common Collateral or Proceeds for the benefit of the other Secured Parties pursuant to Section 2.01 and (iii) in the case of any such Proceeds, such Proceeds shall be applied in accordance with Section 2.01 as promptly as practicable.

SECTION 2.04. Determinations with Respect to Amounts of Obligations and Liens. Whenever any Collateral Agent shall be required, in connection with the exercise of its rights or the performance of its obligations hereunder, to determine the existence or amount of any Obligations, or the Common Collateral subject to any Lien securing the Obligations (and whether such Lien constitutes a valid and perfected Lien), it may request that such information be furnished to it in writing by the other Collateral Agent and shall be entitled to make such determination on the basis of the information so furnished; provided that if,

notwithstanding the request of any Collateral Agent, the other Collateral Agent shall fail or refuse reasonably promptly to provide the requested information, such Collateral Agent shall be entitled to make any such determination by such method as it may, in the exercise of its good faith judgment, determine, including by reliance upon a certificate of an officer of the Company. Each Collateral Agent may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to the Company, any Collateral Agent or any other Person as a result of such determination or any action taken or not taken pursuant thereto.

SECTION 2.05. Exculpatory Provisions. No Collateral Agent shall be liable for any action taken or omitted to be taken by such Collateral Agent with respect to any Common Collateral in accordance with the provisions of this Agreement.

ARTICLE III.

RIGHTS AND REMEDIES; MATTERS RELATING TO COMMON COLLATERAL

SECTION 3.01. Exercise of Rights and Remedies.

(a) Subject to paragraph (b) of this Section, Section 2.01 and Section 4.01, nothing in this Agreement shall affect the ability of any Secured Party (i) to enforce any rights and exercise any remedies with respect to any Common Collateral available under any Credit Document, any Notes Document or applicable law, including any right of set-off and any determinations regarding the release of Liens on, or any sale, transfer or other disposition of, any Common Collateral, or any other rights or remedies available to a secured creditor under the Uniform Commercial Code of any jurisdiction, the Bankruptcy Code or any other Bankruptcy Law or (ii) to commence any action or proceeding with respect to such rights or remedies (including any foreclosure action or proceeding or any Insolvency or Liquidation Proceeding). Subject to paragraph (b) of this Section and Section 4.01, any such exercise of rights and remedies by any Secured Party may be made in such order and in such manner as such Secured Party may, subject to the provisions of the applicable Credit Documents or Notes Documents, determine in its sole discretion. In addition, (A) in any Insolvency or Liquidation Proceeding commenced by or against any Grantor, each Secured Party may file a proof of claim or statement of interest with respect to the applicable obligations thereto, (B) in any Insolvency or Liquidation Proceeding commenced by or against any Grantor, each Secured Party may file any necessary or appropriate responsive pleadings in opposition to any motion, adversary proceeding or other pleading filed by any Person objecting to or otherwise seeking disallowance of the claim or Lien of Secured Party, (C) each Secured Party may file any pleadings, objections, motions, or agreements which assert rights available to unsecured creditors of any Grantor arising under any Insolvency or Liquidation Proceeding or applicable nonbankruptcy law, and (D) each Secured Party may vote on any plan of reorganization in any Insolvency or Liquidation Proceeding of any Grantor, in each case (A) through (D) above to the extent such action is not inconsistent with, or could not result in a resolution inconsistent with, the terms of this Agreement.

(b) Notwithstanding paragraph (a) of this Section:

(i) each Collateral Agent shall remain subject to, and bound by, all covenants or agreements made herein by such Collateral Agent;

(ii) each Collateral Agent agrees that, prior to the commencement of any enforcement of rights or any exercise of remedies with respect to any Common Collateral by such Collateral Agent, such Collateral Agent shall provide prior written notice thereof to the other Collateral Agent, such notice to be provided as far in advance of such commencement as reasonably practicable, and shall regularly inform the other Collateral Agent of developments in connection with such enforcement or exercise; and

(iii) subject to the terms and conditions of the applicable Credit Documents or Notes Documents, each Collateral Agent agrees that it shall cooperate in a commercially reasonable manner with the other Collateral Agent in any enforcement of rights or any exercise of remedies with respect to any Common Collateral.

SECTION 3.02. Prohibition on Contesting Liens. Each Secured Party agrees that it will not, and each Secured Party hereby waives any right to, contest or support any other Person in contesting, in any proceeding (including any Insolvency or

Liquidation Proceeding), the perfection, priority, validity, attachment or enforceability of a Lien held by or on behalf of any other Secured Party in all or any part of the Common Collateral; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Secured Party to enforce this Agreement.

SECTION 3.03. Prohibition on Challenging this Agreement. Each Collateral Agent agrees that it will not attempt, directly or indirectly, whether by judicial proceedings or otherwise, to challenge the enforceability of any provision of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any Collateral Agent to enforce this Agreement.

SECTION 3.04. Release of Liens. The parties hereto agree and acknowledge that the release of Liens on any Common Collateral securing Obligations, whether in connection with a sale, transfer or other disposition of such Common Collateral or otherwise, shall be governed by and subject to the Credit Documents or the Notes Documents, as applicable, and that nothing in this Agreement shall be deemed to amend or affect the terms of the Credit Documents or the Notes Documents with respect thereto; provided that if, at any time any Common Collateral is transferred to a third party or otherwise disposed of, in each case, in connection with any enforcement by the applicable Collateral Agent in accordance with the provisions of this Agreement, then (whether or not any Insolvency or Liquidation Proceeding is pending at the time) the Liens in favor of the other Collateral Agent upon such Common Collateral will automatically be released and discharged upon final conclusion of foreclosure proceeding as and when, but only to the extent, such Liens on the Common Collateral of the Collateral Agent enforcing its remedies in connection with such foreclosure are released and discharged; *provided*, that any proceeds of any Common Collateral realized therefrom shall be applied pursuant to Section 2.01 hereof. Each Collateral Agent agrees to execute and deliver (at the sole cost and expense of the Company) all such authorizations and other instruments as shall reasonably be requested by the other Collateral Agent to evidence and confirm any release of Common Collateral provided for in this Section.

ARTICLE IV.

COLLATERAL

SECTION 4.01. Bailment for Perfection of Security Interests.

(a) Each Collateral Agent agrees that if it shall at any time hold a Lien on any Common Collateral that can be perfected by the possession or control of such Common Collateral or of any deposit, securities or other account in which such Common Collateral is held, and if such Common Collateral or any such account is in fact in the possession or under the control of such Collateral Agent, or of agents or bailees of such Collateral Agent (such Common Collateral being referred to herein as the "**Controlled Common Collateral**"), such Collateral Agent shall, solely for the purpose of perfecting the Liens of the other Collateral Agent granted on such Common Collateral under the Credit Documents or the Notes Documents, as applicable,

and subject to the terms and conditions of this Article, also hold such Controlled Common Collateral as gratuitous bailee for the other Collateral Agent (any Collateral Agent that shall be holding any Controlled Common Collateral as gratuitous bailee being referred to herein as the "**Bailee Secured Party**"). In furtherance of the foregoing, each Collateral Agent appoints each Bailee Secured Party as such Collateral Agent's gratuitous bailee hereunder with respect to any Controlled Common Collateral that such Bailee Secured Party possesses or controls at any time solely for the purpose of perfecting a Lien on such Controlled Common Collateral.

(b) In furtherance of the foregoing, the Company hereby grants a security interest in the Controlled Common Collateral to each Collateral Agent that possesses or controls Controlled Common Collateral as permitted in Section 4.01 for the benefit of the other Collateral Agent.

(c) The obligations and responsibilities of any Bailee Secured Party to the other Collateral Agent under this Article shall be limited solely to holding or controlling the applicable Controlled Common Collateral as gratuitous bailee and sub-agent in accordance with this Article.

ARTICLE V.

OTHER AGREEMENTS

SECTION 5.01. Reinstatement. If, in any Insolvency or Liquidation Proceeding or otherwise, all or part of any payment with respect to the Obligations previously made shall be rescinded for any reason whatsoever (including an order or judgment for disgorgement of a preference or other avoidance action under the Bankruptcy Code, or any similar law), then the terms and conditions of this Agreement shall be fully applicable thereto until all the Obligations shall again have been satisfied in full.

SECTION 5.02. Notice of Acceptance and Other Waivers.

(a) All Credit Obligations at any time made or incurred by any Grantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the Notes Collateral Agent, on behalf of itself and the Notes Secured Parties, hereby waives notice of acceptance, or proof of reliance by the Credit Collateral Agent or any Lender of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or non-payment of all or any part of the Credit Obligations. All Notes Obligations at any time made or incurred by any Grantor shall be deemed to have been made or incurred in reliance upon this Agreement, and the Credit Collateral Agent, on behalf of itself and the Lenders, hereby waives notice of acceptance, or proof of reliance, by the Notes Collateral Agent or any other Notes Secured Party of this Agreement, and notice of the existence, increase, renewal, extension, accrual, creation, or nonpayment of all or any part of the Notes Obligations.

(b) None of the Credit Collateral Agent, any Lender, or any of their respective Affiliates, directors, officers, employees, or agents shall be liable to the Notes Collateral Agent, any other Notes Secured Party, or any of their respective Affiliates for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be

under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the Credit Collateral Agent or any Lender honors (or fails to honor) a request by the Company for an extension of credit pursuant to the Credit Agreement or any of the other Credit Documents, whether the Credit Collateral Agent or any Lender has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of the Indenture or any other Notes Document (but not a default under this Agreement) or an act, condition, or event that, with the giving of notice or the passage of time, or both, would constitute such a default, or if the Credit Collateral Agent or any Lender otherwise should exercise any of its contractual rights or remedies under any Credit Documents (subject to the express terms and conditions hereof), neither the Credit Collateral Agent nor any Lender shall have any liability whatsoever to the Notes Collateral Agent or any other Notes Secured Party as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). The Credit Collateral Agent and the Lenders shall be entitled to manage and supervise their loans and extensions of credit under the Credit Agreement and any of the other Credit Documents as they may, in their sole discretion, deem appropriate, and may manage their loans and extensions of credit without regard to any rights or interests that the Notes Collateral Agent or any of the Notes Secured Parties have in the Collateral, except as otherwise expressly set forth in this Agreement. The Notes Collateral Agent, on behalf of itself and the Notes Secured Parties, agrees that neither the Credit Collateral Agent nor any Lender shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or any Proceeds thereof, pursuant to the Credit Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

(c) None of the Notes Collateral Agent, any other Notes Secured Party or any of their respective Affiliates, directors, officers, employees, or agents shall be liable to the Credit Collateral Agent, any Lender, or any of their respective Affiliates for failure to demand, collect, or realize upon any of the Collateral or any Proceeds, or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral or Proceeds thereof or to take any other action whatsoever with regard to the Collateral or any part or Proceeds thereof, except as specifically provided in this Agreement. If the Notes Collateral Agent or any other Notes Secured Party honors (or fails to honor) a request by any Grantor for an extension of credit pursuant to the Indenture or any of the other Notes Documents, whether the Notes Collateral Agent or any other Notes Secured Party has knowledge that the honoring of (or failure to honor) any such request would constitute a default under the terms of the Credit Agreement or any other Credit Document (but not a default under this Agreement) or an act, condition, or event that, with

the giving of notice or the passage of time, or both, would constitute such a default, or if the Notes Collateral Agent or any other Notes Secured Party otherwise should exercise any of its contractual rights or remedies under the Notes Documents (subject to the express terms and conditions hereof), neither the Notes Collateral Agent nor any other Notes Secured Party shall have any liability whatsoever to the Credit Collateral Agent or any Lender as a result of such action, omission, or exercise (so long as any such exercise does not breach the express terms and provisions of this Agreement). The Notes Collateral Agent and the other Notes Secured Parties shall be entitled to manage and supervise their loans and extensions of credit under the Notes Documents as they may, in their sole discretion, deem appropriate, and may manage their loans

and extensions of credit without regard to any rights or interests that the Credit Collateral Agent or any Lender has in the Collateral, except as otherwise expressly set forth in this Agreement. The Credit Collateral Agent, on behalf of itself and the Lenders, agrees that none of the Notes Collateral Agent or the other Notes Secured Parties shall incur any liability as a result of a sale, lease, license, application, or other disposition of all or any portion of the Collateral or any Proceeds thereof, pursuant to the Notes Documents, so long as such disposition is conducted in accordance with mandatory provisions of applicable law and does not breach the provisions of this Agreement.

SECTION 5.03. Modifications to Credit Documents and Notes Documents.

(a) The Notes Collateral Agent, on behalf of itself and the other Notes Secured Parties, hereby agrees that, without affecting the obligations of the Notes Collateral Agent and the other Notes Secured Parties hereunder, the Credit Collateral Agent and the Lenders may, at any time and from time to time, in their sole discretion without the consent of or notice to the Notes Collateral Agent or any other Notes Secured Party (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the Notes Collateral Agent or any other Notes Secured Party or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the Credit Documents in any manner whatsoever (other than in a manner which would have the effect of contravening the terms of this Agreement) including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Credit Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Credit Obligations or any of the Credit Documents;

(ii) retain or obtain a Lien on any property of any Person to secure any of the Credit Obligations, and in connection therewith to enter into any additional Credit Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Credit Obligations;

(iv) release its Lien on any Collateral or other property;

(v) exercise or refrain from exercising any rights against any Grantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the Credit Obligations; and

(vii) otherwise manage and supervise the Credit Obligations as the Credit Collateral Agent shall deem appropriate.

(b) The Credit Collateral Agent, on behalf of itself and the Lenders, hereby agrees that, without affecting the obligations of the Credit Collateral Agent and the Lenders hereunder, the Notes Collateral Agent and the Notes Secured Parties may, at any time and from time to time, in their sole discretion without the consent of or notice to the Credit Collateral Agent or any Lender (except to the extent such notice or consent is required pursuant to the express provisions of this Agreement), and without incurring any liability to the Credit Collateral Agent or any Lender or impairing or releasing the subordination provided for herein, amend, restate, supplement, replace, refinance, extend, consolidate, restructure, or otherwise modify any of the Notes Documents in any manner whatsoever (other than in a manner which would have the effect of contravening the terms of this Agreement), including, without limitation, to:

(i) change the manner, place, time, or terms of payment or renew, alter or increase, all or any of the Notes Obligations or otherwise amend, restate, supplement, or otherwise modify in any manner, or grant any waiver or release with respect to, all or any part of the Notes Obligations or any of the Notes Documents;

(ii) retain or obtain a Lien on any property of any Person to secure any of the Notes Obligations, and in connection therewith to enter into any additional Notes Documents;

(iii) amend, or grant any waiver, compromise, or release with respect to, or consent to any departure from, any guaranty or other obligations of any Person obligated in any manner under or in respect of the Notes Obligations;

(iv) release its Lien on any Collateral or other property;

(v) exercise or refrain from exercising any rights against any Grantor, or any other Person;

(vi) retain or obtain the primary or secondary obligation of any other Person with respect to any of the Notes Obligations; and

(vii) otherwise manage and supervise the Notes Obligations as the Notes Collateral Agent shall deem appropriate.

SECTION 5.04. Reorganization Modifications. In the event the Obligations are modified pursuant to applicable law, including Section 1129 of the Bankruptcy Code, any reference to the Obligations or the Credit Documents or Notes Documents, as applicable, shall refer to such obligations or such documents as so modified.

SECTION 5.05. Further Assurances. Each Collateral Agent agrees that it will execute, or will cause to be executed, such reasonable further documents, agreements and instruments, and take all such reasonable further actions, as may be required under any applicable law, or which any Collateral Agent may reasonably request, to effectuate the terms of this Agreement.

ARTICLE VI.

NO RELIANCE; NO LIABILITY

SECTION 6.01. No Warranties or Liability.

(a) Each Collateral Agent acknowledges and agrees that the other Collateral Agent has not made any

express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Credit Documents or Notes Documents, the ownership of any Common Collateral or the perfection or priority of any Liens thereon. Each Collateral Agent will be entitled to manage and supervise their loans and other extensions of credit in the manner set forth in their Credit Documents or Notes Documents, as applicable. No Collateral Agent shall, by reason of this Agreement, any Credit Document, any Notes Document or any other document, have a fiduciary relationship or other implied duties in respect of any other Collateral Agent.

(b) No Collateral Agent shall have any express or implied duty to the other Collateral Agent to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of a default or an Event of Default under any Secured Credit Document (other than, in each case, this Agreement), regardless of any knowledge thereof that they may have or be charged with.

ARTICLE VII.

MISCELLANEOUS

SECTION 7.01. Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Company or any Collateral Agent under this Agreement shall be in writing and faxed, mailed or delivered to such party to the facsimile number or its address set forth below (or to such other facsimile number or address as the recipient of any notice shall have notified the other in writing). All such notices and communications shall be effective when sent by Federal Express or other overnight service of recognized standing, upon receipt; when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and when faxed, upon confirmation of receipt:

(a) if to the Company at:

Bloom Energy Corporation
4353 North First Street
San Jose, California 95134
Attention: General Counsel
Telephone:
Facsimile:

(b) if to the Credit Collateral Agent, to it at:

[Name]
[address]
[address]
Attn:
Telephone:
Facsimile:

(c) if to the Notes Collateral Agent, to it at:

U.S. Bank National Association
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attn: Bradley Scarbrough
Facsimile: (213) 615-6197
Email: bradley.scarbrough@usbank.com

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.

SECTION 7.02. Waivers; Amendment.

(a) No failure or delay on the part of any party hereto in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power.

(b) Neither this Agreement nor any provision hereof may be waived, amended or otherwise modified except pursuant to an agreement or agreements in writing entered into by each Collateral Agent, and, only if the rights or duties of any Grantor are directly affected thereby, the Grantors.

SECTION 7.03. Assignments. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 7.04. Effectiveness; Survival. This Agreement shall become effective when executed and delivered by the parties hereto. All covenants, agreements, representations and warranties made by any party in this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement. This Agreement shall continue in full force and effect notwithstanding the commencement of any Insolvency or Liquidation Proceeding against the Company or any other Grantor, and the parties hereto acknowledge that this Agreement is intended to be and shall be enforceable as a "subordination" agreement under Bankruptcy Code Section 510(a). All references herein to the Company shall apply to any trustee for such Person and such Person as a debtor-in-possession.

SECTION 7.05. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original but all of which when taken together shall constitute a single contract. Delivery of an executed signature page to this Agreement by facsimile or other

electronic transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 7.06. Severability. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

SECTION 7.07. Governing Law; Jurisdiction. (a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(b) Each Collateral Agent and the Company hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the courts of the State of New York sitting in the City of New York, Borough of Manhattan, and of the United States District Court for the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that either Collateral Agent may otherwise have to bring any action or proceeding relating to this Agreement or any other Credit Document or Notes Document against any Grantor or its properties in the courts of any jurisdiction.

(c) Each Collateral Agent and each Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 7.08. Construction. This Agreement is the result of negotiations among, and has been reviewed by, Secured Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against any Collateral Agent.

SECTION 7.09. Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the Secured Parties in relation to one another. Except as expressly provided in this Agreement, none of the Company or any other creditor of any of the foregoing shall have any rights or obligations hereunder, and the Company may not rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Company, which are absolute and

unconditional, to pay the Obligations as and when the same shall become due and payable in accordance with their terms.

SECTION 7.10. Specific Performance. Each Collateral Agent may demand specific performance of this Agreement. Each Collateral Agent hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense that might be asserted to bar the remedy of specific performance in any action which may be brought by the other Collateral Agent.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION, in its capacity as Notes Collateral Agent and not in any individual capacity

By:
Name:
Title:

[_____], as Credit Collateral Agent

By:
Name:
Title:

ACKNOWLEDGMENT

Each Grantor hereby acknowledges that it has received a copy of this Agreement and consents thereto, agrees to recognize all rights granted thereby to the Credit Collateral Agent, the Lenders, the Notes Collateral Agent, and the Notes Secured Parties and will not do any act or perform any obligation which is not in accordance with the agreements set forth in this Agreement. Each Grantor further acknowledges and agrees that it is not an intended beneficiary or third party beneficiary under this Agreement and that the Credit Documents and Notes Documents remain in full force and effect as written. Without limitation to the foregoing, each Grantor agrees to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Credit Collateral Agent or the Notes Collateral Agent (or any of their respective agents or representatives) may reasonably request to effectuate the terms of and the lien priorities contemplated by the Intercreditor Agreement, including to cause any Person that becomes a Grantor after the date of the Intercreditor Agreement to execute and deliver to the Credit Collateral Agent and the Notes Collateral an acknowledgement in the form of this Acknowledgement on the date that such Person becomes a Grantor.

BLOOM ENERGY CORPORATION

By:
Name:
Title:

[name]

By:
Name:
Title:

EXHIBIT G

Number of Additional Shares

Stock Price

Date	$5.33	$5.50	$5.75	$6.00	$6.50	$7.00	$7.50	$8.00
4/20/2020	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
6/1/2020	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
9/1/2020	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
12/1/2020	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
3/1/2021	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
9/1/2021	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
9/1/2021	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000
12/1/2021	62.6172	56.8181	48.9129	41.6666	28.8461	17.8570	8.3332	0.0000

Exhibit 4.2

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THE SALE OF THIS NOTE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), THIS NOTE AND ANY SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS NOTE MAY NOT BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO BLOOM ENERGY CORPORATION (THE "COMPANY") OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OR TO A PERSON THAT YOU REASONABLY BELIEVE TO BE AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN RULE 501(A)(1), (2), (3) OR (7) OF REGULATION D UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE "RESALE RESTRICTION TERMINATION DATE" MEANS THE LATER OF: (1) THE DATE THAT IS ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE NOTES OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; AND (2) SUCH OTHER DATE AS MAY BE REQUIRED BY APPLICABLE LAW.

WITH RESPECT TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), PRIOR TO THE RESALE RESTRICTION TERMINATION DATE, THE COMPANY AND THE NOTE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

Bloom Energy Corporation

10.0% Convertible Senior Secured Note due 2021

[PIK][1]

No. [ ] [Initially][2] $[ ]

CUSIP No. [ ]

Bloom Energy Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (the "Company," which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby
promises to pay to [CEDE & CO.][3] [ ][4], or registered assigns, the principal sum [as set
forth in the "Schedule of Exchanges of Notes" attached hereto][5] [of $[ ]][6], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed $1[ ],000,000 in aggregate at any time, [in accordance with the rules and procedures of the Depositary,] on December 1, 2021, and interest thereon as set forth below.

This Note shall bear interest at the Applicable Rate from April [ ], 2020, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until December 1, 2021; *provided* that with respect to the first interest payment, this Note shall bear interest from April 1, 2020 to April [ ], 2020 at the rate of 6% per annum and from April [ ], 2020 to the first Interest Payment Date at the Applicable Rate. Interest is payable monthly in arrears on each January 1, February 1, March 1, April 1, May 1, June 1, July 1, August 1, September 1, October 1, November 1 and December 1, commencing on [ ], to Holders of record at the close of business on the preceding December 15, January 15, February 15, March 15, April 15, May 15, June 15, July 15, August 15, September 15, October 15 and November 15 (whether or not such day is a Business Day), respectively. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months or, in the case of a partial month, the number of days elapsed over a 30-day month and shall be compounded monthly on the last day of each month.
Additional Interest will be payable as set forth in Section 4.10 and Section 6.04 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 4.10 and Section 6.04, and any express mention of the payment of

1 Insert on any certificated PIK Notes.

2 Include if a Global Note.

3 Include if a Global Note.

4 Include if a Physical Note.

5 Include if a Global Note.

6 Include if a Physical Note.

Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Interest will be payable, at the election of the Company (made by delivering a notice to the Trustee prior to the beginning of the related Interest Period), (1) entirely in Cash Interest or (2) entirely in PIK Interest. In the absence of an interest payment election, interest on the Notes will be payable in PIK Interest. Notwithstanding anything to the contrary, the payment of accrued interest shall be made solely in cash, (A) in connection with any redemption or repurchase of Notes as described under Section 13.01, Section 13.02, Section 15.01, Section 15.02 and Section 15.03 of the Indenture, (1) with respect to all Notes, if the related Redemption Date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is after a Regular Record Date and on or prior to the Scheduled Trading Day immediately following the date on which the corresponding interest payment is made or (2) solely with respect to the Notes to be repurchased or redeemed, if the related Redemption Date, Specified Repurchase Date, Fundamental Change Repurchase Date or Change of Control Repurchase Date, as applicable, is on any other date, (B) with respect to all Notes, if any Notes are surrendered for conversion after the close of business on a Regular Record Date for the payment of interest and on or prior to the related Interest Payment Date and (C) on the final Interest Payment Date.

Following an increase in the principal amount of any outstanding Global Notes as a result of a PIK Payment, such Global Note will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in certificated form will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. All PIK Notes issued pursuant to a PIK Payment will be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as the Notes issued on the Issue Date.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(d) of the Indenture.

The Company shall pay the principal of and interest (other than PIK Interest) on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent, Note Registrar, Custodian and Conversion Agent in respect of the Notes and its agency in the continental United States of America as a place where Notes may be presented for payment, repurchase, or conversion or for registration of transfer and exchange.

At all times, PIK Interest on the Notes will be payable (x) with respect to Notes represented by one or more Global Notes registered in the name of, or held by, DTC or its nominee on the relevant Regular Record Date, by increasing the principal amount of the outstanding Global Note by an amount equal to the amount of PIK Interest for the applicable

Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up), or by issuing a new Global Note, if required pursuant to the applicable procedures of the Depositary, in each case, as provided in writing by the Company in a Company Order to the Trustee, and the Trustee, at the written request of the Company, will record such increase in such Global Note and (y) with respect to Notes represented by Physical Notes, by issuing PIK Notes in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar, with amounts of $0.50 or more being rounded up), and the Trustee will, at the written request of the Company in a Company Order, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant Regular Record Date, as shown in the register of the Note Registrar.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into shares of Common Stock on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

BLOOM ENERGY CORPORATION

By:

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Notes described in the within-named Indenture.

By:
Authorized Signatory

Dated:

Exhibit 4.3

THIRD AMENDMENT TO SECURITY AGREEMENT

THIS THIRD AMENDMENT TO SECURITY AGREEMENT (this "**Amendment**") is made as of April 20, 2020 by and among Bloom Energy Corporation, a Delaware corporation (the "**Company**"), Rye Creek LLC, a Delaware limited liability company, and U.S. Bank National Association, in its capacity as collateral agent pursuant to the Indenture (as defined below) (the "**Collateral Agent**"), with respect to that certain Security Agreement, dated as of December 15, 2015, made by among the Company, the Guarantors from time to time party thereto and the Collateral Agent (as amended by the First Amendment to Security Agreement dated as of June 29, 2017, as further amended by the Second Amendment to the Security Agreement, dated as of July 7, 2017, and as otherwise amended, restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Security Agreement.

WHEREAS, reference is made to that certain Indenture, dated as of December 15, 2015 (as amended by the First Supplemental Indenture, dated as of September 20, 2016, the Second Supplemental Indenture, Omnibus Amendment to Notes and Limited Waiver, dated as of June 29, 2017, and the Third Supplemental Indenture and Omnibus Amendment to Notes, dated as of January 18, 2018, and as further amended, modified, supplemented or restated and in effect from time to time, the "**Indenture**"), by and among the Company, each Guarantor, U.S. Bank National Association, as trustee (together with its successors in such capacity, the "**Trustee**"), and the Collateral Agent, pursuant to which the Company issued its 5.0% Convertible Senior Secured PIK Notes due 2020 (together with any additional notes issued under the Indenture, the "**Senior Secured Notes**");

WHEREAS, pursuant to Sections 10.02 and 17.04(a)(ii) of the Indenture, holders of Senior Secured Notes in an aggregate amount representing at least the Minimum Principal Amount (as defined in the Indenture) of the aggregate principal amount of Senior Secured Notes outstanding (determined in accordance with Article 8 of the Indenture) have agreed that the Security Agreement may be amended and have consented to the release of certain Collateral, each as set forth in this Amendment.

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, the Guarantor and the Collateral Agent hereby agree to enter into this Amendment.

1. Amendments to the Security Agreement.

(a) Section 1.02 of the Security Agreement is hereby amended to add the following definitions in proper alphabetical order:

"**2020 Released Collection Account**" shall have the meaning assigned to such term in the Indenture.

"**2020 Transaction Collateral**" shall have the meaning assigned to such term in the Indenture.

"**Third Amendment Date**" means April 20, 2020.

(b) The definition of Excluded Assets set forth in Section 1.02 of the Security Agreement is hereby amended by deleting the word "and" appearing at the end of clause (14) thereof, adding ", and" at the end of clause (15) thereof and immediately following clause (15) thereof inserting a new clause (16) that reads in its entirety as follows:

"(16) all 2020 Transaction Collateral so long as there remains outstanding any of the Company's secured obligations under the documentation for the applicable 2020 Financing Transaction."

(c) Section 4.09 of the Security Agreement is hereby amended and restated in its entirety to read as follows:

"Deposit Account Control Agreements and Securities Account Control Agreements. Each Grantor shall provide to the Collateral Agent, within 30 days after the First Amendment Date, a Deposit Account Control Agreement or other control agreement duly executed on behalf of each financial institution holding a Deposit Account (other than an Excluded Deposit Account) or securities account as of the First Amendment Date. No Grantor shall open any new Deposit Account or securities account after the First Amendment Date (other than any 2020 Released Collection Account) unless (i) such Grantor shall have given at least thirty (30) days' prior written notice to the Collateral Agent and (ii) the depository institution or securities intermediary at which such account is maintained, such Grantor and the Collateral Agent shall first have entered into a Deposit Account Control Agreement or other control agreement over such account.

2. Reference to and Effect on the Security Agreement.

(a) Upon the effectiveness hereof, each reference to the Security Agreement in the Security Agreement or any other Indenture Document shall mean and be a reference to the Security Agreement as amended hereby.

(b) The Security Agreement, as amended hereby, and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

(c) Each Grantor reaffirms, acknowledges, agrees and confirms that it has granted, upon the terms set forth in the Security Agreement, to the Collateral Agent a security interest in the Collateral (as such term is amended hereby) in order to secure all of its present and future Secured Obligations and acknowledges and agrees that such security interest, and, except as set forth herein, all Collateral heretofore pledged as security for the Secured Obligations, continues to be and remain in full force and effect on and as of the date hereof.

(d) Except with respect to the subject matter hereof, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Collateral Agent, nor constitute a waiver of any provision of the Security Agreement or any other documents, instruments and agreements executed and/or delivered in connection therewith,

nor shall it prejudice any of the Collateral Agent's rights under the Indenture Documents at law or in equity. The Collateral Agent reserves any and all rights it may have under the terms of the applicable Indenture Documents.

(e) This Amendment shall be an Indenture Document.

3. Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

4. Headings. Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

5. Waiver of Jury Trial; Jurisdiction; Consent to Service of Process. The terms and provisions of Section 8.09 and Section 8.13 of the Security Agreement are incorporated by reference herein as if fully set forth herein.

6. Counterparts. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy, .pdf or e-mail shall be effective as delivery of a manually executed counterpart of this Amendment.

7. Severability. Any provision of this Amendment held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

[*Signature pages follow*.]

IN WITNESS WHEREOF, this Amendment has been duly executed as of the day and year first above written.

GRANTORS:
BLOOM ENERGY CORPORATION

By: /s/ Shawn M. Soderberg
Name: Shawn M. Soderberg
Title: EVP General Counsel and Secretary

RYE CREEK LLC

By: Bloom Energy Corporation, its sole member

By: /s/ Shawn M. Soderberg
Name: Shawn M. Soderberg
Title: EVP General Counsel and Secretary

Signature Page to Third Amendment to
Security Agreement

COLLATERAL AGENT:

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

By: /s/ Bradley E. Scarbrough
Name: Bradley E. Scarbrough
Title: Vice President

Signature Page to Third Amendment to
Security Agreement

Exhibit 4.4

[●], 2020

BLOOM ENERGY CORPORATION

(as Issuer)

the Guarantor party hereto as of the date hereof

and any Guarantor that becomes party hereto pursuant to Section 4.10 hereof

Senior Secured Notes due 2027

U.S. BANK NATIONAL ASSOCIATION

(as Trustee and as Collateral Agent)

INDENTURE[1]

1 All dates indicated herein and the amounts set forth in the table in Section 4.01(b) will be adjusted as needed to reflect the actual Issue Date in a manner satisfactory to the initial purchasers of the Original Securities

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INDENTURE dated as of [●], 2020 among Bloom Energy Corporation, a Delaware corporation with an address at 4353 North First Street, San Jose, California 95134 (the "Issuer"), the Guarantor party hereto as of the date hereof, any other Guarantor that becomes party hereto pursuant to Section 4.10, and U.S. Bank National Association, as trustee (as more fully defined in Section

1.01, the "Trustee") and as collateral agent (as more fully defined in Section 1.01, the "Collateral Agent").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Issuer's Senior Secured Notes due 2027 (as more fully defined in Section 1.01, the "Securities").

ARTICLE 1.

DEFINITIONS AND INCORPORATION BY REFERENCE SECTION 1.01. Definitions.

"5% Convertible Notes" means the Issuer's 5.0% Amended and Restated Subordinated Secured Convertible Promissory Note due 2020 (originally 8% Subordinated Convertible Promissory Notes due 2018), dated January 18, 2018, issued prior to the Issue Date.

"6% Convertible Notes" means the Issuer's 6.0% Convertible Senior Secured PIK Notes due 2020 (originally 5% Convertible Senior Secured PIK Notes due 2020) issued prior to the Issue Date and any 6.0% Convertible Senior Secured PIK Notes due 2020 issued after the Issue Date in lieu of any interest payment required to be made thereunder.

"Accredited Investors" means institutional "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act.

"Acquired Indebtedness" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, consolidating or amalgamating with or into or becoming a Restricted Subsidiary of such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

"Adjusted EBITDA" means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication, to the extent the same was deducted (or otherwise not included) in calculating Consolidated Net Income:

(1) Consolidated Taxes; plus

(2) Consolidated Interest Expense plus all cash dividend payments (excluding items eliminated in consolidation) on a series of Preferred Stock or Disqualified Stock of such Person and its Subsidiaries that are Restricted Subsidiaries; plus

(3) Consolidated Non-cash Charges; plus

(4) any expenses, fees or charges related to any issuance of Equity Interests, Investment, Restricted Payment, acquisition, disposition, recapitalization or the incurrence or repayment of Indebtedness permitted to be incurred by this Indenture (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Issue Date), including such fees, expenses or charges related to (i) the offering of the Securities and the Bank Indebtedness and (ii) any amendment or other modification of the Securities or other Indebtedness; plus

(5) extraordinary, unusual, or non-recurring charges or expenses; plus

(6) restructuring charges, reserves or expenses (including any write offs or write downs), carve-out costs, severance costs, integration costs, retention, recruiting, relocation, signing bonuses and expenses, stock option and other equity-based compensation expenses, accruals or reserves (including restructuring costs related to Asset Acquisitions and other Permitted Investments and adjustments to existing reserves), expense relating to enhanced accounting function, the closure and/or consolidation of facilities and existing lines of business and optimization expense (which, for the avoidance of doubt, shall include the costs related to severance or relocation, facility openings or closures, facility consolidations, retention, contract terminations, project start-up costs, costs incurred in connection with an acquisition, acquisition integration costs and excess pension charges); plus

(7) Consolidated Net Income attributable to, or adding to the losses attributable to, the minority equity interests of third parties in any Restricted Subsidiary that is not a Wholly Owned Restricted Subsidiary of such Person, except to the extent of dividends declared or paid with respect to such period or any prior period on the shares of Capital Stock of such Restricted Subsidiary held by such third parties; plus

(8) any ordinary course dividend, distribution or other payment paid in cash and received from any Person in excess of amounts included in clause (7) of the definition of Consolidated Net Income; plus

(9) any costs or expenses incurred pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of the Issuer or a Restricted Subsidiary or net cash proceeds of an issuance of Equity Interests of the Issuer (other than Disqualified Stock) solely to the extent that such net cash proceeds are excluded from the calculation of the Cumulative Credit; plus

(10) charges, losses, expenses and payments that are covered by indemnification, reimbursement, guaranty, purchase price adjustment or other similar

provisions in favor of the Issuer or its Restricted Subsidiaries in any agreement entered into by the Issuer or any of its Restricted Subsidiaries to the extent such expenses and payments have been reimbursed pursuant to the applicable indemnity, guaranty or acquisition agreement in such period (or are reasonably expected to be so paid or reimbursed within one year after the end of such period to the extent not accrued) or an earlier period if not added back to Adjusted EBITDA in such earlier period; plus

(11) Insurance Loss Addbacks; plus

(12) net realized losses from Hedging Obligations or embedded derivatives that require similar accounting treatment; plus

(13) any net loss from disposed, abandoned, transferred, closed or discontinued operations (excluding held for sale discontinued operations until actually disposed of); plus

(14) the unamortized fees, costs and expenses paid in cash in connection with the repayment of Indebtedness to Persons that are not Affiliates of the Issuer or any of its Restricted Subsidiaries; plus

(15) letter of credit fees; plus

(16) costs associated with, or incurred in anticipation of, or preparation for, compliance with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith and Public Company Costs;

less, without duplication,

(17) only to the extent (and in the same proportion) added in determining Consolidated Net Income for such period and without duplication, non-cash items increasing Consolidated Net Income for such period (excluding the recognition of deferred revenue or any items that represent the reversal of any accrual of, or cash reserve for, anticipated cash charges that reduced Adjusted EBITDA in any prior period and any items for which cash was received in a prior period).

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under common control with such specified Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; *provided*, for the avoidance of doubt, that the term "Affiliate" in respect of the Issuer shall not include any PPA Company to the extent that the Issuer does not own any Equity Interests in such PPA Company or control such PPA Company.

"Applicable Premium" means, with respect to any Security (or portion thereof) to be redeemed on any Redemption Date, the greater of (x) 1.0% of the amount of principal of such Security to be redeemed and (y) the amount, if any, by which (a) the present value at such

Redemption Date of (i) the redemption price of the amount of principal of such Security to be redeemed on the First Call Date (such redemption price being set forth in the table immediately following the second paragraph under Paragraph 5 of the form of Security set forth in Exhibit A), plus (ii) all required interest payments due on the amount of principal of such Security to be redeemed through the First Call Date (excluding accrued but unpaid interest, if any, to the Redemption Date), computed using a discount rate equal to the Treasury Rate in respect of such Redemption Date plus 100 basis points, exceeds (b) the amount of principal of such Security to be redeemed. The Trustee shall have no duty to calculate or verify the calculation of the Applicable Premium.

"Asset Acquisition" means (1) an Investment by the Issuer or any Restricted Subsidiary in any other Person pursuant to which such Person shall become a Restricted Subsidiary or shall be consolidated, amalgamated or merged with the Issuer or any Restricted Subsidiary or (2) the acquisition by the Issuer or any Restricted Subsidiary of all or substantially all assets of (or all or substantially all of the assets constituting a business unit, division, product line or line of business of) any Person.

"Asset Sale" means:

(1) the sale, conveyance, transfer or other disposition (whether in a single transaction or a series of related transactions that are part of a common plan) of property or assets (including by way of a Sale/Leaseback Transaction) of the Issuer or any Restricted Subsidiary of the Issuer outside the ordinary course of business (each referred to in this definition as a "disposition"); or

(2) the issuance or sale of Equity Interests (other than directors' qualifying shares and shares issued to foreign nationals or other third parties to the extent required by applicable law) of any Restricted Subsidiary (other than to the Issuer or another Restricted Subsidiary of the Issuer or Preferred Stock of a Subsidiary issued in compliance with Section 4.03) (whether in a single transaction or a series of related transactions),

in each case other than:

(a) a disposition of (i) Cash Equivalents or Investment Grade Securities, (ii) obsolete, damaged or worn-out or surplus property or equipment or assets in the ordinary course of business (including the abandonment or other disposition of Intellectual Property that is, in the reasonable judgment of the Issuer, no longer economically practicable or commercially reasonable to maintain or useful in any material respect, taken as a whole, in the conduct of the business of the Issuer and its Restricted Subsidiaries taken as a whole), (iii) Inventory (as defined in the Uniform Commercial Code), property or goods (or other assets) held for sale in the ordinary course of business (including dispositions of Inventory to any PPA Company, leasing company, or financing company) or (iv) equipment, property or other assets as part of a trade-in for replacement equipment;

(b) the disposition of all or substantially all of the assets of the Issuer and its Subsidiaries, taken as a whole, in a manner permitted pursuant to Section 5.01 or any disposition that constitutes a Change of Control;

(c) any Restricted Payment that is permitted to be made, and is made, under Section 4.04 or any Permitted Investment;

(d) any disposition of property or assets of the Issuer or any Restricted Subsidiary or issuance or sale of Equity Interests of any Restricted Subsidiary, which assets or Equity Interests so disposed or issued have an aggregate Fair Market Value (as determined in good faith by the Issuer) of less than $5,000,000;

(e) any disposition of property or assets, or the issuance of securities, by a Restricted Subsidiary of the Issuer to the Issuer or by the Issuer or a Restricted Subsidiary of the Issuer to a Restricted Subsidiary of the Issuer (or to an entity that contemporaneously therewith becomes a Restricted Subsidiary);

(f) any exchange of property or assets (including a combination of assets, property and Cash Equivalents) (other than Intellectual Property) for property or assets related to a Permitted Business of comparable or greater market value or usefulness to the business of the Issuer and its Restricted Subsidiaries as a whole, as determined in good faith by the Issuer, which in the event of an exchange of property or assets with a Fair Market Value in excess of $1,000,000 shall be evidenced by an Officer's Certificate;

(g) foreclosures, condemnations, seizures or any similar action on, or any loss, destruction, or damage of, property or assets of the Issuer or any of its Restricted Subsidiaries;

(h) any sale of Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(i) the lease, assignment or sublease of any real or personal property in the ordinary course of business;

(j) any license, sublicense, cross-license, collaboration agreement, strategic alliance or similar arrangement providing for the licensing of Intellectual Property or the development or commercialization of Intellectual Property that, at the time of such license, sublicense, cross-license, collaboration agreement, strategic alliance or similar arrangement, does not materially and adversely affect the Issuer's business or condition (financial or otherwise), immediately prior to the granting of such license, sublicense, strategic alliance or similar agreement;

(k) any surrender or waiver of contract rights or the settlement of, release of, recovery on or surrender of contract, tort or other claims of any kind;

(l) any swap of assets, or lease, assignment or sublease of any real or personal property, in each case, other than Intellectual Property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or greater

value or usefulness to the business of the Issuer and its Restricted Subsidiaries taken as a whole, as determined in good faith by the Issuer;

(m) any financing transaction with respect to (i) the Delaware Property, including any sale or other disposition of the Delaware Property in connection with a Sale/Leaseback Transaction or (ii) property built or acquired by the Issuer or any of its Restricted Subsidiaries after the Issue Date, including any Sale/Leaseback Transaction, permitted by this Indenture, so long as any net cash proceeds from such Sale/Leaseback Transaction or other financing transaction (other than a Sale/Leaseback Transaction or other financing transaction entered into within 180 days of the acquisition of such property) are treated as Net Proceeds of an Asset Sale under this Indenture;

(n) the creation, incurrence and disposition of Permitted Liens;

(o) any disposition of Capital Stock of any Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Issuer or a Restricted Subsidiary of the Issuer) from whom such Restricted Subsidiary was acquired or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(p) (i) dispositions or discounting of receivables in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy or similar proceedings and exclusive of factoring or similar arrangements and (ii) the settlement, write-off, discount, forgiveness, or cancellation of any Indebtedness owing by any present or former consultants, directors, officers or employees of the Issuer or any of its Subsidiaries or any of their successors or assigns;

(q) the issuance of Disqualified Stock pursuant to Section 4.03;

(r) the transfer, sale or other disposition resulting from any involuntary loss of title or damage to, involuntary loss or destruction of, or condemnation or other taking of, any property or assets of the Issuer or any Restricted Subsidiary;

(s) the transfer of improvements, additions or alterations in connection with the lease of any property;

(t) the unwinding of any Hedging Obligations or obligations in respect of Cash Management Services; and

(u) the sale, lease, conveyance or other disposition of Receivables Program Assets, or participations or interests therein, or other transactions in connection with any Receivables Program.

"Bank Indebtedness" means any and all amounts payable under or in respect of any Credit Agreement and the other Credit Agreement Documents, as amended, restated, supplemented, waived, replaced, restructured, repaid, refunded, refinanced or otherwise modified from time to time (including after termination of such Credit Agreement), including principal,

premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Issuer whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof.

"Bloom Energy Server" means the Issuer's energy servers or similar products or platforms branded as a "Bloom Energy Server".

"Board of Directors" means, as to any Person, the board of directors, board of managers or similar governing body, as applicable, of such Person (or, if such Person is a partnership, the board of directors or other governing body of the general partner of such Person) or any duly authorized committee thereof. References in this Indenture to directors (on a Board of Directors) shall also be deemed to refer to managers (on a Board of Managers).

"Business Day" means a day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York or the place of payment on the Securities is authorized or required by law or executive order to close or be closed.

"Capital Stock" means:

(1) in the case of a corporation or company, corporate stock or shares;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) and membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person;

in each case to the extent treated as equity in accordance with GAAP and excluding any debt securities convertible into any of the foregoing, cash or any combination thereof.

"Capitalized Lease Obligation" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) in accordance with GAAP; *provided*, that all leases of a Person that are or would be characterized as operating leases in accordance with GAAP immediately prior to the Issue Date (without giving effect to ASU No. 2016-02, Leases (Topic 842)), whether or not such operating leases were in effect on such date, shall continue to be accounted for as operating leases (and not capital leases) for purposes of this Indenture (other than for purposes of preparing any reports or financial statements required pursuant to Section 4.02) regardless of any change in GAAP or the application of GAAP by the Issuer following the Issue Date that would otherwise require such leases to be recharacterized as capital leases; *provided*, *further*, that the term "Capitalized Lease Obligation" shall not include any obligations in respect of property leased in connection with

financing vehicles entered into by the Issuer and any Restricted Subsidiaries in connection with commercial transactions with customers that would otherwise be classified as capital leases so long as such obligations are non-recourse to the Issuer and any Restricted Subsidiaries.

"Cash Contribution Amount" means the aggregate amount of cash contributions made to the capital of the Issuer used for purposes of calculating the amount of Indebtedness that may be Incurred as "Contribution Indebtedness" as described in the definition of "Contribution Indebtedness"; *provided* that such cash contributions shall cease to be treated as the Cash Contribution Amount to the extent the related Contribution Indebtedness has been reclassified in accordance with Section 4.03.

"Cash Equivalents" means:

(1) U.S. Dollars, Canadian dollars, pounds sterling, euros or the national currency of any member state in the European Union, or any other currencies held from time to time in the ordinary course of business;

(2) securities issued or directly and fully guaranteed or insured by the U.S. government, Canada, the United Kingdom or any country that is a member of the European Union or any agency or instrumentality thereof, in each case maturing not more than two years from the date of acquisition;

(3) certificates of deposit, demand deposits, time deposits and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case with any commercial bank having capital and surplus in excess of $250,000,000 and whose long-term debt is rated "A" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency);

(4) repurchase obligations for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper issued by a Person (other than an Affiliate of the Issuer) rated at least "A-1" or the equivalent thereof by Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), and in each case maturing within one year after the date of acquisition;

(6) marketable short-term money market and similar securities having a rating of at least "A-2" or the equivalent thereof by Moody's or S&P, respectively (or reasonably equivalent ratings of another internationally recognized rating agency) and in each case maturing within two years after the date of acquisition;

(7) readily marketable direct obligations issued by any state of the United States of America or any political subdivision thereof having one of the two highest rating categories obtainable from either Moody's or S&P (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition;

(8) Indebtedness issued by Persons (other than an Affiliate of the Issuer) with a rating of "A" or higher from S&P or "A-2" or higher from Moody's (or reasonably equivalent ratings of another internationally recognized rating agency), in each case with maturities not exceeding two years from the date of acquisition;

(9) investment funds investing at least 95% of their assets in securities of the types described in clauses (1) through (8) above;

(10) Investments with average maturities of 12 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's;

(11) time deposits, certificates of deposit and money market deposits not otherwise permitted hereby in an aggregate face amount not in excess of 0.5% of the Total Assets of the Issuer and its Restricted Subsidiaries as of the end of the Issuer's most recently completed fiscal year;

(12) substantially similar Investments, of comparable credit quality, denominated in the currency of any jurisdiction in which the Issuer or any of its Restricted Subsidiaries conduct business; and

(13) Investments that are consistent with the investment policy of the Issuer that has been adopted by the Issuer's Board of Directors as in effect on the Issue Date, together with any amendments thereto.

"Cash Management Agreement" means any agreement or arrangement to provide Cash Management Services.

"Cash Management Services" means any one or more of the following types of services or facilities: (i) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, or electronic funds transfer services, (ii) treasury management services (including controlled disbursement, overdraft automatic clearing house fund transfer services, return items, and interstate depository network services), (iii) any other demand deposit or operating account relationships or other cash management services, and (iv) other services related, ancillary or complementary to the foregoing.

"Change of Control" means the occurrence of any of the following events:

(i) any combination transaction in which the stockholders of the Issuer immediately prior to such combination transaction own less than 50% of the voting power of the surviving or successor entity (or its parent, as applicable)

immediately after such combination transaction;

(ii) any transaction or series of related transactions to which the Issuer is a party in which more than 50% of the Issuer's voting power is transferred;

(iii) any sale, lease or other disposition of all or substantially all of the assets of the Issuer and its Restricted Subsidiaries taken as a whole other than to a Restricted Subsidiary; or

(iv) the adoption of a plan by the Issuer's shareholders relating to the Issuer's dissolution or liquidation in accordance with the Issuer's organizational documents.

Notwithstanding the foregoing, no transaction or series of related transactions principally for *bona fide* equity financing purposes in which cash is received by the Issuer or indebtedness of the Issuer is cancelled or converted, or a combination thereof, or the transfer by any stockholder of shares of the Issuer's capital stock to any third party in a transaction or series of related transactions to which the Issuer is not a party, shall be deemed a Change of Control.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Collateral Agent" means U.S. Bank National Association in its capacity as "Collateral Agent" under this Indenture and under the Security Documents and any successor thereto in such capacity.

"Confidentiality Agreement" means a confidentiality agreement substantially in the form of Exhibit D.

"Consolidated Interest Expense" means, with respect to any Person for any period, the sum, without duplication, of:

(1) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, to the extent such expense was deducted and not added back in computing Consolidated Net Income (including (a) amortization of original issue discount, (b) the interest component of Capitalized Lease Obligations, (c) net payments pursuant to Hedging Obligations (including amortization of fees), (d) amortization of deferred financing fees, (e) debt discount and debt issuance costs (including commitment fees), commissions, fees and expenses, (f) non-cash interest expense, (g) all commissions, discounts and other fees and charges owed with respect to letters of credit, bank guarantees, bankers acceptances or similar instruments and (h) expensing of any bridge, commitment or other financing fees); plus

(2) consolidated capitalized interest of such Person and its Restricted Subsidiaries for such period, whether paid or accrued; minus

(3) interest income for such period.

For purposes of this definition, interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by the Issuer to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated Leverage Ratio" means, with respect to any Person, at any date (the "Consolidated Leverage Calculation Date"), the ratio of (i) Indebtedness of such Person and its Restricted Subsidiaries as of the Consolidated Leverage Calculation Date (determined on a

consolidated basis in accordance with GAAP) less the amount of Cash Equivalents in excess of any Restricted Cash that is stated on the balance sheet of such Person and its Restricted Subsidiaries and held by such Person and its Restricted Subsidiaries as of such Consolidated Leverage Calculation Date to (ii) Adjusted EBITDA of such Person for the most recent four full fiscal quarters ended on the last day of the most recent fiscal quarter for which internal financial statements are available immediately preceding such Consolidated Leverage Calculation Date. In the event that the Issuer or any of its Restricted Subsidiaries Incurs, repays, repurchases, defeases or redeems any Indebtedness subsequent to such last day but prior to the Consolidated Leverage Calculation Date, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect to such Incurrence, repayment, repurchase, defeasance or redemption of Indebtedness as if the same had occurred at the beginning of the applicable four-quarter period; *provided* that the Issuer may elect pursuant to an Officer's Certificate delivered to the Trustee to treat all or any portion of the commitment under any agreement evidencing Indebtedness as being Incurred on the first day of the applicable four-quarter measurement period, in which case any subsequent Incurrence of Indebtedness under such commitment shall not be deemed, for purposes of this calculation, to be an Incurrence at such subsequent time; *provided*, *further*, that any Cash Equivalent proceeds received in connection with or as a result of such Incurrence or other transaction for which the Consolidated Leverage Ratio is being calculated shall not be subtracted from Indebtedness for purposes of calculating the Consolidated Leverage Ratio.

For purposes of making the computation referred to above, Asset Sales or Asset Acquisitions, in each case, in an amount in excess of $50,000,000 per transaction, that the Issuer or any of its Restricted Subsidiaries has determined to make or made during the applicable four-quarter measurement period or subsequent to such measurement period and on or prior to or simultaneously with the Consolidated Leverage Calculation Date shall be calculated on a *pro forma* basis assuming that all such Asset Sales and Asset Acquisitions (and the change of any associated Indebtedness and the change in Adjusted EBITDA resulting therefrom) had occurred on the first day of the applicable four-quarter measurement period. If since the beginning of such period any Person that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period shall have made any Asset Sale or Asset Acquisition, in each case, in an amount in excess of $50,000,000 and with respect to a business, a division or an operating unit of a business, as applicable, that would have required adjustment pursuant to this definition, then the Consolidated Leverage Ratio shall be calculated giving *pro forma* effect thereto for such period as if such Asset Sale or Asset Acquisition had occurred on the first day of the applicable four-quarter measurement period.

For purposes of this definition, whenever pro forma effect is to be given to any calculation under this definition, the pro forma calculations shall be (x) made in good faith by a responsible financial or accounting officer of the Issuer (and may include, for the avoidance of doubt, cost savings and operating expense reductions resulting from such Asset Sale or Asset Acquisition which is being given pro forma effect that have been or are expected to be realized within twelve (12) months after the date of such Asset Sale or Asset Acquisition as the result of specified actions taken or to be taken within six (6) months after such date) and (y) determined in accordance with Regulation S-X.

For purposes of this definition, any amount in a currency other than U.S. Dollars will be converted to U.S. Dollars based on the average exchange rate for such currency for the most

recent four full fiscal quarters immediately prior to the date of determination in a manner consistent with that used in calculating Adjusted EBITDA for the applicable period.

"Consolidated Net Income" means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis; *provided*, *however*, that:

(1) any after-tax effect of (a) extraordinary, non-recurring or unusual gains or losses (including all fees and expenses relating thereto), (b) any facility shutdown expenses, severance (including payroll, retention bonus and benefit expense relating to employees who have been notified they are being severed, following such notification), relocation costs,

restructuring-related consulting and travel costs, and curtailments or modifications to pension and post-retirement employee benefit plans and (c) any other amounts (in an amount not to exceed $1,000,000 in any four fiscal quarter reference period) recorded in the "Restructuring and other charges, net" line item (or other similar line item) of such Person's consolidated statement of operations for such period prepared in accordance with GAAP, shall be excluded;

(2) effects of purchase accounting adjustments (including the effects of such adjustments pushed down to such Person and such Subsidiaries) in amounts required or permitted by GAAP, resulting from the application of purchase accounting in relation to any consummated acquisition or the amortization or write-off of any amounts thereof, net of taxes, shall be excluded;

(3) the Net Income for such period shall not include the cumulative effect of a change in accounting principles during such period;

(4) any net after-tax income or loss from disposed, abandoned, transferred, closed or discontinued operations and any net after-tax gains or losses on disposal of disposed, abandoned, transferred, closed or discontinued operations shall be excluded;

(5) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to business dispositions or asset dispositions other than in the ordinary course of business (as determined in good faith by the Issuer) shall be excluded;

(6) any net after-tax gains or losses (less all fees and expenses or charges relating thereto) attributable to the early extinguishment of indebtedness, and any unrealized gains and losses relating to Hedging Obligations or other derivative instruments, shall be excluded;

(7) the Net Income for such period of any Person that is not a Subsidiary of such Person, or is an Unrestricted Subsidiary, or that is accounted for by the equity method of accounting, shall be included only to the extent of the amount of dividends or distributions or other payments paid in cash (or to the extent converted into cash) to the referent Person or a Restricted Subsidiary thereof in respect of such period;

(8) solely for the purpose of determining the amount available for Restricted Payments under clause (1) of the definition of "Cumulative Credit", the Net Income for

such period of any Restricted Subsidiary (other than any Guarantor) shall be excluded to the extent that the declaration or payment of dividends or similar distributions by such Restricted Subsidiary of its Net Income is not at the date of determination with respect to such Restricted Payment permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders or equityholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; *provided* that the Consolidated Net Income of such Person shall be increased by the amount of dividends or other distributions or other payments actually paid in cash (or converted into cash) by any such Restricted Subsidiary to such Person, to the extent not already included therein;

(9) any impairment charges or asset write-offs, in each case pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP shall be excluded;

(10) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights shall be excluded;

(11) any one-time non-cash compensation charges shall be excluded;

(12) accruals and reserves that are established or adjusted within 12 months after the Issue Date and that are so required to be established or adjusted in accordance with GAAP or as a result of adoption or modification of accounting policies shall be excluded;

(13) non-cash gains, losses, income and expenses resulting from fair value accounting required by the applicable standard under GAAP and related interpretations shall be excluded;

(14) any currency translation gains and losses related to currency remeasurements of Indebtedness, and any net loss or gain resulting from Hedging Obligations, shall be excluded;

(15) solely for the purposes of calculating Restricted Payments, if positive, any permanent difference (but excluding, for the avoidance of doubt, any temporary difference the Issuer reasonably expects to be paid in cash in any future tax period) of (A) the Consolidated Taxes of the Issuer calculated in accordance with GAAP over (B) the actual Consolidated Taxes paid in cash by the Issuer during such period shall be excluded;

(16) any non-cash interest expense and beneficial conversion features resulting from the application of Accounting Standards Codification Topic 470-20 "Debt — Debt With Conversion and Other Options" shall be excluded;

(17) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable carrier in writing and (b) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), such loss or expense amounts as are so reimbursed, or reimbursable, by insurance providers in respect of liability or casualty events or business interruption shall be excluded;

(18) to the extent covered by fees, costs, expenses and losses that are, or (without duplication) are required to be, covered by contractual indemnities, guaranty obligations, purchase price adjustments, insurance policies or other contractual reimbursement obligations of third parties, to the extent actually indemnified or reimbursed or with respect to which the Issuer has determined that a reasonable basis exists for indemnification or reimbursement, but only to the extent that such amount is actually indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period of any amount so added back to the extent not so indemnified or reimbursed within such 365 days), shall be excluded;

(19) the effects of adjustments in property and equipment, inventory, software and other intangible assets, revenue and cost of revenue line items in such Person's consolidated financial statements pursuant to GAAP resulting from the application of business combination or asset acquisition accounting, shall be excluded;

(20) any fees, costs, expenses and contingent payments incurred during such period, or any amortization or fair value adjustments thereof for such period (including non-cash accretion of deferred or contingent purchase price of an acquisition), in connection with any acquisition, Investment, Asset Sale, intellectual property collaboration agreement in the nature of an asset purchase, issuance or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (in each case, including any such transaction consummated prior to the Issue Date and any such transaction undertaken but not completed) and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, shall be excluded; and

(21) Consolidated Net Income shall be calculated to give effect to adjustments to revenues and cost of goods sold to remove ratable revenue recognition in connection with financing arrangements.

In calculating the after-tax effect of any item set forth above that is being excluded from Consolidated Net Income, such after-tax effects shall be calculated only after taking into account any cash tax effect.

Notwithstanding the foregoing, for the purpose of Section 4.04 only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of assets from Unrestricted Subsidiaries of the Issuer or a Restricted Subsidiary of the Issuer to the extent such dividends, repayments or transfers increase the amount of Restricted

Payments permitted under Section 4.04 pursuant to clauses (5) and (6) of the definition of "Cumulative Credit".

"Consolidated Non-cash Charges" means, with respect to any Person for any period, the aggregate depreciation, amortization and other non-cash items, expenses or charges of such Person and its Restricted Subsidiaries reducing Consolidated Net Income of such Person for such period on a consolidated basis and otherwise determined in accordance with GAAP, but excluding any such charge to the extent it consists of or requires an accrual of, or cash reserve for, anticipated cash charges for any future period.

"Consolidated Taxes" means, with respect to any Person for any period, the provision for taxes for such Person and its Restricted Subsidiaries based on income, profits or capital, including U.S. federal, state, franchise, property and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) utilized in computing Consolidated Net Income.

"Contingent Obligations" means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

(1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;

(2) to advance or supply funds:

(a) for the purchase or payment of any such primary obligation; or

(b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or

(3) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

Notwithstanding the foregoing, the term Contingent Obligations shall not include (i) endorsements for collection or deposit in the ordinary course of business or (ii) customary indemnification obligations.

"Contribution Indebtedness" means Indebtedness of the Issuer or any Restricted Subsidiary and Preferred Stock of any Restricted Subsidiary in an aggregate principal amount not greater than the aggregate amount of cash contributions (other than Excluded Contributions) made to the capital of the Issuer or such Restricted Subsidiary after the Issue Date; *provided* that:

(1) such cash contributions have not been used to make a Restricted Payment or a Permitted Investment in any Person other than the Issuer or a Restricted Subsidiary; and

(2) such Contribution Indebtedness (a) is Incurred within 360 days after the making of such cash contributions and (b) is so designated as Contribution Indebtedness pursuant to an Officer's Certificate on the Incurrence date thereof.

"Convertible Indebtedness" means unsecured Indebtedness of the Issuer that is convertible into shares of common stock of the Issuer (or other securities or property following a merger event or other change of the common stock of the Issuer) (and cash in lieu of fractional shares), cash (in an amount determined by reference to the price of such common stock or such other securities) or a combination thereof.

"Corporate Trust Office" means the address of the Trustee specified in Section 12.01 or such other address as to which the Trustee may give notice to the Holders and the Issuer.

"Credit Agreement" means (i) any revolving credit facility, term loan, receivables or inventory financing facility, line of credit or other Indebtedness or similar agreements, as amended, restated, supplemented, waived, replaced (whether or not upon

termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or instrument extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Indebtedness under such agreement or instrument or any successor or replacement agreement or agreements or instrument or instruments or increasing the amount loaned or issued thereunder or altering the maturity thereof and (ii) whether or not the agreements or instruments referred to in clause (i) remain outstanding, one or more (A) debt facilities, commercial paper facilities or other financing arrangements, providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to lenders or to special purpose entities formed to borrow from lenders against such receivables), letters of credit or other long-term indebtedness, or (B) debt securities, notes, debentures, indentures or other forms of debt financing (including convertible or exchangeable debt instruments or bank guarantees or bankers' acceptances or similar instruments), in each case, with the same or different borrowers or issuers and, in each case, as amended, supplemented, modified, extended, restructured, renewed, refinanced, restated, replaced or refunded in whole or in part from time to time.

"Credit Agreement Documents" means any Credit Agreement, any notes issued pursuant thereto and the guarantees thereof, and the collateral documents relating thereto, and any other agreements, documents or instruments entered into in connection with any Credit Agreement, in each case, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time.

"Cumulative Credit" means the sum of (without duplication):

(1) 50% of the Consolidated Net Income for the period (taken as one accounting period, the "Reference Period") from April 1, 2020 to the end of the Issuer's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, in the case such Consolidated Net Income for such Reference Period is a deficit, minus 100% of such deficit); plus

(2) 100% of the aggregate net proceeds, including cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash, received by the Issuer after the Issue Date from the issue or sale of Equity Interests of the Issuer (excluding Refunding Interests, Designated Preferred Stock, Excluded Contributions, Disqualified Stock and the Cash Contribution Amount), including Equity Interests issued upon conversion of Indebtedness or Disqualified Stock or upon exercise of warrants or options (other than an issuance or sale to a Restricted Subsidiary of the Issuer or to an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries); plus

(3) 100% of the aggregate amount of contributions to the capital of the Issuer received in cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash after the Issue Date (other than Excluded Contributions); plus

(4) the principal amount of any Indebtedness, or the liquidation preference or maximum fixed repurchase price, as the case may be, of any Disqualified Stock of the Issuer or any Restricted Subsidiary thereof issued after the Issue Date (other than Indebtedness or Disqualified Stock issued to a Restricted Subsidiary) that has been converted into or exchanged for Equity Interests in the Issuer (other than Disqualified Stock) or any direct or indirect parent of the Issuer (*provided* in the case of any such parent, such Indebtedness or Disqualified Stock is retired or extinguished); plus

(5) 100% of the aggregate amount received by the Issuer or any Restricted Subsidiary after the Issue Date in cash and the Fair Market Value (as determined in good faith by the Issuer) of property other than cash received by the Issuer or any Restricted Subsidiary after the Issue Date from:

(A) the sale or other disposition (other than to the Issuer or a Restricted Subsidiary of the Issuer) of Restricted Investments made by the Issuer and its Restricted Subsidiaries and from repurchases and redemptions of such Restricted Investments from the Issuer and its Restricted Subsidiaries by any Person (other than the Issuer or any of its Restricted Subsidiaries) and from repayments of loans or advances, and releases of guarantees, that constituted Restricted Investments (other than in each case to the extent that the Restricted Investment was made pursuant to clause (vii) or (x) of Section 4.04(b));

(B) the sale (other than to the Issuer or a Restricted Subsidiary of the Issuer) of the Capital Stock of an Unrestricted Subsidiary; or

(C) a distribution or dividend from an Unrestricted Subsidiary; plus

(6) in the event any Unrestricted Subsidiary of the Issuer has been redesignated as a Restricted Subsidiary or has been merged, consolidated or amalgamated with or into, or transfers or conveys its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer, the Fair Market Value (as determined in good faith by the Issuer) of the Investment of the Issuer or a Restricted Subsidiary in such Unrestricted Subsidiary at the time of such redesignation, combination or transfer (or of the assets

transferred or conveyed, as applicable), after taking into account any Indebtedness associated with the Unrestricted Subsidiary so designated or combined or any Indebtedness associated with the assets so transferred or conveyed (other than in each case to the extent that the Investment in such Unrestricted Subsidiary was made pursuant to clause (vii) or (x) of Section 4.04(b) or constituted a Permitted Investment), which Fair Market Value shall not exceed the amount invested in such Unrestricted Subsidiary by the Issuer and its Restricted Subsidiaries.

"DBRS" means DBRS, Inc. or any successor to the rating agency business thereof.

"Default" means any event that is, or after notice or passage of time or both would be, an Event of Default.

"Delaware Property" means the land, building and other improvements located at 200 Christina Parkway, Newark, Delaware 19713 and subject to that certain Ground Lease by and between 1743 Holdings, LLC, and Diamond State Generation Partners, LLC, as tenant.

"Designated Non-cash Consideration" means the Fair Market Value (as determined in good faith by the Issuer) of non-cash consideration received by the Issuer or its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate, setting forth the basis of such valuation, less the amount of Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

"Designated Preferred Stock" means Preferred Stock of the Issuer or any direct or indirect parent of the Issuer, as applicable (other than Disqualified Stock), that is issued for cash (other than to the Issuer or any of its Subsidiaries or an employee stock ownership plan or trust established by the Issuer or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer's Certificate, on the issuance date thereof.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person that, by its terms (or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable), or upon the happening of any event:

(1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than as a result of a change of control or asset sale; *provided* that the relevant asset sale or change of control provisions, taken as a whole, are no more favorable in any material respect to holders of such Capital Stock (as determined in good faith by the Issuer) than the provisions of Sections 4.06 and 4.08 (as applicable) and any purchase requirement triggered thereby may not become operative until after compliance with the provisions of Sections 4.06 and 4.08 (as applicable) (including the purchase of any Securities tendered pursuant thereto));

(2) is convertible or exchangeable for Indebtedness or Disqualified Stock of such Person; or

(3) is redeemable at the option of the holder thereof, in whole or in part (other than solely as a result of a change of control or asset sale),

in each case prior to 91 days after the earlier of the Stated Maturity of the Securities and the date the Securities are no longer outstanding; *provided*, *however*, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; *provided*, *further*, *however*, that if such Capital Stock is issued to any employee or to any plan for the benefit of employees of the Issuer or its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Issuer in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; *provided*, *further*, that any class of Capital Stock of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of Capital Stock that is not Disqualified Stock shall not be deemed to be Disqualified Stock.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any Convertible Indebtedness, the 5% Convertible Notes, the 6% Convertible Notes, and Permitted Bond Hedge Transactions).

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Excluded Contributions" means the Cash Equivalents or other assets (valued at their Fair Market Value as determined in good faith by the Issuer) received by the Issuer after the Issue Date from:

(1) contributions to its common equity capital; and

(2) the sale (other than to a Subsidiary of the Issuer or to any Subsidiary management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Issuer or any Subsidiary) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Issuer,

in each case designated as Excluded Contributions pursuant to an Officer's Certificate on or after the date such capital contributions are made or the date such Capital Stock is sold, as the case may be.

"Fair Market Value" means, with respect to any asset or property, the price (after taking into account any liabilities related to such asset or property) that could be negotiated in an arm's-length transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction.

"Financial Officer" of any Person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer or Controller of such Person.

"First Amortization Date" means, with respect to any security or Indebtedness, the date specified in such security or document governing such Indebtedness as the fixed date on which the first payment of principal of such security is due and payable.

"Fitch" means Fitch, Inc. or any successor to the rating agency business thereof.

"Foreign Subsidiary" means, with respect to any Person, (a) any direct or indirect Subsidiary of such Person that is not organized or existing under the laws of the United States, any state thereof or the District of Columbia and is a "controlled foreign corporation" within the meaning of Section 957 of the Code, (b) any direct or indirect Subsidiary of such Person if substantially all of its assets consists of Capital Stock of one or more direct or indirect Subsidiaries described in clause (a) of this definition or of such Capital Stock and intercompany obligations of such Subsidiaries described in clause (a) of this definition or (c) any Subsidiary of a Subsidiary described in clause (a) or (b) of this definition.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession. Notwithstanding any other provision in this Indenture, the amount of any Indebtedness with respect to any Capitalized Lease Obligation shall be determined in accordance with the definition of Capitalized Lease Obligation.

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

"guarantee" means a guarantee or other provision of credit support (other than by endorsement of negotiable instruments for collection in the ordinary course of business and customary indemnity obligations), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations, including by providing security therefor or by becoming a co-obligor with respect thereto. The term "guarantee", when used as a verb, shall mean to provide a guarantee.

"Guarantee" means any guarantee of the obligations of the Issuer under this Indenture and the Securities by any Person in accordance with the provisions of this Indenture.

"Guarantor" means any Subsidiary of the Issuer party to this Indenture on the Issue Date as a guarantor and any other Person that Incurs a Guarantee pursuant to Section 4.10; *provided*, *however*, that upon the release or discharge of such Person from its Guarantee in accordance with this Indenture, such Person ceases to be a Guarantor.

"Hedging Obligations" means, with respect to any Person, the obligations of such Person under:

(1) currency exchange, interest rate or commodity swap agreements, currency exchange, interest rate or commodity cap agreements and currency exchange, interest rate or commodity collar agreements; and

(2) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange, interest rates or commodity prices or to otherwise manage interest rate risk or currency exchange risk.

"Holder" means the Person in whose name a Security is registered on the Registrar's books.

"Immaterial Subsidiary" means any Subsidiary of the Issuer (i) whose total assets as of any date of determination are less than $100,000 and whose total revenues for the most recently ended twelve-month period are less than $50,000 and (ii) who is formed for the purpose of
(A)bidding on potential transactions and, if secured, financing, developing and/or operating such transactions in a fashion similar to the Issuer's power purchase agreement program or
(B)bidding on awards under federal, state or local incentive programs and passing the benefits of such programs on to the Issuer or the owner or offtaker of the applicable fuel cell assets.

"Incur" means issue, assume, guarantee, incur or otherwise become liable for; *provided*, *however*, that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, amalgamation, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Person at the time it becomes a Subsidiary; and "Incurrence" has a

correlative meaning.

"Indebtedness" means, with respect to any Person:

(1) the principal and premium (if any) of any indebtedness of such Person, whether or not contingent, (a) in respect of borrowed money, (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers' acceptances (or, without duplication, reimbursement agreements in respect thereof), (c) representing the deferred and unpaid purchase price of any property (except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor Incurred in the ordinary course of business and (ii) any liabilities accrued in the ordinary course of business), which purchase price is due more than six months after the date of placing the property in service or taking delivery and title thereto, (d) in respect of Capitalized Lease Obligations or (e) representing any Hedging Obligations, if and to the extent that any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation of such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the Indebtedness of another Person (other than by endorsement of negotiable instruments for collection in the ordinary course of business); and

(3) to the extent not otherwise included, Indebtedness of another Person secured by a Lien on any asset owned by such Person (whether or not such Indebtedness is assumed by such Person); *provided*, *however*, that the amount of such Indebtedness will be the lesser of: (a) the Fair Market Value (as determined in good faith by the Issuer)

of such asset at such date of determination; and (b) the amount of such Indebtedness of such other Person;

provided, *however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include: (1) Contingent Obligations incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) any earn-out obligations, purchase price adjustments, deferred purchase money amounts, milestone or bonus payments (whether performance or time-based), and royalty, licensing, revenue or profit sharing arrangements, in each case, characterized as such and arising expressly out of purchase and sale contracts, development arrangements or licensing arrangements; (5) any obligations in respect of a lease properly classified as an operating lease in accordance with GAAP (without giving effect to ASU No. 2016-02, Leases (Topic 842)); (6) any liability for federal, state, local or other taxes; (7) any customer deposits or advance payments received in the ordinary course of business; or (8) any derivative liabilities or warrant liabilities.

The amount of Indebtedness of any Person will be deemed to be:

(A) with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation;

(B) with respect to Indebtedness secured by a Lien on an asset of such Person but not otherwise the obligation, contingent or otherwise, of such Person, the lesser of (x) the fair market value of such asset on the date the Lien attached and (y) the amount of such Indebtedness;

(C) with respect to any Indebtedness issued with original issue discount, the face amount of such Indebtedness less the remaining unamortized portion of the original issue discount of such Indebtedness;

(D) with respect to any Hedging Obligations, the net amount payable of such Hedging Obligation;

(E) with respect to any capital lease, the Capitalized Lease Obligations in respect thereof; and

(F) otherwise, the outstanding principal amount thereof.

Notwithstanding anything in this Indenture to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, the effects of Accounting Standards Codification section 815 and related interpretations to the extent such effects would otherwise increase or decrease the amount of Indebtedness deemed outstanding for purposes of this Indenture (so that such outstanding amount differs from the principal amount of such Indebtedness payable at maturity) as a result of accounting for any embedded derivatives created by the terms of such Indebtedness; and any such amounts that would have constituted Indebtedness under this Indenture but for the application of this sentence shall not be deemed an Incurrence of Indebtedness under this Indenture.

"Indenture" means this Indenture, as amended, restated or supplemented from time to time.

"Independent Financial Advisor" means an accounting, appraisal or investment banking firm or consultant, in each case of recognized standing in the United States, that is, in the good faith determination of the Issuer, qualified to perform the task for which it has been engaged.

"Insurance Loss Addback" shall mean, with respect to any calculation period, the amount of any loss, costs or expenses incurred during such period for which there is insurance, indemnity or reimbursement coverage and for which a related insurance, indemnity or reimbursement recovery is not recorded in accordance with GAAP, but for which such insurance, indemnity or reimbursement recovery is reasonably expected to be received by the Issuer or any of its Restricted Subsidiaries in a subsequent calculation period and within one year of the date of the underlying loss.

"Intellectual Property" means, with respect to any Person, all patents, patent applications and like protections, including improvements, divisions, continuation, renewals, reissues, extensions and continuations in part of the same, trademarks, trade names, trade styles, trade dress, service marks, logos and other business identifiers and, to the extent permitted under applicable law, any applications therefor, whether registered or not, and the goodwill of the business of such Person connected with and symbolized thereby, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative works, whether published or unpublished, technology, know-how and processes, operating manuals, trade secrets, computer hardware and software, rights to unpatented inventions and all applications and licenses therefor, used in or necessary for the conduct of business by such Person and all claims for damages by way of any past, present or future infringement of any of the foregoing.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's or BBB- (or the equivalent) by S&P or an equivalent rating by any other Required Rating Agency.

"Investment Grade Securities" means:

(1) securities issued or directly and fully guaranteed or insured by the U.S. government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) securities that have a rating equal to or higher than "Baa3" (or equivalent) by Moody's or "BBB-" (or equivalent) by S&P, or an equivalent rating by any other Rating Agency, but excluding any debt securities or loans or advances between and among the Issuer and its Subsidiaries;

(3) investments in any fund that invests exclusively in investments of the type described in clauses (1) and (2), which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments and in each case with maturities not exceeding two years from the date of acquisition.

"Investments" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, trade credit and advances to customers and commission, travel and similar advances to officers, employees and consultants made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person and investments that are required by GAAP to be classified on the balance sheet (excluding footnotes) of the Issuer in the same manner as the other investments included in this definition to the extent such transactions involve the transfer of cash or other property. Except as otherwise provided in this Indenture, the outstanding amount of any Investment shall be deemed to be the initial cost of such Investment when made, purchased or acquired (without giving effect to any adjustments for subsequent increases or decreases in value), but giving effect to any repayments, interest, returns, profits, dividends, distributions, proceeds, fees, income and other amounts actually received by the Issuer or any Restricted Subsidiary of the Issuer in respect of such Investment. For purposes of the definition of "Unrestricted Subsidiary" and Section 4.04:

(1) "Investments" shall include the portion (proportionate to the Issuer's equity interest in such Subsidiary) of the Fair Market Value (as determined in good faith by the Issuer) of the net assets of a Subsidiary of the Issuer at the time that such Subsidiary is designated an Unrestricted Subsidiary or ceases to be a Subsidiary (to the extent the Issuer retains an Investment in such Person); and

(2) any property transferred to or from an Unrestricted Subsidiary shall be valued at its Fair Market Value (as determined in good faith by the Issuer) at the time of such transfer, in each case as determined in good faith by the Board of Directors of the Issuer.

"IRS" means the U.S. Internal Revenue Service.

"Issue Date" means [●], 2020.

"Issuer" has the meaning set forth in the preamble hereof but, for the avoidance of doubt, shall not include any of its Subsidiaries.

"KBRA" means Kroll Bond Rating Agency, Inc. or any successor to the rating agency business thereof.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell, or give a security interest in, such asset and any filing of or agreement to give any financing statement

under the Uniform Commercial Code (or equivalent statutes of any jurisdiction)); *provided* that in no event shall an operating lease be deemed to constitute a Lien.

"Moody's" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"Morningstar" means Morningstar Credit Ratings, LLC or any successor to the rating agency business thereof.

"Net Income" means, with respect to any Person, the net income (loss) of such Person and its Subsidiaries, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

"Net Proceeds" means the aggregate cash proceeds received by the Issuer or any of its Restricted Subsidiaries in respect of any Asset Sale (including any cash received in respect of or upon the sale or other disposition of any Designated Non-cash Consideration received in any Asset Sale and any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding the assumption by the acquiring Person of Indebtedness relating to the disposed assets or other consideration received in any other non-cash form), net of the direct costs relating to such Asset Sale and the sale or disposition of such Designated Non-cash Consideration (including legal, accounting and investment banking fees, and brokerage and sales commissions), and any relocation expenses Incurred as a result thereof, taxes paid or payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements to the extent related thereto), amounts required to be applied to the repayment of principal, premium (if any) and interest on Indebtedness required (other than pursuant to
Section 4.06(b)(i)) to be paid as a result of such transaction, and any deduction of appropriate amounts to be provided by the Issuer as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Issuer after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction.

"Notes Collateral" means all property subject, or purported to be subject from time to time, to a Lien under any Security Documents, including the Collection Account; *provided*, *however*, that any funds released by the Trustee or other Paying Agent, as applicable, from the Collection Account in accordance with Section 4.13 shall not constitute "Notes Collateral" and shall be expressly excluded from the definition thereof.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"Officer" means the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, the President, any Executive Vice President, any Senior Vice President, any Vice President, the Treasurer or the Secretary of the Issuer.

"Officer's Certificate" means a certificate signed on behalf of the Issuer by an Officer of the Issuer.

"Opinion of Counsel" means a written opinion from legal counsel who is acceptable to the Trustee and may be an employee of or counsel to the Issuer.

"Original Holder" means each Holder of Original Securities as of the Issue Date and any of such Holder's Affiliates (such Affiliate to be identified to the Trustee pursuant to the "Certificate to be Delivered Upon Exchange or Registration of Transfer of Securities" attached to the form of Security set forth in Exhibit A). In no event shall the Depository, any participant of the Depository (in its capacity as such) or any beneficial owner of an interest in a Global Security be an Original Holder.

"Original Securities" means the Issuer's 10.25% Senior Secured Notes due 2027 that are issued on the Issue Date pursuant to Section 2.01(b).

"Pari Passu Indebtedness" means the Securities and any Indebtedness that (i) ranks equally in right of payment to the Securities and (ii) is secured by Liens on the Notes Collateral that rank equally as to Lien priority with the Liens on the Notes Collateral securing the Securities.

"Permitted Bond Hedge Transaction" means any call option or capped call option (or substantively equivalent derivative transaction) relating to or referencing the Issuer's common stock (or other securities or property following a merger event or other change of the common stock of the Issuer) purchased by the Issuer in connection with the issuance of any Convertible Indebtedness; *provided*, that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Issuer from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Issuer from the sale of such Convertible Indebtedness issued in connection with such Permitted Bond Hedge Transaction.

"Permitted Business" means a business that is reasonably similar or complementary or supportive to the business activities of the Issuer and the Restricted Subsidiaries or a reasonable extension, development or expansion thereof or ancillary or complementary thereto.

"Permitted Investments" means:

(1) any Investment in the Issuer or any Restricted Subsidiary;

(2) any Investment in Cash Equivalents or Investment Grade Securities or that constitute Cash Equivalents or Investment Grade Securities at the time such Investment was made;

(3) any Investment by the Issuer or any Restricted Subsidiary of the Issuer in a Person if as a result of such Investment (a) such Person becomes a Restricted Subsidiary of the Issuer or (b) such Person, in one transaction or a series of related transactions, is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Issuer or a Restricted Subsidiary of the Issuer and, in each case, any Investments held by such Person (*provided*

that such Investments were not acquired or made by such Person in contemplation of such acquisition, merger, consolidation or transfer);

(4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made pursuant to the provisions of Section 4.06 or any other disposition of assets not constituting an Asset Sale;

(5) any Investment existing on, or made pursuant to binding commitments existing on, the Issue Date or an Investment consisting of any extension, modification or renewal of any Investment existing on the Issue Date or an Investment purchased or received in exchange for any such Investment; *provided* that the amount of any such Investment may be increased as required by the terms of such Investment as in existence on the Issue Date;

(6) advances to, or guarantees of Indebtedness of, employees and consultants not in excess of $500,000 outstanding at any one time in the aggregate and advances of payroll payments, sales commissions and expenses to employees and consultants in the ordinary course of business;

(7) any Investment acquired by the Issuer or any of its Restricted Subsidiaries (a) in exchange for any other Investment or accounts receivable held by the Issuer or any such Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable, (b) as a result of a foreclosure by the Issuer or any of its Restricted Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default, or (c) in connection with the resolution of disputes with, or judgments against, another Person;

(8) Hedging Obligations permitted under Section 4.03(b)(x);

(9) Investments by the Issuer or any of its Restricted Subsidiaries having an aggregate Fair Market Value, taken together with all other Investments made pursuant to this clause (9) that are at that time outstanding, not to exceed the greater of $15,000,000 or 1.5% of Total Assets (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value); *provided*, *however*, that if any Investment pursuant to this clause (9) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (9) for so long as such Person continues to be a Restricted Subsidiary;

(10) loans and advances to officers, directors, employees and consultants for business-related travel expenses, moving expenses and other similar expenses, in each case Incurred in the ordinary course of business or consistent with past practice or to

fund

such person's purchase of Equity Interests of the Issuer or any direct or indirect parent of the Issuer;

(11) Investments the payment for which consists of, or the net cash proceeds from the issuance and sale of, Equity Interests of the Issuer (other than Disqualified Stock) or any direct or indirect parent of the Issuer, as applicable; *provided*, *however*, that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of the definition of "Cumulative Credit";

(12) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 4.07(b) (except transactions described in clauses (ii), (iv), (v) and (viii)(B) of such Section);

(13) Investments consisting of the licensing or contribution of Intellectual Property or collaboration agreements, strategic alliances or similar arrangements in respect of Intellectual Property;

(14) (i) guarantees issued in accordance with Sections 4.03 and 4.10, including any guarantee or other obligation issued or incurred under any Credit Agreement in connection with any letter of credit issued for the account of the Issuer or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawings under, such letters of credit) and (ii) guarantees of operating leases entered into in the ordinary course of business;

(15) Investments consisting of or to finance purchases and acquisitions of inventory, supplies, materials, services, Intellectual Property, or equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(16) Investments of a Restricted Subsidiary of the Issuer acquired after the Issue Date or of an entity merged into, amalgamated with, or consolidated with a Restricted Subsidiary of the Issuer in a transaction that is not prohibited by Article 5 after the Issue Date to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

(17) any Investment in connection with a Sale/Leaseback Transaction not prohibited by this Indenture;

(18) Investments in PPA Companies;

(19) security deposits, prepaid expenses and negotiable instruments held for collection in the ordinary course of business;

(20) lease, utility, workers' compensation, unemployment insurance, performance and other deposits made in the ordinary course of business and other Investments resulting from pledges or deposits constituting Permitted Liens;

(21) extensions of credit to, or on behalf of, and prepayments and other credits to, customers, distributors and suppliers in the ordinary course of business;

(22) Indebtedness owed by officers or employees of the Issuer or any Restricted Subsidiary to the Issuer in connection with any such Person's acquisition of Equity Interests (other than Disqualified Stock) of the Issuer so long as no cash or other property is (or will be or is committed to be) actually advanced by the Issuer or such Restricted Subsidiary to any Person in connection therewith;

(23) Investments in the ordinary course of business consisting of Uniform Commercial Code Article 3 endorsements

for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(24) (a) Investments relating to a Receivables Subsidiary that, in the good faith determination of the Issuer, are necessary or advisable to effect any Receivables Program or any repurchase in connection therewith and (b) obligations under or in respect of any Receivables Program;

(25) any Investment in any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business; and

(26) Investments made in connection with any Permitted Bond Hedge Transaction or Permitted Warrant Transaction.

In the event that any Investment (or any portion thereof) meets the criteria of more than one of the categories of Permitted Investments described in clauses (1) through (26) above, or is entitled to be Incurred or made pursuant to Section 4.04, the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Investment (or any portion thereof) in any manner that complies with such categories above or Section 4.04. In addition, at the time of Incurrence or making of any Investment, the Issuer shall be entitled to divide and classify such Investment in more than one of the categories of Permitted Investments described above or described in Section 4.04.

"Permitted Liens" means, with respect to any Person:

(1) pledges or deposits by such Person under workmen's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(2) Liens imposed by law, such as carriers', warehousemen's, landlord's, materialmen's, repairmen's, construction and mechanics' Liens, in each case for sums not overdue for a period of more than 30 days or being contested in good faith by appropriate proceedings or other Liens arising out of judgments or awards against such Person with

respect to which such Person shall then be proceeding with an appeal or other proceedings for review;

(3) Liens for taxes, assessments or other governmental charges or levies not overdue for a period of more than 10 days or not subject to penalties for nonpayment or that are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(4) Liens in favor of issuers of performance and surety bonds or bid bonds or with respect to other regulatory requirements or letters of credit issued pursuant to the request of and for the account of such Person in the ordinary course of its business, and any Liens securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(v) and Section 4.03(b)(xi), and pledges or deposits to secure letters of credit, bank guarantees and similar instruments obtained in the ordinary course of business;

(5) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, special assessments, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not Incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(6) Liens securing Indebtedness permitted to be Incurred pursuant to Section 4.03(b)(iv), Section 4.03(b)(xv) and Section 4.03(b)(xxviii) (*provided* that in the case of Section 4.03(b)(xv) such Lien applies solely to acquired property or assets of the acquired entity, as the case may be, together with improvements, additions, parts, attachments, fixtures, leasehold improvements and accessions thereto and the proceeds thereof);

(7) (A) Liens existing on the Issue Date, (B) Liens securing the Securities, including Liens arising under or relating to the Security Documents, (C) the Lien securing the Issuer's compensation and indemnity obligations to the Trustee under Section 7.06 and (D) Liens securing the 5% Convertible Notes and the 6% Convertible Notes to the extent not covered by clause (A);

(8) Liens on assets, property or shares of stock of a Person at the time such Person becomes a Subsidiary; *provided*, *however*, that such Liens are not created or Incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary; *provided*, *further*, *however*, that such Liens may not extend to any other property owned by the Issuer or any Restricted Subsidiary of the Issuer;

(9) Liens on assets or property at the time the Issuer or a Restricted Subsidiary of the Issuer acquired the assets or property, including any acquisition by means of a merger, amalgamation or consolidation with or into the Issuer or any Restricted Subsidiary of the Issuer; *provided*, *however*, that such Liens are not created or Incurred in

connection with, or in contemplation of, such acquisition; *provided*, *further*, *however*, that the Liens may not extend to any other property owned by the Issuer or any Restricted Subsidiary of the Issuer;

(10) Liens securing Indebtedness or other obligations of a Restricted Subsidiary owing to the Issuer or a Restricted Subsidiary permitted to be Incurred in accordance with Section 4.03;

(11) Liens securing Hedging Obligations not incurred in violation of this Indenture; *provided* that with respect to Hedging Obligations relating to Indebtedness, such Lien extends only to the property securing such Indebtedness;

(12) Liens on specific items of inventory or other goods and proceeds thereof and related documents of title of any Person securing such Person's obligations in respect of letters of credit, bank guarantees, bankers' acceptances or similar instruments issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) leases and subleases of real property that do not materially interfere with the ordinary conduct of business of the Issuer or any of its Restricted Subsidiaries;

(14) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Issuer and its Restricted Subsidiaries in the ordinary course of business;

(15) Liens in favor of the Issuer or any Guarantor;

(16) deposits made in the ordinary course of business to secure liability to insurance carriers;

(17) Liens on the Equity Interests of Unrestricted Subsidiaries;

(18) (i) any license, collaboration agreement, strategic alliance or similar arrangement providing for the licensing of Intellectual Property or the development or commercialization of Intellectual Property in the ordinary course of business that, at the time of such grant, does not materially and adversely affect the Issuer's business, condition (financial or otherwise) or prospects or the value of the Notes Collateral taken as a whole, and (ii) any interest of co-sponsors, co-owners or co-developers of Intellectual Property;

(19) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness ("Refinancing Secured Indebtedness") secured by any Lien referred to in the foregoing clauses (6) (in the case of Liens to secure any Refinancing Secured Indebtedness under such clause (6), such Liens shall be deemed to have also been incurred under such clause (6), and not this clause (19), for purposes of determining amounts outstanding under such clause (6)), (7), (8) and (9); *provided*, *however*, that (w) such new Lien shall be limited to all or part of the same

property that secured (or, under the written arrangements under which the original Lien arose, could secure) the Lien then securing such Indebtedness being refinanced, refunded, extended, renewed or replaced (plus improvements, accessions, proceeds, dividends or distributions in respect thereof), (x) the Indebtedness secured by such Lien at such time is not increased to any amount greater than the sum of (A) the outstanding principal amount or, if greater, committed amount of the Indebtedness described under clauses (6), (7), (8) and (9) at the time the original Lien became a Permitted Lien under this Indenture, and (B) an amount necessary to pay any fees and expenses, including premiums, related to such refinancing, refunding, extension, renewal or replacement, (y) any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clause 7(B) shall, at the election of the Issuer, be secured by and entitled to the benefits of the Security Documents and rank *pari passu* with the Indebtedness that is refinanced, refunded, extended, renewed or replaced and (z) any Lien securing the Refinancing Secured Indebtedness shall

have a priority relative to the Liens securing the Securities that is not greater than the relative priority of the Lien securing the Indebtedness that is refinanced, refunded, extended, renewed or replaced;

(20) Liens on equipment of the Issuer or any Restricted Subsidiary granted in the ordinary course of business to the Issuer's or such Restricted Subsidiary's client at which such equipment is located;

(21) judgment and attachment Liens not giving rise to an Event of Default and notices of lis pendens and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made to the extent required by GAAP;

(22) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(23) Liens incurred to secure cash management services or to implement cash pooling arrangements in the ordinary course of business that do not, individually or in the aggregate, materially impair the value of the Notes Collateral;

(24) any encumbrance or restriction (including put and call arrangements, rights of first refusal and the like) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement; *provided*, *however*, that this clause (24) shall not apply to any Liens securing Indebtedness;

(25) customary Liens in favor of trustees for Indebtedness of the Issuer or any of its Restricted Subsidiaries and escrow agents acting on behalf of the Issuer or any of its Restricted Subsidiaries (*provided* that in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness);

(26) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts

(as defined in Article 9 of the Uniform Commercial Code) or other funds maintained with a depository or financial institution;

(27) Liens on property subject to any Sale/Leaseback Transactions not prohibited under this Indenture;

(28) other Liens that secure Indebtedness and other obligations in an aggregate amount not to exceed $7,500,000 at any one time outstanding;

(29) any interest of title of a lessor under any lease of real or personal property;

(30) Liens on Intellectual Property securing Indebtedness permitted to be Incurred pursuant to Section 4.03(a), Section 4.03(b)(xii) or Section 4.03(b)(xxiv) not to exceed $150,000,000;

(31) Liens on the identifiable proceeds of any property or asset subject to a Lien otherwise constituting a Permitted Lien;

(32) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(33) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 4.03; *provided* that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(34) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(35) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business;

(36) Liens securing Indebtedness permitted to be incurred under a Credit Agreement, including any letter of credit

facility relating thereto, that was incurred pursuant to Section 4.03(b)(i);

(37) Liens incurred to secure Obligations in respect of any Indebtedness permitted to be incurred pursuant to Section 4.03(a); *provided* that, with respect to Liens securing Obligations permitted under this clause (37), at the time of incurrence and after giving pro forma effect thereto, the Consolidated Leverage Ratio would be no greater than 2.0 to 1.0;

(38) Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of assets subject thereto and Liens on any cash earnest money deposits in connection therewith or any letter of intent;

(39) Liens on the Delaware Property securing Indebtedness or other obligations; and

(40) Liens securing obligations of the Issuer or any Restricted Subsidiary in respect of a Receivables Program, *provided* that any such Lien will be limited to the Receivables Program Assets under such Receivables Program.

"Permitted Warrant Transaction" means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) relating to or referencing the Issuer's common stock (or other securities or property following a merger event or other change of the common stock of the Issuer) and/or cash (in an amount determined by reference to the price of such common stock) sold by the Issuer substantially concurrently with any purchase by the Issuer of a Permitted Bond Hedge Transaction.

"Person" means any individual, corporation, company, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"PPA Company" means (i) an Affiliate of the Issuer that is the project entity (including, for the avoidance of doubt, any parent company of such project entity whose assets consist solely of 100% of the Capital Stock of such project entity) in a bona fide power purchase agreement program involving one or more third party investors and having a structure (including capital structure) that is materially consistent with that used in the Issuer's past practice (as the same may be modified in good faith by the Issuer to take into account changes in tax law or industry practice), including the Incurrence of only Indebtedness that is non-recourse to the assets of the Issuer and its Restricted Subsidiaries and is secured only by the assets of such project entity, or (ii) a Wholly Owned Subsidiary of the Issuer whose assets consist solely of the Capital Stock of one or more project entities described in clause (i) above; *provided*, for the avoidance of doubt, that each of the following shall constitute a "PPA Company": (a) Diamond State Generation Partners, LLC, (b) 2012 ESA Project Company, LLC, (c) 2013B ESA Project Company, LLC, (d) 2014 ESA Project Company, LLC and (e) 2015 ESA Project Company, LLC.

"Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution or winding up.

"Property" means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to this Indenture, the value of any Property shall be its fair market value.

"Public Company Costs" means costs relating to compliance with the provisions of the Securities Act and the Exchange Act, as applicable to companies with equity or debt securities held by the public, and the rules of national securities exchange companies with listed equity or debt securities, including directors' or managers' compensation, fees and expense reimbursement, costs relating to investor relations, shareholder meetings and reports to shareholders or debtholders, directors' and officers' insurance and other executive costs, legal and other professional fees and listing fees.

"Rating Agency" means (1) Moody's, (2) S&P, (3) KBRA, (4) Fitch, (5) Morningstar, (6) DBRS or (7) any "nationally recognized statistical rating organization" within the meaning of Section 3(a)(62) of the Exchange Act selected by the Issuer or any direct or indirect parent of the Issuer as a replacement agency for Moody's, S&P, KBRA, Fitch, Morningstar or DBRS, as the case may be.

"Receivables Fees" means distributions or payments made directly or by means of discounts with respect to any Receivables Program Assets or participation or rights therein issued or sold in connection with, and other fees paid to a Person in connection with, any Receivables Program.

"Receivables Program" means, with respect to any Person, an agreement or other arrangement or program providing for the advance of funds to such Person against the pledge, contribution, sale or other transfer or encumbrances of Receivables Program Assets of such Person or such Person and/or one or more of its Subsidiaries.

"Receivables Program Assets" means all of the following Property and interests in Property (except for any Property constituting Notes Collateral), including any undivided interest in any pool of any such Property or interests, whether now existing or existing in the future or hereafter arising or acquired:

(1) accounts (as defined in the Uniform Commercial Code or any similar or equivalent legislation as in effect in any applicable jurisdiction);

(2) accounts receivable, general intangibles, instruments, contract rights, documents and chattel paper (including all rights to payment created by or arising from sales of goods, leases of goods or the rendition of services, no matter how evidenced, whether or not earned by performance);

(3) all unpaid sellers' or lessors' rights (including rescission, replevin, reclamation and stoppage in transit) relating to any of the foregoing or arising therefrom;

(4) all rights to any goods or merchandise represented by any of the foregoing;

(5) all reserves and credit balances with respect to any such accounts receivable or account debtors;

(6) all letters of credit, security or guarantees of any of the foregoing;

(7) all insurance policies or reports relating to any of the foregoing;

(8) all collection or deposit accounts relating to any of the foregoing;

(9) all books and records relating to any of the foregoing; and

(10) all proceeds of any of the foregoing.

"Receivables Subsidiary" means any Subsidiary formed for the purpose of engaging, and that solely engages only in, one or more Receivables Programs and other activities reasonably related thereto.

"Redemption Date" means any date of redemption of all or part of the Securities.

"Required Rating Agencies" means two "nationally recognized statistical rating organizations" within the meaning of Section 3(a)(62) of the Exchange Act making a rating on the Securities publicly available.

"Restricted Cash" means Cash Equivalents held by the Issuer or its Restricted Subsidiaries that are contractually restricted from being distributed to, or used by, the Issuer.

"Restricted Investment" means an Investment other than a Permitted Investment.

"Restricted Subsidiary" means, with respect to any Person, any Subsidiary of such Person other than an Unrestricted Subsidiary of such Person. Notwithstanding the foregoing, no PPA Company shall be a Restricted Subsidiary. Unless otherwise indicated in this Indenture, all references to Restricted Subsidiaries shall mean Restricted Subsidiaries of the Issuer.

"S&P" means S&P Global Ratings or any successor to the rating agency business thereof.

"Sale/Leaseback Transaction" means an arrangement relating to property now owned or acquired after the Issue Date by the Issuer or a Restricted Subsidiary whereby the Issuer or such Restricted Subsidiary transfers such property to a Person and the Issuer or such Restricted Subsidiary leases it from such Person, other than leases between the Issuer and a Restricted Subsidiary of the Issuer or between Restricted Subsidiaries of the Issuer.

"SEC" means the United States Securities and Exchange Commission or any successor thereto.

"Secured Indebtedness" means any Indebtedness secured by a Lien. "Securities" means the Original Securities and any

Additional Securities.

"Securities Act" means the United States Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means the Security Agreement dated as of the date hereof among the Issuer, the Trustee and the Collateral Agent, as may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

"Security Documents" means the security agreements, pledge agreements, mortgages, collateral assignments and related agreements, as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests granted by the Issuer in favor of the Collateral Agent in the Notes Collateral as contemplated by this Indenture, including the Security Agreement.

"Servicing Agreements" has the meaning assigned to it in the Security Agreement. "Servicing Payments" has the meaning

assigned to it in the Security Agreement.

"Significant Subsidiary" means a subsidiary that is a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X promulgated by the SEC; *provided* that, in the case of a subsidiary that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, such subsidiary shall not be deemed to be a significant subsidiary unless the subsidiary's income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds $5,000,000.

"Stated Maturity" means, with respect to any security or Indebtedness, the date specified in such security or Indebtedness as the fixed date on which the final payment of principal of such security or Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security or mandatory prepayment of Indebtedness at the option of the holder thereof upon the happening of any contingency beyond the control of the

issuer unless such contingency has occurred).

"Subordinated Indebtedness" means (a) with respect to the Issuer, any Indebtedness of the Issuer that is unsecured and by its terms subordinated in right of payment to the Securities or (b) with respect to any Guarantor, any Indebtedness of such Guarantor that is unsecured and by its terms subordinated in right of payment to its Guarantee. For the avoidance of doubt, Subordinated Indebtedness shall be deemed to include any Indebtedness reflecting the payment subordination terms set forth in Exhibit E.

"Subsidiary" means, with respect to any Person, (a) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, and (b) any partnership, joint venture, limited liability company or similar entity of which (x) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (y) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity. For purposes of clarity, a
Subsidiary of a Person shall not include any Person that is under common control with the first Person solely by virtue of having directors, managers or trustees in common and shall not include any Person that is solely under common control with the first Person (i.e., a sister company with a common parent).

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as interpreted and in effect on the Issue Date; *provided*, *however*, that in the event the Trust

Indenture Act of 1939 is amended or there is a change in its interpretation after the Issue Date, the term "TIA" shall mean, to the extent required by such amendment or such change in interpretation, the Trust Indenture Act of 1939, as so amended or interpreted. It is acknowledged that this Indenture will not be qualified under the TIA.

"Total Assets" means the total assets of the Issuer and its Restricted Subsidiaries on a consolidated basis, as shown on the most recent balance sheet of the Issuer or such other Person or such other period as may be expressly stated.

"Treasury Rate" means, in respect of any Redemption Date, the yield to maturity as of such Redemption Date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to such Redemption Date (or, if such Federal Reserve Statistical Release H.15 is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such Redemption Date to the First Call Date; *provided*, that if the period from such Redemption Date to the First Call Date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"Trust Officer" means:

(1) any officer within the Corporate Trust Office of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such Person's knowledge of and familiarity with the particular subject; and

(2) who shall have direct responsibility for the administration of this Indenture.

"Trustee" means the party named as such in this Indenture until a successor replaces it in accordance with the applicable

provisions of this Indenture and, thereafter, means such successor.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"Unrestricted Subsidiary" means:

(1) any Subsidiary of the Issuer that at the time of determination shall be designated an Unrestricted Subsidiary by the Issuer in the manner provided below;

(2) any Subsidiary of an Unrestricted Subsidiary; and

(3) any PPA Company.

The Issuer may designate any Subsidiary of the Issuer (including any newly acquired or newly formed Subsidiary of the Issuer) to be an Unrestricted Subsidiary unless such Subsidiary

or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on any property of, the Issuer or any other Subsidiary of the Issuer that is not a Subsidiary of the Subsidiary to be so designated; *provided*, *however*, that the Subsidiary to be so designated and its Subsidiaries (i) do not at the time of designation have and do not thereafter Incur any Indebtedness that is guaranteed by the Issuer or any of its Restricted Subsidiaries (or that otherwise has recourse to the property or assets of the Issuer or any of its Restricted Subsidiaries) and (ii) do not at the time of designation and do not thereafter guarantee any other Indebtedness of the Issuer or any of its Restricted Subsidiaries; *provided*, *further*, *however*, that either:

(a) the Subsidiary to be so designated has total consolidated assets of $1,000 or less; or

(b) if such Subsidiary has consolidated assets greater than $1,000, then such designation would be permitted under Section 4.04.

The Issuer may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided*, *however*, that immediately after giving effect to such designation: (1) the Issuer could Incur $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in Section 4.03(a); or (2) the Consolidated Leverage Ratio for the Issuer and its Restricted Subsidiaries would be less than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such designation, in each case on a *pro forma* basis taking into account such designation.

Any such designation by the Issuer shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the resolution of the Board of Directors of the Issuer or any committee thereof giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Government Obligations" means securities that are:

(1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged; or

(2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America,

which, in each case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any such U.S. Government Obligations or a specific payment of principal of or interest on any such U.S. Government Obligations held by such custodian for the account of the holder of such depository receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in

respect of the U.S. Government Obligations or the specific payment of principal of or interest on the U.S. Government Obligations evidenced by such depository receipt.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness, Preferred Stock or Disqualified Stock, as the case may be, at any date, the quotient obtained by dividing (1) the sum of the products of the number of years from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock multiplied by the amount of such payment, by (2) the sum of all such payments.

"Wholly Owned Restricted Subsidiary" means any Wholly Owned Subsidiary that is a Restricted Subsidiary.

"Wholly Owned Subsidiary" of any Person means a Subsidiary of such Person 100% of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

SECTION 1.02. Other Definitions.

Term	Defined in Section
"Acceleration"	6.02
"Actual Debt Service Coverage Ratio"	4.13(e)
"Additional Securities"	2.01(c)
"Affiliate Transaction"	4.07(a)
"Asset Sale Offer"	4.06(c)
"Available Amounts"	4.13(d)
"Bankruptcy Law"	6.01
"Base Currency"	12.14(b)(i)
"Calculation Report"	4.13(f)
"Change of Control Offer"	4.08(b)
"Change of Control Repurchase Date"	4.08(b)(iii)
"Collection Account"	4.13(a)
"Confidential Information"	7.11
"Confidential Parties"	7.11
"Consolidated Leverage Calculation Date"	"Consolidated Leverage Ratio" definition
"covenant defeasance option"	8.01(e)
"Covenant Suspension Event"	4.20(a)
"Custodian"	6.01
"Definitive Security"	Appendix A
"Depository"	Appendix A
"Event of Default"	6.01
"Excess Proceeds"	4.06(c)
"First Call Date"	Exhibit A
"Global Security"	Appendix A
"Guaranteed Obligation"	10.01(a)
"Increased Amount"	4.11

Term	Defined in Section
"Judgment Currency"	12.14(b)(i)
"legal defeasance option"	8.01(e)
"Offer Period"	4.06(f)
"Paying Agent"	2.04(a)
"Payment Date"	Exhibit A
"primary obligations"	"Contingent Obligations" definition
"primary obligor"	"Contingent Obligations" definition
"protected purchaser"	2.08
"QIB"	Appendix A
"rate(s) of exchange"	12.14(d)
"Record Date"	Exhibit A
"Reference Period"	"Cumulative Credit" definition
"Refinancing Indebtedness"	4.03(b)(xiv)
"Refinancing Secured Indebtedness"	"Permitted Liens" definition
"Refunding Interests"	4.04(b)(ii)
"Registrar"	2.04(a)
"Relevant Calculation Period"	4.13(d)
"Restricted Payments"	4.04(a)
"Retired Interests"	4.04(b)(ii)
"Reversion Date"	4.20(c)
"Second Commitment"	4.06(b)
"Securities"	Preamble
"Securities Custodian"	Appendix A
"Security Document Order"	11.09(i)
"Successor Company"	5.01(a)(i)
"Successor Guarantor"	5.02(a)(i)
"Suspended Covenants"	4.20(a)
"Suspension Period"	4.20(d)

SECTION 1.03. Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) except as otherwise set forth in this Indenture, all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP as defined herein, and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP as defined herein;

(c) the word "or" is not exclusive;

(d) the word "including" means including without limitation, and any item or list of items set forth following the word "including", "include" or "includes" in this Indenture is set forth only for the purpose of indicating that, regardless of whatever other items are in the category in which such item or items are "included", such item or items are in such category and

shall not be construed as indicating the items in the category in which such item or items are "included" are limited to such item or items similar to such items;

(e) all references in this Indenture to any designated "Article", "Section", "Appendix", "Exhibit", definition and other subdivision are to the designated Article, Section, Appendix, Exhibit, definition and other subdivision, respectively, of this Indenture;

(f) all references in this Indenture to (i) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section, Appendix, Exhibit and other subdivision, respectively, and (ii) the term "this Indenture" means this Indenture as a whole, including the Appendix and Exhibits;

(g) words in the singular include the plural and words in the plural include the singular;

(h) unsecured Indebtedness shall not be deemed to be subordinate or junior to Secured Indebtedness merely by virtue of its nature as unsecured Indebtedness;

(i) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP as defined herein;

(j) the principal amount of any Preferred Stock shall be (i) the maximum liquidation value of such Preferred Stock or (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock, whichever is greater;

(k) "$" and "U.S. Dollars" each refers to United States dollars, or such other money of the United States of America that at the time of payment is legal tender for payment of public and private debts;

(l) the words "asset" or "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(m) unless otherwise specified, all references to an agreement or other document include references to such agreement or document as from time to time amended, restated, reformed, supplemented or otherwise modified in accordance with the terms thereof (subject to any restrictions on such amendments, restatements, reformations, supplements or modifications set forth herein);

(n) all references to any Person shall be construed to include such Person's successors and permitted assigns (subject to any restrictions on assignment, transfer or delegation set forth herein), and any reference to a Person in a particular capacity excludes such Person in other capacities; and

(o) the word "will" shall be construed to have the same meaning and effect as the word "shall".

ARTICLE 2.

THE SECURITIES

SECTION 2.01. Amount of Securities.

(a) Subject to the terms and conditions set forth in this Section 2.01, the aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to $150,000,000.

(b) On the Issue Date, the Issuer shall issue and deliver, in accordance with this Article 2, Original Securities in an aggregate principal amount of $70,000,000.

(c) As long as no Event of Default has occurred and is continuing, at any time and from time to time on or prior to September 27, 2021, the Issuer may issue and deliver, in accordance with this Section 2.01(c), upon five Business Days' written

notice to the Trustee (but, in any case, not during the period between the day immediately after the relevant Record Date immediately preceding the next related Payment Date and such Payment Date) and subject to the substantially concurrent receipt of payment therefor, additional Securities in an aggregate principal amount up to $80,000,000 (the "Additional Securities") without the consent of any Holder or holder of beneficial interests in the Original Securities. Such Additional Securities shall have the same terms as the Original Securities, except that the issue date, the stated interest rate, the issue price, the initial Payment Date and the initial date from which interest shall accrue may vary; *provided* that with respect to any Original Securities for which an Original Holder is a registered holder, (x) if the stated interest rate on any Additional Securities is higher than the then-current stated interest rate on the Original Securities, then such stated interest rate on the Original Securities held by such Original Holder shall be automatically increased to be the same as the stated interest rate on such Additional Securities or (y) if the issue price at which any Additional Securities are issued (excluding any adjustment required to reflect the intended allocation of interest payable on such Additional Securities on the next Payment Date in accordance with customary market practice) is less than 100% of the aggregate principal amount thereof, then the then-current stated interest rate on the Original Securities held by such Original Holder shall be automatically increased such that the stated interest rate on the Original Securities held by such Original Holder is the same as the per-annum yield to maturity of the Additional Securities as of the issue date of such Additional Securities. If either of the conditions set forth in clauses (x) and (y) of the preceding sentence are satisfied, the Issuer shall (i) deliver an Officer's Certificate to the Trustee (upon which the Trustee shall conclusively rely) stating the effective date of such increase, the interest rate applicable to the then-current interest period (which shall be calculated based on the number of days in such interest period prior to the effective date of such increase at the then-current interest rate and the number of days in such interest period following the effective date of such increase (and including such effective date) to, but excluding, the following Payment Date, at the increased interest rate) and the new interest rate applicable to such Original Securities following the succeeding Payment Date, (ii) request that the Trustee authenticate and make available for delivery upon a written order of the Issuer substitute Original Securities reflecting the increased stated interest rate thereon (and by its acceptance of the benefits of the Securities, each Holder agrees to cooperate with the Issuer and the Trustee in connection with the foregoing) and (iii) obtain a new CUSIP number for the

applicable Original Securities to the extent necessary to differentiate such Original Securities or any Additional Securities for fungibility or related purposes. If the Issuer determines that any such Additional Securities are not fungible for U.S. federal income tax purposes with the Original Securities or any other Additional Securities, such Additional Securities will be required to have a CUSIP number that is different than the CUSIP number of the Original Securities or such other Additional Securities, as the case may be. Notwithstanding anything to the contrary in this Indenture or the Securities, in no event shall the Original Securities be issued in the form of Global Securities until any adjustment pursuant to this Section 2.01(c) is no longer possible, as certified by the Issuer to the Trustee in an Officer's Certificate in connection with the authentication and delivery of such Global Securities. In no event shall the Trustee be responsible for calculating or verifying the Issuer's calculation of the interest rate on the Securities.

(d) The Securities, including any Additional Securities, shall be treated as a single class for all purposes under this Indenture, including directions provided to the Trustee pursuant to Section 6.05, waivers, amendments, redemptions and offers to purchase, and shall rank on a parity basis in right of payment and security.

SECTION 2.02. Form and Dating. Provisions relating to the Securities are set forth in Appendix A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Securities and the Trustee's certificate of authentication shall each be substantially in the form of Exhibit A, which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Issuer or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Security shall be dated the date of its authentication. The Securities shall be issued in the form of one or more registered notes, without interest coupons, and in minimum denominations of $250,000 and any integral multiple of $1,000 in excess thereof.

SECTION 2.03. Execution and Authentication. The Trustee shall authenticate and make available for delivery upon a written order of the Issuer signed by one Officer (a) Original Securities for original issue on the Issue Date in an aggregate principal amount of $70,000,000 and (b) subject to the terms and conditions set forth in Section 2.01(c), Additional Securities. Such order shall specify the amount of the Securities to be authenticated, the form in which the Securities are to be authenticated and the date on which the original issue of Securities is to be authenticated.

One Officer shall sign the Securities for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture.

The Trustee may appoint one or more authenticating agents reasonably acceptable to the Issuer to authenticate the Securities. Any such appointment shall be evidenced by an instrument signed by a Trust Officer, a copy of which shall be furnished to the Issuer. Unless limited by the terms of such appointment, an authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

SECTION 2.04. Registrar and Paying Agent.

(a) The Issuer shall maintain (i) an office or agency where Securities may be presented for registration of transfer or for exchange (the "Registrar") and (ii) an office or agency where Securities may be presented for payment (the "Paying Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Issuer may have one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrars. The term "Paying Agent" includes the Paying Agent and any additional paying agents. The Issuer initially appoints the Trustee as Registrar, Paying Agent and the Securities Custodian with respect to the Global Securities and as Registrar and Paying Agent with respect to the Definitive Securities.

(b) The Issuer may enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Issuer shall notify the Trustee of the name and address of any such agent. If the Issuer fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.06. The Issuer or any of its domestically organized Wholly Owned Restricted Subsidiaries may act as Paying Agent or Registrar. Upon the occurrence and during the continuance of any Event of Default as described in Section 6.01(e) or Section 6.01(f), the Trustee shall automatically be the Paying Agent.

(c) The Issuer may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided*, *however*, that no such removal shall become effective until (i) if applicable, acceptance of an appointment by a successor as evidenced by an appropriate agreement entered into by the Issuer and such successor Registrar or Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Issuer and the Trustee; *provided*, *however*, that the Trustee may resign as Paying Agent or Registrar only if the Trustee also resigns as Trustee in accordance with
Section 7.07.

(d) The Issuer shall promptly deliver to the Trustee (and any Holder upon written request) following the end of each calendar year a written notice specifying the amount of original issue discount, if any, accrued on the outstanding Securities for the previous calendar year, including daily rates and accrual periods, and such other information relating to original issue discount as may be required under the Code and applicable regulations, as amended from time to time.

SECTION 2.05. Paying Agent to Hold Money in Trust. On or prior to each due date of the principal of and interest on any Security, the Issuer shall deposit with each Paying Agent (or if the Issuer or a Wholly Owned Restricted Subsidiary is acting as Paying Agent, segregate and hold in trust for the benefit of the Persons entitled thereto) a sum sufficient to pay such principal and interest when so becoming due. The Issuer shall require each Paying Agent (other than the Trustee) to agree in writing that a Paying Agent shall act as an agent for or representative of the Trustee, and act solely as directed by the Trustee, in the administration of any Collection Account and hold in trust for the benefit of the Secured Parties (as defined in the Security Agreement) all money held by a Paying Agent or in any Collection Account for the payment of principal of and interest on the Securities or other Obligations under this Indenture, and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. If the Issuer or a Wholly Owned Restricted Subsidiary of the Issuer acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it in trust for the benefit of the Persons entitled thereto. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee will serve as Paying Agent if not otherwise so acting. Subject to compliance with the applicable terms and conditions of Section 4.13, the Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.05, a Paying Agent shall have no further liability for the money delivered to the Trustee.

SECTION 2.06. Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Issuer shall furnish, or cause the Registrar to furnish, to the Trustee, in writing at least five Business Days before each Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders. The Issuer shall also maintain a copy of such list of the names and addresses of Holders at its registered office.

SECTION 2.07. Transfer and Exchange. The Securities shall be issued in the form of one or more registered notes and shall be transferable only upon the surrender of a Security for registration of transfer and in compliance with Appendix A. When a Security is presented to the Registrar with a request to register a transfer, the Registrar shall register the transfer as requested if its requirements therefor are met. When Securities are presented to the Registrar with a request to exchange them for an equal principal amount of Securities of other denominations, the Registrar shall make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Securities at the Registrar's request. No service charge will be imposed by the Issuer, the Trustee or the Registrar for any registration of transfer or exchange of the Securities, but the Issuer may require payment from the Holder of a sum sufficient to pay all taxes (including transfer taxes), assessments or other governmental charges or duties in connection with any transfer or exchange pursuant to this Section 2.07. Upon any transfer or exchange, the Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. The Issuer shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or of any Securities for a period of 15 days prior to a selection of Securities to be redeemed.

Prior to the due presentation for registration of transfer of any Security, the Issuer, the Guarantors, the Trustee, the Paying Agent and the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest, if any, on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, any Guarantor, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

Any holder of a beneficial interest in a Global Security shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by (a) the Holder of such Global Security (or its agent) or (b) any holder of a beneficial interest in such Global Security, and that ownership of a beneficial interest in such Global Security shall be required to be reflected in a book entry.

All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

SECTION 2.08. Replacement Securities. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Issuer shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Holder (a) satisfies the Issuer or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Issuer or the Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Issuer and the Trustee. If required by the Trustee or the Issuer, such Holder shall furnish an indemnity bond sufficient in the judgment of the Trustee to protect the Trustee, the Paying Agent and the Registrar (if the Registrar also serves as the Paying Agent) and of the Issuer to protect the Issuer, each Guarantor, the Paying Agent and the Registrar (if the Trustee is not serving in the role of Paying Agent or Registrar, as the case may be) from any loss that any of them may suffer if a Security is replaced. The Issuer and the Trustee may charge the Holder for their expenses in replacing a Security (including attorneys' fees and disbursements in replacing such Security). In the event any such mutilated, lost, destroyed or wrongfully taken Security has become or is about to become due and payable, the Issuer in its discretion may pay such Security instead of issuing a new Security in replacement thereof.

Every replacement Security is an additional obligation of the Issuer and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Securities duly issued hereunder.

The provisions of this Section 2.08 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, lost, destroyed or wrongfully taken Securities.

SECTION 2.09. Outstanding Securities. Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation and those described in this Section 2.09 as not outstanding. Subject to Section 12.04, a Security does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Security.

If a Security is replaced pursuant to Section 2.08 (other than a mutilated Security surrendered for replacement), it ceases to be outstanding unless the Trustee and the Issuer receive proof satisfactory to them that the replaced Security is held by a protected purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.08.

If the principal amount of any Securities (or portions thereof) is considered paid under Section 4.01, such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

If a Paying Agent segregates and holds in trust, in accordance with this Indenture, on a Redemption Date or Stated Maturity in respect of the Securities money sufficient to pay all principal and interest payable on that date with respect to the Securities (or portions thereof) to be redeemed or maturing, as the case may be, and no Paying Agent is prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture, then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

SECTION 2.10. Temporary Securities. In the event that Definitive Securities are to be issued under the terms of this

Indenture, until such Definitive Securities are ready for delivery, the Issuer may prepare and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Issuer considers appropriate for temporary Securities. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Securities and make them available for delivery in exchange for temporary Securities upon surrender of such temporary Securities at the office or agency of the Issuer, without charge to the Holder. Until such exchange, temporary Securities shall be entitled to the same rights, benefits and privileges as Definitive Securities under this Indenture.

SECTION 2.11. Cancellation. The Issuer at any time may deliver Securities to the Trustee for cancellation. The Registrar and each Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment or cancellation. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and shall dispose of canceled Securities in accordance with its customary procedures. Certification of the destruction of all cancelled Securities shall be delivered to the Issuer. The Issuer may not issue new Securities to replace Securities it has redeemed, paid or delivered to the Trustee for cancellation. The Trustee shall not authenticate Securities in place of canceled Securities other than pursuant to the terms of this Indenture.

SECTION 2.12. Defaulted Interest. If the Issuer defaults in a payment of interest on the Securities, the Issuer shall pay the defaulted interest then borne by the Securities (plus interest on

such defaulted interest to the extent lawful) in any lawful manner. The Issuer may pay the defaulted interest to the Persons who are Holders on a subsequent special record date. The Issuer shall fix or cause to be fixed any such special record date and payment date and shall promptly provide or cause to be provided to each affected Holder a written notice that states the special record date, the payment date and the amount of defaulted interest to be paid. The special record date for the payment of such defaulted interest shall not be more than 15 days and shall not be less than 10 days prior to the proposed payment date and shall not be less than 10 days after the receipt by the Trustee of the notice of the proposed payment.

SECTION 2.13. CUSIP Numbers, ISINs, etc. The Issuer in issuing the Securities may use CUSIP numbers, ISINs and "Common Code" numbers (if then generally in use) and, if so, the Trustee shall use CUSIP numbers, ISINs and "Common Code" numbers in notices (including notices of redemption) as a convenience to Holders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness of such numbers, either as printed on the Securities or as contained in any notice that reliance may be placed only on the other identification numbers printed on the Securities and that any such notice shall not be affected by any defect in or omission of such numbers. The Issuer shall advise the Trustee of any change in the CUSIP numbers, ISINs and "Common Code" numbers.

SECTION 2.14. Calculation of Principal Amount of Securities. The aggregate principal amount of the Securities, at any date of determination, shall be the aggregate principal amount of the Securities outstanding at such date of determination. With respect to any matter requiring consent, waiver, approval or other action of the Holders of a specified percentage of the principal amount of all the Securities, such percentage shall be calculated, on the relevant date of determination, by dividing (a) the principal amount, as of such date of determination, of Securities, the Holders of which have so consented, waived, approved or taken other action by (b) the aggregate principal amount, as of such date of determination, of the Securities then outstanding, in each case, as determined in accordance with the preceding sentence, Section 2.09 and Section 12.04. Any such calculation made pursuant to this Section 2.14 shall be made by the Issuer and delivered to the Trustee pursuant to an Officer's Certificate. The Issuer and the Trustee agree that any action of the Holders may be evidenced by the Depository applicable procedures or by such other procedures as the Issuer and Trustee may agree.

SECTION 2.15. Statement to Holders. After the end of each calendar year but not later than the latest date permitted by applicable law, the Trustee shall (or shall instruct any Paying Agent to) furnish to each Person who at any time during such calendar year was a Holder a statement (for example, a Form 1099 or any other means required by applicable law) prepared by the Trustee

containing the interest and original issue discount paid (based solely upon information provided by the Issuer) with respect to the Securities for such calendar year or, in the event such Person was a Holder during only a portion of such calendar year, for the applicable portion of such calendar year, and such other items as may be (a) required pursuant to the then-applicable regulations under the Code or (b) readily available to the Trustee and that a Holder shall reasonably request as necessary for the purpose of such Holder's preparation of its U.S. federal income or other tax returns. In the event that any such information has been provided by any Paying Agent directly to such Person through other tax-related reports or otherwise, the Trustee in its capacity as Paying Agent shall not be obligated to comply with such request for information.

ARTICLE 3.

REDEMPTION

SECTION 3.01. Redemption. The Securities may be redeemed by the Issuer at its option, in whole, or from time to time in part, on any Business Day specified by the Issuer, subject to the conditions and at the redemption prices set forth in Paragraph 5 of the form of Security set forth in Exhibit A, which is hereby incorporated by reference and made a part of this Indenture, together with accrued and unpaid interest to the Redemption Date.

SECTION 3.02. Applicability of Article. Redemption of Securities at the election of the Issuer or otherwise, as permitted or required by any provision of this Indenture, shall be made in accordance with such provision and this Article 3.

SECTION 3.03. Notices to Trustee. If the Issuer elects to redeem Securities pursuant to the optional redemption provisions of Paragraph 5 of the Security, it shall notify the Trustee and the Holders in writing of (i) the Section of this Indenture and the Paragraph of the Security (if any) pursuant to which the redemption shall occur, (ii) the Redemption Date, (iii) the principal amount of Securities to be redeemed and (iv) the redemption price (if then ascertainable).

The Issuer shall provide written notice to the Trustee provided for in this Section 3.03 at least 10 days but not more than 60 days before a Redemption Date if the redemption is pursuant to Paragraph 5 of the Security. If fewer than all the Securities are to be redeemed, the record date relating to such redemption shall be selected by the Issuer and given to the Trustee, which record date shall be not fewer than 15 days after the date of notice to the Trustee. Any such notice may be canceled at any time prior to written notice of such redemption being provided to any Holder and shall thereby be void and of no effect.

SECTION 3.04. Selection of Securities to Be Redeemed. In the case of any partial redemption, and if the Securities are Global Securities held by the Depository, the particular Securities or portions thereof to be redeemed shall be allocated on a pro rata pass-through distribution of principal basis in accordance with Depository procedures; provided, that, so long as the Securities are held in book-entry form, the selection for redemption of such Securities shall be made in accordance with the operational arrangements of the Depository then in effect, and if the Depository operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the Securities will be selected for redemption, in accordance with Depository procedures, by lot. If the Securities are not Global Securities held by the Depository, selection of the Securities for redemption will be made by the Trustee on a pro rata basis to the extent practicable or such other method the Trustee deems fair and appropriate; *provided* that no Securities of $250,000 or less shall be redeemed in part. The Trustee shall make the selection from outstanding Securities not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than $250,000. Securities and portions of them the Trustee selects shall be in amounts of $250,000 or any integral multiple of $1,000 in excess thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall notify the Issuer promptly of the Securities or portions of Securities to be redeemed and the principal amount thereof.

SECTION 3.05. Notice of Optional Redemption.

(a) At least 10 days but not more than 60 days before a Redemption Date pursuant to Paragraph 5 of the Security, the Issuer shall provide or cause to be provided a written notice of redemption to each Holder whose Securities are to be redeemed (with a copy to the Trustee).

Any such notice shall identify the Securities to be redeemed and shall state:

(i) the Redemption Date;

(ii) the redemption price (or manner of calculation thereof if not then known) and the amount of accrued and unpaid interest to the Redemption Date;

(iii) the name and address of the Paying Agent;

(iv) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price, plus accrued and unpaid interest;

(v) that all outstanding Securities are to be redeemed or, if fewer than all the outstanding Securities are to be redeemed, the certificate numbers and principal amounts of the particular Securities to be redeemed, the aggregate principal amount of Securities to be redeemed and the aggregate principal amount of Securities to be outstanding after such partial redemption;

(vi) that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Securities (or portion thereof) called for redemption ceases to accrue on and after the Redemption Date;

(vii) the CUSIP number, ISIN or "Common Code" number, if any, printed on the Securities being redeemed;

(viii) that no representation is made as to the correctness or accuracy of the CUSIP number, ISIN or "Common Code" number, if any, listed in such notice or printed on the Securities; and

(ix) such other matters as the Issuer deems desirable or appropriate.

Notice of any redemption pursuant to this Section 3.05 may, at the Issuer's direction, be revocable and be subject to one or more conditions precedent.

(b) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense. In such event, the Issuer shall provide the Trustee a notice containing the information required by this Section 3.05 at least five Business Days (unless the Trustee consents to a shorter period) prior to the date such notice is to be provided to Holders and such notice may not be canceled but may be subject to such conditions precedent as shall be set forth in such notice.

SECTION 3.06. Effect of Notice of Redemption. Once written notice of redemption is provided in accordance with Section 3.05, Securities called for redemption become due and payable on the Redemption Date and at the redemption price stated in the notice, subject to the satisfaction or waiver of any conditions precedent in the notice of redemption. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price stated in the notice, plus accrued and unpaid interest, to, but not including, the Redemption Date; *provided*, *however*, that if the Redemption Date is after a Record Date and on or prior to the related Payment Date, the accrued and unpaid interest shall be payable to the Holder of the redeemed Securities registered on such Record Date. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

SECTION 3.07. Deposit of Redemption Price. With respect to any Securities, prior to 12:00 p.m., New York City time, on the Redemption Date (*provided* that the Issuer shall have confirmed in writing to the Trustee the satisfaction or waiver of all

conditions to such redemption pursuant to Section 3.05(a)), the Issuer shall deposit with the Paying Agent (or, if the Issuer or a Wholly Owned Restricted Subsidiary is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the redemption price of and accrued and unpaid interest on all Securities or portions thereof to be redeemed on that date other than Securities or portions of Securities called for redemption that have been delivered by the Issuer to the Trustee for cancellation. On and after the Redemption Date, interest shall cease to accrue on Securities or portions thereof called for redemption so long as the Issuer has deposited with the Paying Agent funds sufficient to pay the principal of, and premium (if any), plus accrued and unpaid interest on, the Securities to be redeemed, unless the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture. Upon redemption of any Securities by the Issuer, such redeemed Securities will be cancelled.

SECTION 3.08. Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Issuer shall execute and the Trustee shall authenticate for the Holder (at the Issuer's expense) a new Security equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE 4.

COVENANTS

SECTION 4.01. Payment of Securities.

(a) The Issuer shall promptly pay the principal of and interest on the Securities on the dates and in the manner provided in the Securities and in this Indenture. An installment of principal or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds as of 12:00 p.m. New York City time money sufficient to pay all principal and interest then due and the Trustee or the Paying Agent, as the case may be, is not prohibited from paying such money to the Holders on that date pursuant to the terms of this Indenture. The Issuer shall pay interest on overdue principal at the rate specified therefor in the Securities, and the Issuer shall pay interest on overdue installments of interest at the same rate borne by the Securities to the extent lawful.

(b) On each Payment Date, commencing on June 30, 2022, or on the succeeding Business Day if any such date is not a Business Day, the Issuer shall pay to the Holders (on a pro rata basis among the Definitive Securities and the Global Securities (and, as among the Holders of Definitive Securities, on a pro rata basis, and as among the Holders of Global Securities, on a pro rata distribution of principal basis, as nearly as practicable (subject to the applicable procedures of the Depository))) an installment of principal of the Securities in accordance with the table below corresponding to the applicable Payment Date:

Payment Date	Amount
June 30, 2022	$2,020,073
September 30, 2022	$4,013,991
December 31, 2022	$2,312,912
March 31, 2023	$4,007,983
June 30, 2023	$2,099,015
September 30, 2023	$4,372,803
December 31, 2023	$2,236,400
March 31, 2024	$4,262,994
June 30, 2024	$2,446,020
September 30, 2024	$4,646,390
December 31, 2024	$2,589,319
March 31, 2025	$4,676,344

June 30, 2025	$2,761,693
September 30, 2025	$5,065,125
December 31, 2025	$2,966,438
March 31, 2026	$4,985,642
June 30, 2026	$3,117,153
September 30, 2026	$5,488,852
December 31, 2026	$3,253,303
March 31, 2027	All remaining outstanding principal of the Securities at such date

On the date of any issuance of Additional Securities, each amount in the table above will be increased by an amount (rounded to two decimal places) equal to (i) a quotient, the numerator of which is such amount in the table above and the denominator of which is the aggregate principal amount of Notes issued prior to such date of issuance of Additional Securities, multiplied by (ii) the aggregate principal amount of Additional Securities issued on such date. A table reflecting the revised amounts as calculated in accordance with the foregoing will be set forth in a supplemental indenture on the date of issuance of any Additional Securities (which supplemental indenture may be the supplemental indenture pursuant to which such Additional Securities are issued). The revised amounts set forth in such supplemental indenture shall be calculated by the Issuer and will be deemed to be conclusive absent manifest error.

In the event that there shall have been any partial redemption or repurchase of the Securities, the amounts set forth in the table above (as they may have been previously increased upon the issuance of Additional Securities or reduced upon a prior partial repurchase or redemption) across from a date on or after the date of any partial redemption or repurchase shall be reduced on a pro rata basis among the Definitive Securities and the Global Securities (and, as

among the Holders of Definitive Securities, on a pro rata basis, and as among the Holders of Global Securities, on a pro rata distribution of principal basis, as nearly as practicable (subject to the applicable procedures of the Depository)), by an amount equal to the aggregate amount of Securities so redeemed or repurchased.

SECTION 4.02. Reports and Other Information.

(a) Annual Financials.

(i) The Issuer shall deliver to the Trustee, as soon as available, but in any event within 120 days (or such earlier date on which the Issuer is required to file a Form 10-K under the Exchange Act (after giving effect to any extension provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), if applicable) after the end of each fiscal year of the Issuer, beginning with the fiscal year ending December 31, 2020, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all prepared in accordance with GAAP, with such consolidated financial statements to be audited and accompanied by (i) a report and opinion of the Issuer's independent certified public accounting firm of recognized standing in the United States (which report and opinion shall be prepared in accordance with GAAP), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer as of the dates and for the periods specified in accordance with GAAP, and (ii) (if and only if the Issuer is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm) an attestation report of such independent certified public accounting firm as to the Issuer's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; *provided*, *however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above with the SEC via the EDGAR system (or any successor system

adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor). Such consolidated financial statements shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied.

(ii) The Issuer shall deliver to the Trustee, as soon as available, but in any event within 120 days (or such earlier date on which the Issuer is required to file a Form 10-K under the Exchange Act (after giving effect to any extension provided by
Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), if applicable) after the end of each fiscal year of the Issuer, beginning with the fiscal year
ending December 31, 2020, historical data as to production, capacity and efficiency

performance by the Issuer pursuant to each applicable Servicing Agreement in the aggregate, including any liability on the part of the Issuer for any warranty, claim or setoff thereunder, including an explanatory note and a proposed resolution time frame for any such liability, for the preceding fiscal year and the quarter ending such fiscal year.

(b) Quarterly Financials.

(i) The Issuer shall deliver to the Trustee, as soon as available, but in any event within 45 days (or such earlier date on which the Issuer is required to file a Form 10-Q under the Exchange Act (after giving effect to any extension provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), if applicable) after the end of each of the first three fiscal quarters of each fiscal year of the Issuer, beginning with the fiscal quarter ending March 31, 2020, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income and cash flows for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of the Issuer's fiscal year, setting forth in each case in comparative form the figures for the comparable period or periods in the previous fiscal year (which prior period figures will not reflect any later adjustments or year-end audit adjustments) for, all prepared in accordance with GAAP; *provided*, *however*, that the Issuer shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available for free within the time period specified above with the SEC via the EDGAR system (or any successor system adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor). Such consolidated financial statements shall be certified by a Financial Officer as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of the Issuer and its Subsidiaries as of the dates and for the periods specified in accordance with GAAP consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 4.02(a), subject to normal year-end audit adjustments and the absence of footnotes. Notwithstanding the foregoing, if the Issuer or any of its Subsidiaries have made an acquisition, the financial statements with respect to an acquired entity need not be included in the consolidated quarterly financial statements required to be delivered pursuant to this Section 4.02(b) until the first date upon which such quarterly financial statements are required to be so delivered that is at least 90 days after the date such acquisition is consummated.

(ii) The Issuer shall deliver to the Trustee, as soon as available, but in any event within 45 days (or such earlier date on which the Issuer is required to file a Form 10-Q under the Exchange Act (after giving effect to any extension provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), if applicable) after the end of each of the first three fiscal quarters of each fiscal year of the Issuer, beginning with the fiscal quarter ending March 31, 2020, historical data as to production, capacity and efficiency performance by the Issuer pursuant to each applicable Servicing Agreement in the aggregate, including any liability on the part of the Issuer for

any warranty, claim or set-off thereunder, including an explanatory note and a proposed resolution time frame for any such liability, for the preceding quarter.

(c) Compliance with Indenture. The Issuer shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Issuer, commencing with respect to the fiscal year ending December 31, 2020, an Officer's Certificate certifying that to such Officer's knowledge there is no Default or Event of Default that has occurred and is continuing or, if such Officer does know of any such Default or Event of Default, such Officer shall include in such certificate a description of such Default or Event of Default and its status with particularity.

(d) Information During Event of Default. The Issuer shall deliver to the Trustee and the Holders, promptly, such additional information regarding the business or financial affairs of the Issuer or any of its Subsidiaries, or compliance with the terms of this Indenture, as the Trustee, any Holder or any holder of beneficial interests in the Securities may from time to time reasonably request during the existence of any Event of Default (subject to reasonable requirements of confidentiality, including requirements imposed by law or contract; and *provided* that the Issuer shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege).

(e) Information Filed with SEC or Exchanges. The Issuer shall deliver to the Trustee, promptly after the same are filed with the SEC (giving effect to any extension provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), copies of any periodic and other reports, registration statements and other materials filed by the Issuer or any of its Subsidiaries with the SEC and not otherwise required to be delivered to the Trustee pursuant to this Indenture (excluding, for the avoidance of doubt, any documents or reports (or portions thereof) that are subject to confidential treatment and any correspondence with the SEC); *provided*, *however*, that the Issuer shall be deemed to have made such delivery of such reports or other materials if such reports or other materials shall have been filed or furnished within the time period specified above with the SEC on the EDGAR system (or any successor system adopted by the SEC); *provided*, *further*, *however*, that the Trustee shall have no obligation whatsoever to determine whether or not such reports or other materials have been filed pursuant to EDGAR (or its successor).

(f) Rule 144A Information. So long as the Issuer is not subject to either Section 13 or 15(d) of the Exchange Act, the Issuer shall, so long as any Securities shall constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act, upon the written request of any Holder of Securities or beneficial owner or prospective purchaser of Securities, deliver to such Holder, beneficial owner or prospective purchaser of the Securities, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act, as such rule may be amended from time to time.

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) Limitations. In no event shall any of the reports or financial statements required to be delivered by this Section 4.02 be required to contain separate financial statements for Guarantors that would be required under Section 3-10 of Regulation S-X promulgated by the SEC or any financial statements required by Rule 3-16 of Regulation S-X promulgated by the SEC.

(k) Trustee Matters. Delivery of information under this Section 4.02 to the Trustee shall be for informational purposes only, and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from any information contained therein, including compliance by the Issuer or any of its Subsidiaries with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates or certificates or statements delivered to the Trustee pursuant to Section 4.02(c)). Neither the Issuer nor the Guarantors shall be obligated to deliver any confidential reports or other confidential information to any Holder (or any holder of beneficial interests in the Securities) who has not executed a Confidentiality Agreement in accordance with the terms of this Indenture. The Issuer shall provide the Trustee with a list of such Holders (or holders of beneficial interests in the Securities) and shall update such list after the execution and delivery to the Issuer of a Confidentiality Agreement by any Person not already party to such a Confidentiality Agreement with the Issuer. The Trustee shall have no duty to monitor the IntraLinks site.

SECTION 4.03. Limitation on Incurrence of Indebtedness and Issuance of Disqualified Stock and Preferred Stock.

(a) (i) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, Incur any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock; and (ii) the Issuer shall not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; *provided*, *however*, that the Issuer and any Restricted Subsidiary may Incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may issue shares of Preferred Stock, in each case if the Consolidated Leverage Ratio of the Issuer would have been less than or equal to 4.0 to 1.0 determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been Incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of the period for which the Adjusted EBITDA component of the Consolidated Leverage Ratio calculation is being measured.

(b) The limitations set forth in Section 4.03(a) shall not apply to:

(i) the Incurrence by the Issuer or any Restricted Subsidiary of Indebtedness under a Credit Agreement and the issuance and creation of letters of credit and bankers' acceptances or similar instruments thereunder (with letters of credit and bankers' acceptances or similar instruments being deemed to have a principal amount equal to the face amount thereof) in the aggregate principal amount outstanding at any one time not to exceed $25,000,000;

(ii) the Incurrence by any of the Issuer and the Guarantors of Indebtedness represented by the Securities and the Guarantees;

(iii) (a) Indebtedness existing on the Issue Date (other than Indebtedness described in clauses (i) and (ii) of this Section 4.03(b)) and (b) the 5% Convertible Notes and the 6% Convertible Notes to the extent not covered by clause (a);

(iv) Indebtedness (including Capitalized Lease Obligations) Incurred by the Issuer or any Restricted Subsidiary, and Disqualified Stock issued by the Issuer or any Restricted Subsidiary or Preferred Stock issued by any Restricted Subsidiary, (1) to finance (whether prior to or within 365 days after) the acquisition, lease, construction, repair, replacement, installation, or improvement of property (real or personal) or equipment (whether through the direct purchase of assets or the Capital Stock of any Person owning such assets) or (2) consisting of the deferred purchase price of property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Indebtedness does not exceed the anticipated useful life of the property being financed, in each case, that (A) is secured, if at all, only by the assets so acquired, leased, constructed, repaired, replaced, installed or improved together with additions, accessions, improvements, parts and attachments thereto and the proceeds thereof and (B) is in an aggregate principal amount that, when aggregated with the principal amount of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding that was Incurred pursuant to this clause (iv), does not exceed the greater of $10,000,000 and 1.0% of Total Assets;

(v) Indebtedness Incurred by the Issuer or any of its Restricted Subsidiaries constituting reimbursement obligations with respect to letters of credit, bank guarantees or similar instruments issued or indemnification obligations incurred, in each case in the ordinary course of business, including letters of credit, bank guarantees, or similar instruments in respect of workers' compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, letters of credit in support of customer leasing obligations or any residual lease interest of the Issuer or any Restricted Subsidiary, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from Governmental Authorities, or other Indebtedness with respect to reimbursement type obligations regarding workers' compensation claims, employee benefits or requirements of Governmental Authorities;

(vi) Indebtedness arising from agreements of the Issuer or a Restricted Subsidiary providing for indemnification, adjustment of purchase price, earn-outs, or similar obligations, in each case, Incurred or assumed in connection with any acquisition or disposition of any business or any assets of the Issuer or any business, assets or Capital Stock of a Subsidiary of the Issuer in accordance with the terms of this Indenture, other than guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition;

(vii) Indebtedness of the Issuer to a Restricted Subsidiary; *provided* that any such Indebtedness owed to a Restricted Subsidiary that is not a Guarantor is subordinated in right of payment to the Obligations of the Issuer under the Securities (it being understood that such subordination need not include payment blockage rights prior to a bankruptcy of the Issuer or a Guarantor); *provided*, *further*, that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (vii);

(viii) shares of Preferred Stock of a Restricted Subsidiary issued to the Issuer or another Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such other Restricted Subsidiary that holds such shares of Preferred Stock of such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock (except to the Issuer or another Restricted Subsidiary) shall be deemed, in each case, to be an issuance of shares of Preferred Stock not permitted by this clause (viii);

(ix) Indebtedness of a Restricted Subsidiary to the Issuer or another Restricted Subsidiary; *provided*, that any such Indebtedness owed to a Restricted Subsidiary that is not a Guarantor is subordinated in right of payment to the Obligations of the Issuer under the Securities or the Guarantors under the Guarantees (it being understood that such subordination need not include payment blockage rights prior to a bankruptcy of the Issuer or a Guarantor); *provided*, *further,* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary of the Issuer holding such Indebtedness ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness (except to the Issuer or another Restricted Subsidiary of the Issuer or any pledge of such Indebtedness constituting a Permitted Lien) shall be deemed, in each case, to be an Incurrence of such Indebtedness not permitted by this clause (ix);

(x) Hedging Obligations of the Issuer or any Restricted Subsidiary entered into in the ordinary course of business that are not incurred for speculative purposes but: (1) for the purpose of fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (2) for the purpose of fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (3) for the purpose of fixing or hedging commodity price risk with respect to any commodity purchases or sales;

(xi) obligations (including reimbursement obligations with respect to any related letters of credit, banker's acceptances, bank guarantees or similar instruments) in respect of self-insurance, performance, bid, appeal, surety bonds and similar bonds, security deposits, and completion guarantees and similar obligations provided by the Issuer or any Restricted Subsidiary in the ordinary course of business or consistent with past practice or industry practice;

(xii) Indebtedness, Disqualified Stock or Preferred Stock of the Issuer or any Restricted Subsidiary not otherwise permitted under this Indenture in an aggregate principal amount or liquidation preference, which when aggregated with the principal amount or liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and Incurred pursuant to this clause (xii), does not exceed the greater of $10,000,000 and 1.0% of Total Assets at any one time outstanding (it being understood that any Indebtedness Incurred pursuant to this clause (xii) shall cease to be deemed Incurred or outstanding for purposes of this clause (xii) but shall be deemed Incurred for purposes of Section 4.03(a) from and after the first date on which the Issuer or the Restricted Subsidiary, as the case may be, could have Incurred such Indebtedness under Section 4.03(a) without reliance upon this clause (xii));

(xiii) any guarantee by the Issuer or a Restricted Subsidiary of Indebtedness or other obligations of the Issuer or any other Restricted Subsidiary so long as, in the case of a guarantee of Indebtedness, the Incurrence of such Indebtedness Incurred by the Issuer or such other Restricted Subsidiary is permitted under the terms of this Indenture;

(xiv) the Incurrence by the Issuer or any Restricted Subsidiary of Indebtedness, Preferred Stock or Disqualified Stock of the Issuer or a Restricted Subsidiary that serves to refund, refinance, replace, renew or defease any Indebtedness Incurred or Preferred Stock or Disqualified Stock issued as permitted under Section 4.03(a) and clauses (ii), (iii), (iv), (xii), (xiv), (xv), (xviii),

(xx) and (xxviii) of this Section 4.03(b) or any Indebtedness, Preferred Stock or Disqualified Stock Incurred to so refund, refinance, replace or renew such Indebtedness, Preferred Stock or Disqualified Stock, including any additional Indebtedness, Preferred Stock or Disqualified Stock Incurred to pay premiums (including tender premiums and paid-in-kind interest), fees, expenses and defeasance costs in connection therewith (subject to the following proviso, "Refinancing Indebtedness") prior to its respective maturity; *provided* that such Refinancing Indebtedness:

(1) has a Weighted Average Life to Maturity at the time such Refinancing Indebtedness is Incurred that is not less than the remaining Weighted Average Life to Maturity of the Indebtedness or Disqualified Stock being refunded, refinanced, replaced, renewed or defeased;

(2) has a Stated Maturity that is not earlier than the Stated Maturity of the Indebtedness being refunded, refinanced, replaced or renewed;

(3) to the extent such Refinancing Indebtedness refunds, refinances or defeases (a) Indebtedness by its express terms subordinated in right of payment to the Securities or a Guarantee, as applicable, such Refinancing Indebtedness is subordinated by its express terms in right of payment to the Securities or a Guarantee to substantially the same extent as such Indebtedness being refunded, refinanced, replaced, renewed or defeased, as applicable (as determined by the Issuer in good faith), or (b) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness is Disqualified Stock or Preferred Stock, respectively;

(4) is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refunded, refinanced, replaced, renewed or defeased plus accrued and unpaid interest, premiums (including tender premiums and paid-in-kind interest), fees, expenses and defeasance costs Incurred in connection with such refinancing;

(5) shall not include Indebtedness of the Issuer or a Restricted Subsidiary that refunds, refinances, replaces, renews or defeases Indebtedness of an Unrestricted Subsidiary; and

(6) in the case of any Refinancing Indebtedness Incurred to refund, refinance, replace, renew or defease Indebtedness outstanding under clause (iv), (xii), (xviii) or
(xx) of this Section 4.03(b), shall be deemed to have been Incurred and to be outstanding under such clause (iv), (xii), (xviii) or (xx) of this Section 4.03(b), as applicable, and not this clause (xiv) for purposes of determining amounts outstanding under such clause (iv), (xii), (xviii) or (xx) of this Section 4.03(b);

(xv) Indebtedness, Preferred Stock or Disqualified Stock of (x) the Issuer or any Restricted Subsidiary incurred to finance an acquisition of any property or assets or (y) Persons that are acquired by the Issuer or any Restricted Subsidiary or merged, consolidated or amalgamated with or into the Issuer or a Restricted Subsidiary in accordance with the terms of this Indenture; *provided* that, in each case, immediately after giving effect to such acquisition or merger, consolidation or amalgamation:

(1) the Issuer would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to the Consolidated Leverage Ratio test set forth in Section 4.03(a); or

(2) the Consolidated Leverage Ratio would be less than immediately prior to such acquisition or merger, consolidation or amalgamation;

(xvi) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument, including electronic transfers, wire transfers and commercial card payments, in each case, drawn against insufficient funds in the ordinary course of business; *provided* that such Indebtedness is extinguished within ten Business Days after its Incurrence;

(xvii) Indebtedness of the Issuer or any Restricted Subsidiary supported by a letter of credit, bank guarantee or similar instrument issued pursuant to a Credit Agreement, in a principal amount not in excess of the stated amount of such letter of credit, bank guarantee or similar instrument to the extent such letter of credit, bank guarantee or similar instrument issued pursuant to such Credit Agreement is otherwise permitted by this Section 4.03;

(xviii) Contribution Indebtedness;

(xix) Indebtedness of the Issuer or any Restricted Subsidiary consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(xx) Indebtedness of the Issuer or any Restricted Subsidiary Incurred in connection with an Investment in, or representing guarantees of Indebtedness of, joint ventures of the Issuer or any Restricted Subsidiary in an aggregate principal amount, at any one time outstanding, not to exceed the greater of $10,000,000 or 1.0% of Total Assets at the time of Incurrence;

(xxi) Indebtedness of the Issuer or any Restricted Subsidiary issued to (x) any joint venture (regardless of the form of legal entity) that is not a Subsidiary or (y) any Unrestricted Subsidiary, in each case arising in the ordinary course of business in connection with the treasury cash management operations (including with respect to intercompany self-insurance arrangements) of the Issuer or any Restricted Subsidiary;

(xxii) Subordinated Indebtedness of the Issuer or any Guarantor with a Stated Maturity and, if applicable, a First Amortization Date no earlier than 91 days following the Stated Maturity of the Securities;

(xxiii) Capitalized Lease Obligations Incurred by the Issuer in connection with a Sale/Leaseback Transaction in respect of a Bloom Energy Server entered into with a third party investor or financing partner under the Issuer's managed services (or equivalent) program having a structure that is materially consistent with that used in the Issuer's past practice;

(xxiv) Indebtedness Incurred by the Issuer that is convertible into Equity Interests of the Issuer with a Stated Maturity and, if applicable, a First Amortization Date no earlier than 91 days following the Stated Maturity of the Securities, in an aggregate principal amount, at any time outstanding, not to exceed $150,000,000 at the time of Incurrence;

(xxv) Indebtedness owed on a short-term basis of no longer than 30 days to banks and other financial institutions Incurred in the ordinary course of business of the Issuer and its Restricted Subsidiaries with such banks or financial institutions that arises in connection with Cash Management Services provided to the Issuer and its Restricted Subsidiaries;

(xxvi) guarantees to suppliers or licensors (other than guarantees of Indebtedness) in the ordinary course of business;

(xxvii) Indebtedness of the Issuer or any Restricted Subsidiary to the extent that the net proceeds thereof are promptly deposited to defease the Securities as set forth in Article 8; and

(xxviii)Indebtedness of Foreign Subsidiaries of the Issuer incurred not to exceed at any one time outstanding, and together with any other Indebtedness incurred under this

clause (xxviii), the greater of $10,000,000 and 2.5% of the Total Assets of the Foreign Subsidiaries.

(c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness incurred pursuant to and in compliance with, this Section 4.03:

(i) in the event that an item of Indebtedness, Preferred Stock or Disqualified Stock (or any portion thereof) meets the criteria of more than one of the categories of permitted Indebtedness described in clauses (i) through (xxviii) of Section 4.03(b) or is entitled to be Incurred pursuant to Section 4.03(a), the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such item of Indebtedness, Preferred Stock or Disqualified Stock (or any portion thereof) in any manner that complies with this Section 4.03 and shall only be required to include the amount and type of such Indebtedness once;

(ii) Guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that is otherwise included in the determination of a particular amount of Indebtedness shall not be included;

(iii) if obligations in respect of letters of credit, bank guarantees or similar instruments are Incurred pursuant to a Credit Agreement and are being treated as Incurred pursuant to Section 4.03(b)(i) and the letters of credit, bank guarantees or similar instruments relate to other Indebtedness, then such other Indebtedness shall not be included;

(iv) the principal amount of any Disqualified Stock of the Issuer or a Restricted Subsidiary, or Preferred Stock of a Restricted Subsidiary that is not a Guarantor, will be equal to the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the liquidation preference thereof; and

(v) the amount of Indebtedness issued at a price that is less than the principal amount thereof will be equal to the amount of the liability in respect thereof determined in accordance with GAAP.

(d) Accrual of interest, accrual of dividends, the accretion of accreted value or the amortization of debt discount, the payment of interest in the form of additional Indebtedness and the payment of dividends in the form of additional shares of Preferred Stock or Disqualified Stock are deemed not to constitute an Incurrence of Indebtedness for purposes of this Section 4.03 and shall not be included in the determination of the amount of such Indebtedness. The amount of any Indebtedness outstanding as of any date shall be (i) in the case of the guarantee by a specified Person of Indebtedness of another Person, the maximum liability to which the specified Person may be subject upon the occurrence of the contingency giving rise to the obligation and (ii) in the case of Indebtedness of others guaranteed solely by means of a Lien on any asset or property of the Issuer or any Restricted Subsidiary (and not to their other assets or properties generally), the lesser of (x) the Fair Market Value of such asset or property on the date

on which such Indebtedness is Incurred and (y) the amount of the Indebtedness so secured. For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a non-U.S. currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was Incurred, in the case of term debt, or first committed or first Incurred (whichever yields the higher U.S. dollar equivalent), in the case of revolving credit debt; *provided* that if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced plus the amount of any reasonable premium (including reasonable tender premiums), defeasance costs and any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness.

(e) Unsecured Indebtedness shall not be treated as subordinated or junior to secured Indebtedness merely because it is unsecured, and senior Indebtedness shall not be treated as subordinated or junior to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral.

(f) Notwithstanding any other provision of this Section 4.03, the maximum amount of Indebtedness that the Issuer or any Restricted Subsidiary of the Issuer may incur pursuant to this Section 4.03 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values following the incurrence of such Indebtedness.

SECTION 4.04. Limitation on Restricted Payments.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to:

(i) declare or pay any dividend or make any distribution on account of the Issuer's or any of its Restricted Subsidiaries' Equity Interests, including any payment made in connection with any merger, amalgamation or consolidation involving the Issuer (other than (A) dividends or distributions by the Issuer payable solely in Equity Interests (other than Disqualified Stock) of the Issuer or in options, warrants or other rights to purchase such Equity Interests of the Issuer or (B) dividends or distributions by a Restricted Subsidiary, *provided* that, in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a Wholly Owned Restricted

Subsidiary, the Issuer or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Equity Interests in such class or series of securities);

(ii) purchase or otherwise acquire or retire for value any Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer held by Persons other than the Issuer or a Restricted Subsidiary;

(iii) purchase or otherwise acquire or retire for value any Disqualified Stock of the Issuer or any direct or indirect parent of the Issuer held by Persons other than the Issuer or a Restricted Subsidiary;

(iv) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case prior to any scheduled repayment or scheduled maturity, any Subordinated Indebtedness of the Issuer or any of its Restricted Subsidiaries (other than the payment, redemption, repurchase, defeasance, acquisition or retirement of Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement); or

(v) make any Restricted Investment

(all such payments and other actions set forth in clauses (i) through (v) above (other than any exception thereto) being collectively referred to as "Restricted Payments"), unless, at the time of such Restricted Payment:

(1) no Default shall have occurred and be continuing or would occur as a consequence thereof;

(2) immediately after giving effect to such transaction on a *pro forma* basis, the Issuer could Incur $1.00 of additional Indebtedness under Section 4.03(a); and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Issuer and its Restricted Subsidiaries after the Issue Date (including Restricted Payments permitted by clauses (i), (iv), (v) (to the extent such dividends did not reduce Consolidated Net Income) and (xiv) of Section 4.04(b), but excluding all other Restricted Payments permitted by Section 4.04(b)), is less than the amount equal to the Cumulative Credit (with the amount of any Restricted Payment made under this Section 4.04 in any property other than cash being equal to the Fair Market Value (as determined in good faith by the Issuer) of such property at the time such Restricted Payment is made).

(b) The provisions of Section 4.04(a) shall not prohibit:

(i) the payment of any dividend or distribution within 60 days after the date of declaration thereof, if at the date of declaration such payment would have complied with the provisions of this Indenture;

(ii) (A) the redemption, repurchase, retirement, defeasance or other acquisition of any Equity Interests, Disqualified Stock or Subordinated Indebtedness ("Retired Interests") of the Issuer or any direct or indirect parent of the Issuer or any Restricted Subsidiary in exchange for, or out of the proceeds of, the substantially concurrent sale of, Equity Interests of the Issuer or any direct or indirect parent of the Issuer or contributions to the equity capital of the Issuer (other than any Disqualified Stock or any Equity Interests sold to a Subsidiary of the Issuer) (collectively, including any such contributions, "Refunding Interests"); and (B) the declaration and payment of

accrued dividends on the Retired Interests out of the proceeds of the substantially concurrent sale (other than to a Subsidiary of the Issuer or to an employee stock ownership plan or any trust established by the Issuer or any of its Subsidiaries) of Refunding Interests;

(iii) the redemption, repurchase, defeasance or other acquisition or retirement for value of Subordinated Indebtedness of the Issuer or any Restricted Subsidiary made by exchange for, or out of the proceeds of the substantially concurrent sale of, new

Indebtedness of the Issuer or a Restricted Subsidiary that is Incurred in accordance with Section 4.03 so long as:

(A) the principal amount (or accreted value, if applicable) of such new Indebtedness does not exceed the principal amount (or accreted value, if applicable), plus any accrued and unpaid interest, of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired for value (plus the amount of any premium required to be paid under the terms of the instrument governing the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired, plus any paid-in-kind interest, any tender premiums or any defeasance costs, fees and expenses incurred in connection therewith), plus any reasonable fees and expenses incurred in connection with the issuance of such new Indebtedness;

(B) such new Indebtedness by its terms is unsecured and subordinated to the Securities or the related Guarantee, as the case may be, in right of payment, at least to the same extent (as determined by the Issuer in good faith) as such Subordinated Indebtedness so purchased, exchanged, redeemed, repurchased, defeased, acquired or retired for value;

(C) such new Indebtedness has a Stated Maturity and, if applicable, a First Amortization Date equal to or later than the earlier of (x) the Stated Maturity of the Subordinated Indebtedness being so redeemed, repurchased, acquired or retired and (y) 91 days following the Stated Maturity of any Securities then outstanding; *provided* that, for the avoidance of doubt, any provision of Convertible Indebtedness providing for a put right upon a change of control or termination of trading shall not cause the Convertible Indebtedness to fail to satisfy the provisions of this Section 4.04(b)(iii)(C); and

(D) such Indebtedness has a Weighted Average Life to Maturity at the time Incurred that is not less than the remaining Weighted Average Life to Maturity of the Subordinated Indebtedness being so redeemed, repurchased, defeased, acquired or retired;

(iv) the redemption, repurchase, retirement or other acquisition (or dividends to any direct or indirect parent of the Issuer to finance any such redemption, repurchase, retirement or other acquisition) for value of Equity Interests of the Issuer or any direct or indirect parent of the Issuer held by any future, present or former employee, director or consultant (or their beneficiaries or estates) of the Issuer or any direct or indirect parent of the Issuer or any Subsidiary of the Issuer pursuant to any management or employee

equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided* that the aggregate amounts paid under this clause (iv) do not exceed $5,000,000 in any calendar year (with unused amounts in any calendar year being permitted to be carried over for the two succeeding calendar years subject to a maximum payment (without giving effect to the following proviso) of $10,000,000 in any calendar year); *provided*, *further*, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Issuer or any of its Restricted Subsidiaries from the sale of Equity Interests (other than Disqualified Stock) of the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer) to employees, directors or consultants of the Issuer and its Restricted Subsidiaries or any direct or indirect parent of the Issuer that occurs after the Issue Date (*provided* that the amount of such cash proceeds utilized for any such repurchase, retirement, other acquisition or dividend shall not increase the amount available for Restricted Payments under clause (3) of Section 4.04(a)); plus

(B) the cash proceeds of key man life insurance policies received by the Issuer or any direct or indirect parent of the Issuer (to the extent contributed to the Issuer) or the Issuer's Restricted Subsidiaries after the Issue Date;

provided that the Issuer may elect to apply all or any portion of the aggregate increase contemplated by clauses (A) and (B) above in any one or more calendar years; and *provided*, *further*, that cancellation of Indebtedness owing to the Issuer or any Restricted Subsidiary from any present or former employees, directors, officers or consultants (or their beneficiaries or estates) of the Issuer or any Restricted Subsidiary or any direct or indirect parent of the Issuer will not be deemed to constitute a Restricted Payment for purposes of this Section 4.04 or any other provision of this Indenture;

(v) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Issuer or any of its Restricted Subsidiaries or any class of Preferred Stock of any Restricted Subsidiary, in each case, issued or incurred in accordance with Section 4.03;

(vi) the declaration and payment of dividends or distributions to holders of any class or series of Designated

Preferred Stock (other than Disqualified Stock) issued by the Issuer after the Issue Date and to any direct or indirect parent of the Issuer and the declaration and payment of dividends on Refunding Interests that are Preferred Stock in excess of the dividends declarable and payable thereon pursuant to Section 4.04(b)(ii); *provided*, *however*, that, (A) immediately after giving effect to such declaration (and the payment of dividends or distributions) on a *pro forma* basis, the Issuer would be able to Incur at least $1.00 of additional Indebtedness pursuant to Section 4.03(a) and (B) the aggregate amount of dividends declared and paid pursuant to this clause (vi) does not exceed the net cash proceeds actually received by the Issuer from any such sale of Designated Preferred Stock (other than Disqualified Stock) issued after the Issue Date;

(vii) Investments in Unrestricted Subsidiaries having an aggregate Fair Market Value (as determined in good faith by the Issuer), taken together with all other Investments made pursuant to this clause (vii) that are at that time outstanding, not to exceed the greater of $10,000,000 and 1.0% of Total Assets in any calendar year (with the Fair Market Value of each Investment being measured at the time made and without giving effect to subsequent changes in value);

(viii) payments or distributions to dissenting stockholders or equityholders pursuant to applicable law in connection with a consolidation, amalgamation or merger by, or sale of all or substantially all of the assets of, the Issuer or any Restricted Subsidiary;

(ix) other Restricted Payments that are made with Excluded Contributions;

(x) other Restricted Payments in an aggregate amount not to exceed the greater of $10,000,000 and 1.0% of Total Assets;

(xi) the distribution, as a dividend or otherwise, of (i) shares of Capital Stock of, or (ii) Indebtedness owed to the Issuer or a Restricted Subsidiary of the Issuer by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries the primary assets of which are Cash Equivalents);

(xii) repurchases or acquisitions of Equity Interests of the Issuer in connection with the exercise of stock options or warrants or stock appreciation rights by way of cashless exercise or the vesting of restricted stock or restricted units, or in connection with the satisfaction of withholding tax obligations;

(xiii) (a) the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Capital Stock or Convertible Indebtedness of any such Person, (b) the purchase of fractional shares of Capital Stock of the Issuer arising out of stock dividends, splits or combinations or in connection with issuances of Capital Stock of the Issuer pursuant to mergers, consolidations or other acquisitions, and (c) the issuance of Capital Stock upon conversion of Convertible Indebtedness or the exercise of stock options or warrants;

(xiv) the repurchase, redemption or other acquisition or retirement for value of any Subordinated Indebtedness pursuant to the provisions similar to those described under Sections 4.06 and 4.08; *provided* that all Securities tendered by Holders in connection with a Change of Control Offer or Asset Sale Offer, as applicable, have been repurchased, redeemed or acquired for value;

(xv) in connection with any merger, consolidation or other acquisition by the Issuer or any Restricted Subsidiary, the receipt or acceptance by the Issuer or any Restricted Subsidiary of Capital Stock of the Issuer or any Restricted Subsidiary constituting a portion of the purchase price consideration in settlement of indemnification claims or as a result of a purchase price adjustment (including earn-outs and similar obligations), without any payment of cash or other consideration by the Issuer or any Restricted Subsidiary;

(xvi) the distribution of rights pursuant to a customary shareholder rights plan or the redemption of such rights in accordance with the terms of any such shareholder rights plan;

(xvii) the redemption, repurchase, retirement or other acquisition for value of Equity Interests of the Issuer held by any competitor of the Issuer to the extent that the Issuer determines in good faith that the failure to do so would have

a material adverse effect on its business;

(xviii) distributions or payments of Receivables Fees; and

(xix) the payment of premiums in respect of, exercise of, or performance of any obligations under, any Permitted Bond Hedge Transaction or Permitted Warrant Transaction;

provided, that at the time of, and after giving effect to, any Restricted Payment permitted under clause (vii) or (x) of this Section 4.04(b), no Default shall have occurred and be continuing or would occur as a consequence thereof.

(c) As of the Issue Date, all of the Issuer's Subsidiaries (excluding any PPA Company) will be Restricted Subsidiaries. For purposes of designating any Restricted Subsidiary as an Unrestricted Subsidiary, all outstanding Investments by the Issuer and its Restricted Subsidiaries (except to the extent repaid) in the Subsidiary so designated shall be deemed to be Restricted Payments in an amount determined as set forth in the last sentence of the definition of "Investments". Such designation shall only be permitted if a Restricted Payment or Permitted Investment in such amount would be permitted at such time and if such Subsidiary otherwise meets the definition of "Unrestricted Subsidiary".

(d) For purposes of determining compliance with this Section 4.04, in the event that a Restricted Payment (or any portion thereof) meets the criteria of more than one of the categories described in Section 4.04(b) or is entitled to be made pursuant to Section 4.04(a), the Issuer may, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Restricted Payment (or any portion thereof) in any manner that complies with this Section 4.04.

SECTION 4.05. Dividend and Other Payment Restrictions Affecting Subsidiaries. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of any such Restricted Subsidiary to:

(a) (i) pay dividends or make any other distributions to the Issuer or any of its Restricted Subsidiaries (1) on its Capital Stock or (2) with respect to any other interest or participation in, or measured by, its profits or (ii) pay any Indebtedness owed to the Issuer or any of its Restricted Subsidiaries;

(b) make loans or advances to the Issuer or any of its Restricted Subsidiaries; or

(c) sell, lease or transfer any of its properties or assets to the Issuer or any of its Restricted Subsidiaries (it being understood that such sale, lease or transfer shall not include any type of sale, lease or transfer described in Section 4.05(a) or Section 4.05(b)),

except in each case for such encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions (i) in effect on the Issue Date or (ii) under any Credit Agreement permitted under Section 4.03(b)(i);

(2) this Indenture, the Guarantees, the Securities or the Security Documents;

(3) applicable law or any applicable rule, regulation, order, approval, license, permit, grant or similar restriction;

(4) any agreement or other instrument of a Person acquired by the Issuer or any Restricted Subsidiary in existence at the time of such acquisition or at the time it merges, consolidates or amalgamates with or into the Issuer or any Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in each case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries,

so acquired;

(5) contracts or agreements for the sale of assets, including any restriction with respect to a Restricted Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Capital Stock or assets of such Restricted Subsidiary pending the closing of such sale or disposition;

(6) restrictions on cash or other deposits or net worth under agreements, instruments or contracts entered into in the ordinary course of business;

(7) customary provisions in joint venture agreements, partnership agreements, stock sale agreements, asset sale agreements, collaboration agreements, intellectual property licenses and other similar agreements entered into in the ordinary course of business;

(8) restrictions contained in contracts or agreements related to purchase money obligations for property acquired and Capitalized Lease Obligations in the ordinary course of business;

(9) customary provisions contained in leases, subleases, licenses, sublicenses and other similar agreements entered into in the ordinary course of business;

(10) other Indebtedness, Disqualified Stock or Preferred Stock (a) of the Issuer or any Restricted Subsidiary of the Issuer that is a Guarantor or (b) of any Restricted Subsidiary that is not a Guarantor so long as such encumbrances and restrictions contained in any agreement or instrument will not materially affect the Issuer's ability to make anticipated principal or interest payments on the Securities (as determined in good

faith by the Issuer), *provided* that in the case of each of clauses (a) and (b), such Indebtedness, Disqualified Stock or Preferred Stock is permitted to be Incurred subsequent to the Issue Date under Section 4.03;

(11) any Permitted Investment (to the extent such encumbrance or restriction was not made in contemplation of such Permitted Investment and was in existence on the date of such Permitted Investment);

(12) any encumbrances or restrictions of the type referred to in clauses (a), (b) and (c) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (1) through (11) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Issuer, no more restrictive with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;

(13) customary restrictions and conditions contained in any document related to any Permitted Lien so long as such restrictions or conditions relate only to the assets subject to such Lien;

(14) any encumbrances or restrictions existing with respect to any Unrestricted Subsidiary at the time it is designated or deemed to become a Restricted Subsidiary (other than restrictions incurred in contemplation of such designation);

(15) only with respect to Section 4.05(c): (i) customary provisions restricting subletting or assignment of leases or customary provisions in licenses or other agreements that restrict assignment of such agreements or rights thereunder;
(ii)customary provisions restricting the sale or other disposition of property contained in agreements limiting the transfer of property pending the closing of such sale; and
(iii)restrictions on the sale or other disposition of property acquired, constructed, improved or leased (and any additions, parts, attachments, fixtures, leasehold improvements, proceeds, improvements or accessions related thereto) in whole or in part under any agreement, instrument or contract relating to Indebtedness permitted to be Incurred under clause (6) of the definition of Permitted Lien; and

(16) customary provisions under any agreements, instruments or contracts relating to any Receivables Program.

For purposes of determining compliance with this Section 4.05, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on other Capital Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock and (ii) the subordination of loans or advances made to the Issuer or a Restricted Subsidiary of the Issuer to other Indebtedness Incurred by the

Issuer or any such Restricted Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

SECTION 4.06. Asset Sales.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, make an Asset Sale, unless (x) the Issuer or any of its Restricted Subsidiaries, as the case may be, receives consideration in connection with such Asset Sale at least equal to the Fair Market Value (as determined in good faith by the Issuer as of the date of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of, and (y) at least 75% of the consideration therefor received by the Issuer or such Restricted Subsidiary, as the case may be, is in the form of Cash Equivalents; *provided* that the amount of:

(i) any liabilities (as shown on the Issuer's or such Restricted Subsidiary's most recent balance sheet or in the notes thereto or, if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been shown on the Issuer's or such Restricted Subsidiary's balance sheet or in the footnotes thereto if such accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Issuer) of the Issuer or any Restricted Subsidiary of the Issuer (other than liabilities (A) that are by their terms subordinated to the Securities or any Guarantee or (B) that are owed to the Issuer, a Subsidiary thereof or any Affiliate thereof) that are assumed by the transferee of any such assets or that are otherwise cancelled or terminated in connection with the transaction with such transferee;

(ii) any notes or other obligations or other securities or assets received by the Issuer or such Restricted Subsidiary of the Issuer from such transferee that are converted by the Issuer or such Restricted Subsidiary of the Issuer into Cash Equivalents within 180 days of the receipt thereof (to the extent of the Cash Equivalents received); and

(iii) any Designated Non-cash Consideration received by the Issuer or any of its Restricted Subsidiaries in such Asset Sale having an aggregate Fair Market Value (as determined in good faith by the Issuer), taken together with all other Designated Non-cash Consideration received pursuant to this clause (iii) that is at that time outstanding, not to exceed $5,000,000 (with the Fair Market Value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value)

shall be deemed to be Cash Equivalents for the purposes of this Section 4.06(a). The Issuer shall determine the Fair Market Value of any consideration from such Asset Sale that is not Cash Equivalents.

(b) Within 365 days after the Issuer's or any Restricted Subsidiary of the Issuer's receipt of the Net Proceeds of any Asset Sale, the Issuer or such Restricted Subsidiary of the Issuer may apply the Net Proceeds from such Asset Sale, at its option:

(i) to permanently reduce any Indebtedness (other than Subordinated Indebtedness) of the Issuer or any Restricted Subsidiary (excluding any Indebtedness owed to the Issuer or another Restricted Subsidiary) (*provided* that if the Issuer shall so

reduce such Indebtedness, the Issuer will reduce Indebtedness under the Securities as provided under the optional redemption provisions of Paragraph 5 of the Security, through open-market purchases (*provided* that such purchases are at or above 100% of the principal amount thereof) or by making an offer (in accordance with the procedures set forth below for an Asset Sale Offer) to all Holders to purchase at a purchase price equal to 100% of the principal amount thereof, plus accrued and

unpaid interest, the pro rata principal amount of Securities, in each case other than Indebtedness owed to the Issuer or an Affiliate of the Issuer);

(ii) to make an Investment in any one or more businesses (*provided* that if such Investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Restricted Subsidiary of the Issuer or, if such Person is a Restricted Subsidiary of the Issuer, in an increase in the percentage ownership of such Person by the Issuer or any Restricted Subsidiary of the Issuer) or capital expenditures, or to acquire assets or property, in each case (A) used or useful in a Permitted Business or (B) that replace the properties and assets in all material respects that are the subject of such Asset Sale; or

(iii) any combination of Section 4.06(b)(i) and Section 4.06(b)(ii).

In the case of Section 4.06(b)(i) and Section 4.06(b)(ii), a binding commitment shall be treated as a permitted application of the Net Proceeds from the date of such commitment so long as the Issuer or such other Restricted Subsidiary enters into such commitment with the good faith expectation that such Net Proceeds will be applied to satisfy such commitment within 180 days of such commitment; *provided* that in the event such binding commitment is later canceled or terminated for any reason before such Net Proceeds are so applied, the Issuer or such Restricted Subsidiary enters into another binding commitment (a "Second Commitment") within six months of such cancellation or termination of the prior binding commitment; *provided*, *further*, that if any Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are so applied, then such Net Proceeds shall constitute Excess Proceeds.

(c) Any Net Proceeds from any Asset Sale that are not applied as provided and within the time period set forth in Section 4.06(b) (it being understood that any portion of such Net Proceeds used to make an offer to purchase Securities, as described in Section 4.06(b)(i), shall be deemed to have been invested whether or not such offer is accepted) will be deemed to constitute "Excess Proceeds". When the aggregate amount of Excess Proceeds exceeds $15,000,000, the Issuer shall make an offer to all Holders of Securities (and, if required by the terms of any Pari Passu Indebtedness, to holders of any Pari Passu Indebtedness) (an "Asset Sale Offer") to purchase the maximum principal amount of Securities (and such Pari Passu Indebtedness) that is at least $1,000 and an integral multiple of $1,000 that may be purchased out of the Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal balance thereof (or, in the event such Pari Passu Indebtedness was issued with significant original issue discount, 100% of the accreted value thereof), plus accrued and unpaid interest (or, in respect of such Pari Passu Indebtedness, such lesser price, if any, as may be provided for by the terms of such Pari Passu Indebtedness), to the date fixed for the closing of such offer, in accordance with the procedures set forth in this Section 4.06 (or other instrument governing such Pari Passu Indebtedness). The Issuer will commence an Asset Sale Offer with respect to Excess Proceeds

within twenty Business Days after the date that Excess Proceeds exceed $15,000,000 or at the option of the Issuer at any earlier time after receipt of Net Proceeds from an Asset Sale, by providing the written notice required pursuant to Section 4.06(h) (or other instrument governing such Pari Passu Indebtedness), with a copy to the Trustee. To the extent that the aggregate amount of Securities (and such Pari Passu Indebtedness) tendered pursuant to an Asset Sale Offer is less than the Excess Proceeds, the Issuer may use any remaining Excess Proceeds for any purpose that is not prohibited by this Indenture. If the aggregate principal amount of Securities (and such Pari Passu Indebtedness) surrendered by Holders thereof exceeds the amount of Excess Proceeds, the Trustee shall select the Securities to be purchased in the manner described in Section 4.06(g). Upon completion of any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero. For the avoidance of doubt, any Asset Sale Offer shall not be construed to be an optional redemption of the type described in Paragraph 5 of the Security and no premium shall be paid by the Issuer in connection with the repurchase of the Securities.

(d) Pending the final application of any Net Proceeds pursuant to this Section 4.06, the holder of such Net Proceeds may apply such Net Proceeds temporarily to reduce
Indebtedness outstanding under a revolving credit facility, if any, or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

(e) The Issuer shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations to the extent such laws or regulations are applicable in connection with the repurchase of the Securities pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture, the Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Indenture by virtue thereof.

(f) Not later than the date upon which written notice of an Asset Sale Offer is delivered to the Trustee as provided above, the Issuer shall deliver to the Trustee an Officer's Certificate as to (i) the amount of the Excess Proceeds, (ii) the application of the Net Proceeds from the Asset Sales pursuant to which such Asset Sale Offer is being made and (iii) the compliance of such application with the provisions of Section 4.06(b). On the specified date of purchase, the Issuer shall also irrevocably deposit with the Trustee or with a Paying Agent (or, if the Issuer or a domestically organized Wholly Owned Restricted Subsidiary is acting as the Paying Agent, segregate and hold in trust) an amount equal to the Excess Proceeds to be invested in Cash Equivalents, as directed in writing by the Issuer, and to be held for payment in accordance with the provisions of this Section 4.06. Upon the expiration of the period for which the Asset Sale Offer remains open (the "Offer Period"), the Issuer shall deliver to the Trustee for cancellation the Securities or portions thereof that have been properly tendered to and are to be accepted by the Issuer, along with a written payment and cancellation order. The Trustee (or the Paying Agent, if not the Trustee) shall, on the date of purchase, mail or deliver payment to each tendering Holder in the amount of the purchase price as determined by the Issuer and stated in the written payment and cancellation order. In the event that the Excess Proceeds delivered by the Issuer to the Trustee are greater than the purchase price of the Securities tendered, the Trustee shall deliver the excess to the Issuer immediately after the expiration of the Offer Period for application in accordance with Section 4.06.

(g) Holders electing to have a Security purchased shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the notice at least three Business Days prior to the purchase date. Holders shall be entitled to withdraw their election if the Issuer receives not later than one Business Day prior to the purchase date a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered by the Holder for purchase and a statement that such Holder is withdrawing such Holder's election to have such Security purchased. If at the end of the Offer Period more Securities (and such Pari Passu Indebtedness, as applicable) are tendered pursuant to an Asset Sale Offer than the Issuer is required to purchase, and if the Securities are Global Securities held by the Depository, the particular Securities or portions thereof to be redeemed shall be allocated on a pro rata pass-through distribution of principal basis in accordance with Depository procedures; *provided*, that, so long as the Securities are held in book-entry form, the selection for redemption of such Securities shall be made in accordance with the operational arrangements of the Depository then in effect, and if the Depository operational arrangements do not allow for redemption on a pro rata pass-through distribution of principal basis, the Securities will be selected for redemption, in accordance with Depository procedures, by lot. If the Securities are not Global Securities held by the Depository, selection of such Securities for purchase shall be made by the Trustee on a pro rata basis to the extent practicable or such other method as the Trustee shall deem fair and appropriate (and in such manner as complies with applicable legal requirements); *provided* that no Securities of $250,000 or less shall be purchased in part. Selection of such Pari Passu Indebtedness, as applicable, shall be made pursuant to the terms of such Pari Passu Indebtedness; *provided* that any purchase by the Issuer of Pari Passu Indebtedness and Securities tendered pursuant to an Asset Sale Offer shall otherwise be made on a pro rata basis, as nearly as practicable. In connection with an Asset Sale Offer, the Issuer shall deliver an Officer's Certificate to the Trustee certifying as to the principal amount of Pari Passu Indebtedness, to the extent applicable.

(h) Written notices of an Asset Sale Offer shall be provided at least 30 but not more than 60 days before the purchase date to each Holder of Securities at such Holder's registered address (or electronically pursuant to the Depository's applicable procedures). If any Security is to be purchased in part only, any notice of purchase that relates to such Security shall state the portion of the principal amount thereof that has been or is to be purchased. Holders of certificated Securities whose Securities are purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

SECTION 4.07. Transactions with Affiliates.

(a) The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or

amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Issuer (each of the foregoing, an "Affiliate Transaction") involving aggregate consideration in excess of $1,000,000, unless:

(i) such Affiliate Transaction is on terms that are not materially less favorable to the Issuer or the relevant Restricted Subsidiary than those that could have been obtained in a comparable transaction by the Issuer or such Restricted Subsidiary with an unrelated Person; and

(ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10,000,000, the Issuer delivers to the Trustee a resolution adopted by the majority of the disinterested members of the Board of Directors of the Issuer, approving such Affiliate Transaction, evidenced by an Officer's Certificate certifying that such Affiliate Transaction complies with clause (i) above.

(b) The provisions of Section 4.07(a) shall not apply to the following:

(i) any transaction or series of transactions between or among any of the Issuer and its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction), including any payment to, or sale, lease, transfer or other disposition of any properties or assets to, or purchase of any property or assets from, or any contract, agreement, amendment, understanding, loan, advance or guarantee with, or for the benefit of, any of the Issuer and its Restricted Subsidiaries (or an entity that becomes a Restricted Subsidiary as a result of such transaction);

(ii) Restricted Payments permitted by Section 4.04 and Permitted Investments (without giving effect to clause (12) of the definition of "Permitted Investments");

(iii) the payment of reasonable and customary compensation, benefits, fees and reimbursement of expenses paid to, and indemnity (including directors and officers insurance), contribution and insurance provided on behalf of, officers, directors, employees or consultants of the Issuer or any Restricted Subsidiary;

(iv) transactions in which the Issuer or any of its Restricted Subsidiaries, as the case may be, delivers to the Trustee a letter from an Independent Financial Advisor stating that such transaction is fair to the Issuer or such Restricted Subsidiary from a financial point of view or meets the requirements of Section 4.07(a)(i);

(v) payments or loans (or cancellation of loans) to officers, directors, employees or consultants of the Issuer or any of the Restricted Subsidiaries of the Issuer and employment agreements, stock option plans and other similar arrangements with such officers, directors, employees or consultants that, in each case, are approved by a majority of the disinterested members of the Board of Directors of the Issuer in good faith;

(vi) any agreement as in effect as of the Issue Date or any amendment thereto (so long as any such agreement together with all amendments thereto, taken as a whole, is not more disadvantageous to the Holders of the Securities in any material respect than the original agreement as in effect on the Issue Date) or any transaction contemplated thereby as determined in good faith by the Issuer;

(vii) the existence of, or the performance by the Issuer or any of its Restricted Subsidiaries of its obligations under the terms of, any stockholders or equityholders agreement (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Issue Date and any amendment thereto (or amendment and restatement thereof) or similar transactions, agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the

Issuer or any of its Restricted Subsidiaries of its obligations under, any future amendment to any such existing transaction, agreement or arrangement shall only be permitted by this clause (vii) to the extent that the terms of any such existing transaction, agreement or arrangement together with all amendments thereto (or amendment and restatement thereof), taken as a whole, are not otherwise more disadvantageous to the Holders of the Securities in any material respect than the original transaction, agreement or arrangement as in effect on the Issue Date (as determined in good faith by the Issuer);

(viii) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and not otherwise prohibited by the terms of this Indenture, which are fair to the Issuer and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or the senior management of the Issuer, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party or (B) transactions with joint ventures or Unrestricted Subsidiaries entered into in the ordinary course of business that are not otherwise prohibited by this Indenture;

(ix) the issuance or transfer of Equity Interests (other than Disqualified Stock) of the Issuer to any Person;

(x) the issuance of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, stock option and stock ownership plans or similar employee, consultant or director benefit plans approved by the Board of Directors of the Issuer or any direct or indirect parent of the Issuer or of a Restricted Subsidiary of the Issuer, as appropriate, in good faith;

(xi) any contribution to the capital of the Issuer;

(xii) transactions permitted by, and complying with, Article 5;

(xiii) pledges of Equity Interests of Unrestricted Subsidiaries;

(xiv) intercompany transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Issuer and its Subsidiaries and not for the purpose of circumventing compliance with any covenant set forth in this Indenture;

(xv) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business;

(xvi) transactions between the Issuer or any of its Restricted Subsidiaries, on the one hand, and any PPA Company, on the other hand;

(xvii) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers, directors and consultants; and

(xviii) commercial product sales in the ordinary course of business. SECTION 4.08. Change of Control.

(a) Upon a Change of Control, each Holder shall have the right to require the Issuer to repurchase all or any part (in integral multiples of $1,000 but so long as no Security of an unauthorized denomination less than $250,000 remains outstanding) of such Holder's then outstanding Securities at a purchase price in cash equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the Change of Control Repurchase Date (subject to the right of the Holders of record on the relevant Record Date to receive interest due on the related Payment Date, with no interest then to be payable to Holders whose Securities will be subject to repurchase by the Issuer), in accordance with the terms contemplated in this Section 4.08; *provided*, *however*, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to repurchase any Securities pursuant to this Section 4.08 in the event that it has exercised (i) its unconditional right to redeem such Securities in accordance with Article 3 or (ii) its legal defeasance option or covenant defeasance option in accordance with Article 8.

(b) Within 30 days following any Change of Control, except to the extent that the Issuer has exercised (x) its unconditional right to redeem the Securities by delivery of a notice of redemption in accordance with Article 3 or (y) its legal defeasance option or covenant
defeasance option in accordance with Article 8, the Issuer shall provide a written notice (a "Change of Control Offer") to each Holder with a copy to the Trustee stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Issuer to repurchase such Holder's Securities at a repurchase price in cash equal to 101% of the principal balance thereof, plus accrued and unpaid interest, if any, to, but excluding, the Change of Control Repurchase Date (subject to the right of the Holders of record on the relevant Record Date to receive interest on the related Payment Date, with no interest then to be payable to Holders whose Securities will be subject to repurchase by the Issuer);

(ii) the events causing such Change of Control;

(iii) the repurchase date (which shall be no earlier than 30 days nor later than 60 days from the date such written notice is provided) (such repurchase date, the "Change of Control Repurchase Date"); and

(iv) the instructions determined by the Issuer, consistent with this Section 4.08, that a Holder must follow in order to have its Securities repurchased.

(c) Holders electing to have a Security repurchased shall be required to surrender the Security, with an appropriate form duly completed, to the Issuer at the address specified in the Change of Control Offer (or otherwise in accordance with the applicable procedures of the Depository) at least three Business Days prior to the repurchase date. The Holders shall be entitled to withdraw their election if the Issuer receives not later than one Business Day prior to the repurchase date a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security that was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Security repurchased. Holders of certificated Securities whose Securities are repurchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered. If the Securities are Global Securities held by the Depository, then the applicable operational procedures of the Depository for tendering and withdrawing securities will apply.

(d) On the repurchase date, all Securities repurchased by the Issuer under this Section 4.08 shall be delivered to the Trustee for cancellation, and the Issuer shall pay the purchase price plus accrued and unpaid interest to the Holders entitled thereto.

(e) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon the occurrence of such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(f) Notwithstanding the foregoing provisions of this Section 4.08, the Issuer shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer (which may be conditioned upon the occurrence of such Change of Control) in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.08 applicable to a Change of Control Offer made by the Issuer and purchases all Securities validly tendered and not withdrawn under such Change of Control Offer.

(g) Securities repurchased by the Issuer pursuant to a Change of Control Offer will have the status of Securities issued but not outstanding or will be retired and canceled at the option of the Issuer. Securities purchased by a third party pursuant to Section 4.08(f) will have the status of Securities issued and outstanding.

(h) At the time the Issuer delivers (or causes to be delivered) Securities to the Trustee that are to be accepted for repurchase, the Issuer shall also deliver an Officer's Certificate stating that such Securities are to be accepted by the Issuer pursuant to and in accordance with the terms of this Section 4.08 and confirming whether the Securities will be considered issued but not outstanding, or include orders to cancel the repurchased Securities. A Security shall be deemed to have been accepted for repurchase at the time the Trustee, directly or through an agent, provides payment therefor upon receipt from or on behalf of the Issuer to the surrendering Holder.

(i) The Issuer shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Securities pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with provisions of this Indenture, the

Issuer shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Indenture by virtue thereof.

SECTION 4.09. Further Instruments and Acts. Upon the reasonable request of the Trustee or the Collateral Agent or as otherwise required by the Indenture and the Security Documents, the Issuer shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 4.10. Future Guarantors. The Issuer shall cause each Subsidiary, within 30 days of becoming a Subsidiary, to execute and deliver to the Trustee a supplemental indenture substantially in the form of Exhibit C pursuant to which such Subsidiary shall guarantee the Issuer's Obligations under the Securities and this Indenture; *provided*, *however*, that none of any Foreign Subsidiary, any PPA Company, Yellow Jacket Energy, LLC, any Immaterial Subsidiary or any Receivables Subsidiary shall be required to become a Guarantor.

SECTION 4.11. Liens. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, create, Incur or suffer to exist any Lien (except Permitted Liens) on any asset or property of the Issuer or such Restricted Subsidiary securing Indebtedness, unless:

(a) in the case of Liens (other than Permitted Liens) securing Subordinated Indebtedness, the Securities are secured by a Lien on such property, assets or proceeds that is senior in priority to such Liens; or

(b) in the case of all other Liens (other than Permitted Liens), the Securities are equally and ratably secured.

Notwithstanding the foregoing, any Lien securing the Securities granted pursuant to this Section 4.11 shall be automatically and unconditionally released and discharged upon (i) the release by the holders of the Indebtedness described above of their Lien on the property or assets of the Issuer or any Restricted Subsidiary (including any deemed release upon payment in full of all obligations under such Indebtedness), (ii) any sale, exchange, disposition or transfer to any Person other than the Issuer or any Restricted Subsidiary of the property or assets secured by such Lien so long as such disposition is permitted by the terms of this Indenture, (iii) payment in full of the principal of, and accrued and unpaid interest, if any, on, the Securities, or (iv) a defeasance or discharge of the Securities in accordance with the procedures described in Article 8.

For purposes of determining compliance with this Section 4.11, in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of more than one of the categories of Liens described in the foregoing paragraph or in clauses (1) through (40) of the definition of "Permitted Liens", then the Issuer shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing an item of Indebtedness (or any portion thereof) in any manner that complies with this Section 4.11.

With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the Incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any

Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the payment of interest or dividends in the form of additional Indebtedness, amortization of original issue discount and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case in respect of such Indebtedness.

SECTION 4.12. Liens on Notes Collateral. The Issuer shall not create, Incur or suffer to exist any Lien on the Notes Collateral except for the Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of "Permitted Liens".

SECTION 4.13. Administration of the Collection Account.

(a) The Issuer shall establish and maintain a segregated account held with U.S. Bank National Association (or

another segregated account in replacement thereof held with another U.S. federally insured depositary financial institution that is acting as the Trustee or other Paying Agent) in the name of the Trustee or other Paying Agent (acting in either case as an agent for or representative of the Collateral Agent), or in the name of the Issuer, in each case, subject to the Liens established under the Security Agreement and the other Security Documents (such account, the "Collection Account"). The Collection Account shall be established and maintained so as to create, perfect and establish the priority of the Liens established under the Security Agreement and the other Security Documents in such Collection Account and all funds and other assets or property from time to time deposited therein or credited thereto and otherwise to effectuate the Liens under the Security Documents. The Collection Account shall bear a designation clearly indicating that the funds and other assets or property deposited therein or credited thereto are held for the benefit of the Secured Parties.

(b) The Trustee or other Paying Agent, as applicable, shall have sole dominion and control over the Collection Account (including, among other things, the sole power to direct withdrawals or transfers from the Collection Account). The Trustee or other Paying Agent, as applicable, shall make withdrawals and transfers from the Collection Account in accordance with the terms of this Indenture. Each of the Issuer and the Trustee, any other Paying Agent and the Collateral Agent acknowledges and agrees that the Collection Account is a "securities account" within the meaning of Section 8-501 of the Uniform Commercial Code and that the Trustee or other Paying Agent, as applicable, has "control", for purposes of Section 9-314 of the Uniform Commercial Code, of the Collection Account that is maintained with the Trustee or other Paying Agent. The Trustee hereby confirms that it has established account number 241925301 in the name of the Issuer for the benefit of the Secured Parties as the Collection Account. The Issuer and the Trustee, any other Paying Agent and the Collateral Agent further agree that the jurisdiction of the Trustee, such other Paying Agent or the Collateral Agent, as applicable, for purposes of the Uniform Commercial Code shall be the State of New York. The crediting by the Trustee or other Paying Agent, as applicable, to the Collection Account of any asset or property that is not otherwise a financial asset by virtue of Section 8-102(a)(9)(i) of the Uniform Commercial Code or Section 8-102(a)(9)(ii) of the Uniform Commercial Code, including cash, shall constitute the "express agreement" of the Trustee or such other Paying Agent, as applicable, under Section 8-102(a)(9)(iii) of the Uniform Commercial Code that such property is a financial asset under such Section 8-102(a)(9)(iii) of the Uniform Commercial Code.

(c) The Issuer will deposit, or cause to be deposited, all Servicing Payments received on or after [April 1, 2020] into the Collection Account pursuant to an irrevocable written direction from the Issuer to each counterparty or other payor under each Servicing Agreement. Funds may not be withdrawn from the Collection Account except as set forth in this Section 4.13 or, upon the occurrence and during the continuance of an Event of Default, at the direction of the Holders of a majority in principal amount of the Securities as further described in Article 6. Funds in the Collection Account may be invested in Cash Equivalents available to the Trustee or other Paying Agent, as applicable, by the Trustee or such Paying Agent at the written direction of the Issuer absent the occurrence and continuance of an Event of Default. Promptly following the occurrence of an Event of Default and during the continuation thereof, the Trustee or other Paying Agent, as applicable (acting as an agent for or representative of the Collateral Agent) shall direct such funds to be invested pursuant to the direction of the Holders of a majority in principal amount of the Securities that are available to the Trustee or other Paying Agent, as applicable. In the absence of written instructions, such funds may be invested in the U.S. Bank National Association Money Market Deposit Account.

(d) Payments of accrued and unpaid interest due and owing pursuant to the terms of this Indenture on each Payment Date will be paid first from any Servicing Payments deposited in the Collection Account, calculated for the period from and including six Business Days before the previous Payment Date (or from and including [April 1, 2020] if no Payment Date has yet occurred) to and excluding six Business Days before the upcoming Payment Date (including the Stated Maturity in respect of the Securities) (the "Relevant Calculation Period"), including any investment income earned during such Relevant Calculation Period (the "Available Amounts") (plus any other funds then on deposit in the Collection Account). Payments of outstanding principal due and owing pursuant to the terms of this Indenture on each Payment Date, commencing June 30, 2020, will be paid from the Available Amounts in respect of the Relevant Calculation Period (plus any other funds then on deposit in the Collection Account) less any portion of the Available Amounts (and any other such funds then on deposit in the Collection Account) used to pay the required interest amount on the Securities on such Payment Date. Payments of principal and interest will, on each Payment Date, be made in an amount calculated in accordance with Section 4.01. For the avoidance of doubt, to the extent the Available Amounts in respect of the Relevant Calculation Period (plus any other funds then on deposit in the Collection Account) are insufficient to pay the required interest amount on the Securities or the required principal amount of the Securities on the applicable Payment Date, the Issuer will be required to pay the deficiency from other funds (and, if it is unable to do so within the applicable grace periods, it will be an Event of Default in respect of the Securities to the extent provided, and subject to the terms set forth, under Article 6).

(e) As long as no Event of Default has occurred and is continuing, any remaining balance of the Available Amounts in respect of the Relevant Calculation Period (plus any other funds then on deposit in the Collection Account) on the applicable Payment Date (after payment of the required interest amount on the Securities and the required principal amount of the Securities on such Payment Date) shall be released, free and clear of all Liens securing the Securities, from the Collection Account by the Trustee or other Paying Agent, as applicable, to an account directed in writing by the Issuer, which shall initially be: Wells Fargo Bank, N.A., 420 Montgomery Street, San Francisco, California 94104, ABA number 121000248, account name Bloom Energy Corporation Operating Account, account number 4391338282; *provided*,

however, that if the quotient obtained by dividing the Available Amounts in respect of the Relevant Calculation Period for any Payment Date (except the Stated Maturity in respect of the Securities) (excluding any investment income earned during such Relevant Calculation Period) by the total amount of principal and interest required to be paid in respect of the Securities pursuant to the terms of this Indenture on such Payment Date (the "Actual Debt Service Coverage Ratio") is less than 1.20 in respect of such Payment Date, as set forth on the relevant Calculation Report, any such remaining balance shall not be released from the Collection Account on such Payment Date.

(f) The Issuer will provide the Trustee with a calculation report in the form of Exhibit F (the "Calculation Report") in respect of the Available Amounts for each Relevant Calculation Period (plus any other funds then on deposit in the Collection Account), the distributions to be paid from the Collection Account by the Trustee and the calculation of the Actual Debt Service Coverage Ratio no later than 11:00 a.m. New York City time three Business Days prior to the applicable Payment Date consistent with this Section 4.13. The Trustee shall conclusively rely on information set forth in the Calculation Report.

SECTION 4.14. Servicing Agreements and Servicing Payments.

(a) The Issuer shall (i) perform and comply with its material duties and obligations under the Servicing Agreements, (ii) not forgive, release or compromise any amount owed to or becoming owing to it under the Servicing Agreements and (iii) notwithstanding anything to the contrary contained in this Indenture, not sell, assign, transfer, dispose of, amend, modify, supplement, restate, waive, cancel or terminate (or consent to any of the foregoing with respect to), in whole or in part, any of the Servicing Agreements or any provisions of such Servicing Agreements relating to the right to receive the Servicing Payments, in each case, except (y) to the extent that such action or inaction would not reasonably be expected to result in a material adverse effect on (A) the ability of the Issuer to comply with its payment obligations set forth in Section 4.01, (B) the enforceability of the Securities, this Indenture or the Security Documents or (C) the value of the Notes Collateral taken as a whole or (z) with respect to clauses (ii) and (iii), to the extent that the Issuer has, prior to or contemporaneously with the taking of any such action, entered into a new Servicing Agreement on terms and conditions that are, taken as a whole, not materially less favorable to the Issuer in any respect.

(b) The Issuer shall at all times use its commercially reasonable efforts to exercise and enforce its rights and remedies under the Servicing Agreements, in each case, in a timely and commercially reasonable manner, except to the extent that any failure to do so would not reasonably be expected to result in a material adverse effect on (A) the ability of the Issuer to comply with its payment obligations set forth in Section 4.01, (B) the enforceability of the Securities, this Indenture or the Security Documents or (C) the value of the Notes Collateral taken as a whole.

(c) The Issuer shall provide to the Trustee and the Holders of Securities, promptly and in any event no later than five Business Days after an Officer of the Issuer becomes aware of the occurrence thereof, (i) written notice of any material default or alleged material default by any party to any Servicing Agreement and (ii) copies of (x) any forgiveness, release or compromise of any material amount owed to or becoming owing to the Issuer under the

Servicing Agreements, (y) any sale, assignment, transfer, disposition, cancellation or termination of (or any consent to any of the foregoing with respect to) any Servicing Agreement or any provisions of such Servicing Agreement relating to the right to receive the Servicing Payments, and (z) any amendment, modification, supplement, restatement or waiver (solely to the extent that any such amendment, modification, supplement, restatement, or waiver is adverse to the interests of Holders of the Securities) of any Servicing Agreement or any provisions of such Servicing Agreement relating to the right to receive the Servicing Payments.

SECTION 4.15. Maintenance of Office or Agency.

(a) The Issuer shall maintain an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee or Registrar) where Securities may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Securities and this Indenture may be made. The Issuer shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations and surrenders may be made at the corporate trust place of payment and notices and demands may be made at the Corporate Trust Office of the Trustee as set forth in Section 12.01.

(b) The Issuer may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, *however*, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency for such purposes. The Issuer shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

(c) The Issuer hereby designates the Corporate Trust Office of the Trustee or its agent as such office or agency of the Issuer in accordance with Section 2.04.

SECTION 4.16. Line of Business. The Issuer shall not, and shall not permit any of its Restricted Subsidiaries to, engage in any line of business other than a Permitted Business.

SECTION 4.17. Use of Proceeds. The Issuer shall use the net proceeds from the issuance and sale of the Securities to refinance a portion of the 6% Convertible Notes and to pay fees, costs and expenses arising in connection with the issuance of the Securities.

SECTION 4.18. Existence. Subject to Article 5, the Issuer will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the Issuer and each Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect the corporate, partnership or other existence of each Guarantor.

SECTION 4.19. Rating. The Issuer shall use commercially reasonable efforts to maintain a current rating on the Securities of a Rating Agency (at no particular rating category) and deliver to the Trustee and the Holders of the Securities (and holders of beneficial interests in the Securities), within 90 days after each anniversary of the Issue Date, a ratings letter (or similar evidence) from any Rating Agency then rating the Securities indicating the then current rating on the Securities of such Rating Agency.

SECTION 4.20. Covenant Suspension.

(a) If, on any date following the Issue Date, (i) the Securities have received an Investment Grade Rating from the Required Rating Agencies, (ii) no Default or Event of Default has occurred and is continuing under this Indenture, and (iii) the Issuer has delivered to the Trustee an Officer's Certificate certifying as to the events specified in the foregoing clauses (i) and (ii) (the occurrence of the events described in the foregoing clauses (i) through (iii) being referred to collectively as a "Covenant Suspension Event"), the Issuer and the Restricted Subsidiaries will not be subject to Section 4.03, Section 4.04, Section 4.05, Section 4.06, Section 4.07, Section 4.10 and Section 5.01(a)(iii) (collectively, the "Suspended Covenants").

(b) Upon the occurrence of a Covenant Suspension Event, the amount of Excess Proceeds from Net Proceeds shall be reset at zero.

(c) In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenants under this Indenture for any period of time as a result of Section 4.20(a), and on any subsequent date (the "Reversion Date") (i) one or both of the Required Rating Agencies withdraws its Investment Grade Rating or downgrades the ratings assigned to the Securities below an Investment Grade Rating such that the Securities do not have an Investment Grade Rating from either of the Required Rating Agencies or (ii) the Issuer or any of its Affiliates enters into an agreement to effect a transaction that would result in a Change of Control and one or both of the Required Rating Agencies indicates that, if consummated, such transaction (alone or together with any related recapitalization or refinancing transactions) would cause such Required Rating Agencies to withdraw their Investment Grade Ratings or downgrade the ratings assigned to the Securities below an Investment Grade Rating such that the Securities do not have an Investment Grade Rating from both of the Required Rating Agencies, then the Issuer and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants under this Indenture with respect to future events, including a proposed transaction described in clause (ii) above.

(d) The period of time between the Covenant Suspension Event and the Reversion Date is referred to as the "Suspension Period". In the event of any reinstatement following a Reversion Date, neither any action taken or omitted to be taken by the Issuer or any of its Restricted Subsidiaries with respect to a Suspended Covenant prior to such reinstatement, nor the performance of obligations incurred during the Suspension Period (which were permitted to be incurred at such time), will give rise to a Default or Event of Default under this Indenture with respect to the Securities; *provided* that (i) with respect to Restricted Payments made after any such reinstatement, the amount of Restricted Payments made will be calculated as though Section 4.04 had been in effect prior to, but not during, the Suspension Period, *provided* that any Subsidiaries designated as Unrestricted Subsidiaries during the Suspension Period shall automatically become Restricted Subsidiaries on the Reversion Date (subject to the Issuer's right to subsequently designate them as Unrestricted Subsidiaries in compliance with this Indenture) and (ii) all Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, during the Suspension Period will be deemed to have been outstanding on the Issue Date, so that it is classified as permitted under Section 4.03(b)(iii).

(e) The Trustee shall have no duty to monitor the ratings of the Securities and shall not be deemed to have any knowledge of the ratings of the Securities. The Issuer shall provide an Officer's Certificate to the Trustee indicating the occurrence of a Covenant Suspension Event or any Reversion Date. The Trustee shall have no obligation to independently determine or verify if such events have occurred or notify the Holders of Securities of any Suspension Period or Reversion Date. The Trustee may provide a copy of such Officer's Certificate upon request to any Holder (or such holder of beneficial interests in the Securities) who shall have executed and delivered a Confidentiality Agreement in accordance with the terms of this Indenture.

SECTION 4.21. Restricted Proceeds; Escrow Account[2].

(a) The Issuer shall maintain at all times, in a trust account (the "Trust Account"), on an uninvested basis, the Restricted Amount (as defined in the Note Purchase Agreement dated March [30], 2020 to which the Issuer is party), subject to the Escrow/Alternative Arrangement (as defined in such Note Purchase Agreement), until, and the Issuer shall use the Restricted Amount only for, repayment of all obligations in respect of the 6% Convertible Notes to be repaid on or prior to December 1, 2020. The Issuer shall not amend, modify, supplement, terminate or restate the Escrow/Alternative Arrangement prior to such repayment.

(b) Notwithstanding the provisions of Section 4.21(a) above, to the extent any 6% Convertible Notes with respect to which funds have been deposited in the Trust Account have been converted by the holders thereof into shares of the Issuer's common stock after the Issue Date, the Issuer may withdraw an amount equal to the aggregate principal amount of 6% Convertible Notes so converted from the Trust Account.

ARTICLE 5.

SUCCESSOR COMPANY

SECTION 5.01. When Issuer May Merge or Transfer Assets.

(a) The Issuer shall not consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Issuer is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Subsidiaries, taken as a whole, in one or more related transactions to, any Person unless:

(i) (x) the Issuer is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Issuer) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state or territory thereof or the District of Columbia (the Issuer or such Person, as the case may be, being herein called the "Successor Company"); and (y) the Successor Company (if other than the Issuer) expressly assumes all the obligations of the Issuer under this Indenture, the

2 Section 4.21 will be included in this Indenture to the extent that Section 5(p)(iii) of the Note Purchase Agreement is relied upon.

Securities and the Security Documents pursuant to supplemental indentures or other documents or instruments in form reasonably satisfactory to the Trustee;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iii) immediately after giving *pro forma* effect to such transaction, as if such transaction had occurred at the beginning of the applicable four-quarter period (and treating any Indebtedness that becomes an obligation of the Successor Company or any of its Restricted Subsidiaries as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), either:

(A) the Successor Company would be permitted to Incur at least $1.00 of additional Indebtedness pursuant to Section 4.03(a); or

(B) the Consolidated Leverage Ratio for the Successor Company and its Restricted Subsidiaries would be less than such ratio for the Issuer and its Restricted Subsidiaries immediately prior to such transaction;

(iv) each Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person's obligations under this Indenture and the Securities; and

(v) the Issuer shall have delivered to the Trustee (A) an Officer's Certificate and an Opinion of Counsel, stating (to the extent applicable with respect to such Opinion of Counsel) that such transaction complies with this Article 5 and such supplemental indentures (if any) comply with this Indenture and (B) an Officer's Certificate stating that any necessary actions required under this Indenture have been taken or will be taken promptly, and in any event no later than 30 days following such transaction.

(b) The Successor Company (if other than the Issuer) shall succeed to, and be substituted for, the Issuer under this Indenture, the Securities and the Security Documents, and in such event the Issuer will automatically be released and discharged from its obligations under this Indenture, the Securities and the Security Documents. This Article 5 will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any of the Issuer and its Restricted Subsidiaries. Notwithstanding Sections 5.01(a)(iii) and 5.01(a)(iv), (i) any Restricted Subsidiary may consolidate with or merge into or transfer all or part of its properties and assets to the Issuer, and (ii) the Issuer may merge with an Affiliate of the Issuer solely for the purpose of reincorporating the Issuer in any state of the United States, the District of Columbia or any territory thereof so long as the amount of Indebtedness of the Issuer and its Restricted Subsidiaries is not increased thereby.

SECTION 5.02. When Guarantors May Merge or Transfer Assets.

(a) Subject to the provisions of Section 10.02(b) (which govern the release of a Guarantee upon the sale, disposition, exchange or other transfer of the Capital Stock of a Guarantor), none of the Guarantors shall, and the Issuer shall not permit any Guarantor to, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not such Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than such Guarantor or another Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership or limited liability company organized or existing under the laws of the jurisdiction of its formation or the laws of

the United States, any state thereof, the District of Columbia, or any territory thereof (such Guarantor or such Person, as the case may be, being herein called the "Successor Guarantor") and the Successor Guarantor (if other than such Guarantor or another Guarantor) expressly assumes all the obligations of such Guarantor under this Indenture and, if applicable, such Guarantors' Guarantee pursuant to a supplemental indenture or other documents or instruments in form reasonably satisfactory to the Trustee or (B) (x) such consolidation, amalgamation, merger, winding up, conversion, sale, assignment, transfer, lease, conveyance or disposition is made to or with a Person that is not the Issuer or a Restricted Subsidiary and is not in violation of Section 4.06 and (y) after giving effect to such consolidation, amalgamation, merger, winding up, conversion, sale, assignment, transfer, lease, conveyance or disposition, such Guarantor is no longer a Restricted Subsidiary; and

(ii) the Successor Guarantor (if other than such Guarantor or another Guarantor) or the Issuer shall have delivered or caused to be delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger, winding up, conversion, sale, assignment, transfer, lease, conveyance or disposition and such supplemental indenture (if any) comply with this Indenture.

(b) Except as otherwise provided in this Indenture, the Successor Guarantor (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture and such Guarantor's Guarantee, and in such event such Guarantor will automatically be released and discharged from its obligations under this Indenture and such Guarantor's Guarantee.

(c) Notwithstanding the foregoing and without the need to deliver any Opinion of Counsel in connection therewith, any Guarantor may (i) consolidate, amalgamate, merge with or into or wind up or convert into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, the Issuer or any other Guarantor or (ii) convert into a corporation, partnership, limited partnership, limited liability corporation or trust organized or existing under the laws of the jurisdiction of such Guarantor.

ARTICLE 6.

DEFAULTS AND REMEDIES

SECTION 6.01. Events of Default. An "Event of Default" occurs if:

(a) there is a default in any payment of interest on any Security when the same becomes due and payable and such default continues for a period of 30 days;

(b) there is a default in the payment of principal of or premium, if any, on any Security (i) upon scheduled payment thereof (including pursuant to Section 4.01(b)) and such default continues for a period of three Business Days or (ii) upon optional redemption, upon required repurchase, upon declaration of acceleration or otherwise (except as set forth in clause (i) above);

(c) (i) the failure by the Issuer to (A) provide a Change of Control Offer as described in Section 4.08 and such failure continues for two Business Days after the due date for such notice, (B) comply with Article 5 or (C) comply with Section 4.21 and such failure continues for five Business Days or (ii) the failure by the Issuer or any Guarantor to comply with any of its agreements in the Securities or this Indenture (other than those referred to in clause (a) or (b) above or clause (i) of this clause (c)) and such failure in the case of this clause (ii) continues for 30 days;

(d) default by the Issuer, any Guarantor or any Significant Subsidiary of the Issuer with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of $15,000,000 (or its foreign currency equivalent at the time) in the aggregate of the Issuer and/or any such Guarantor or Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable at its Stated Maturity, upon redemption, upon required repurchase, upon declaration of

acceleration or otherwise, and, in the cases of clauses (i) and (ii), such acceleration shall not, after the expiration of any applicable grace period, have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness is not paid or discharged, as the case may be, within 30 days after receipt by the Issuer of the notice specified below;

(e) the Issuer, any Guarantor or any Significant Subsidiary of the Issuer shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Issuer or any such Guarantor or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer or any such Guarantor or Significant Subsidiary of the Issuer or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors;

(f) an involuntary case or other proceeding shall be commenced against the Issuer, any Guarantor or a Significant Subsidiary of Issuer seeking liquidation, reorganization or other relief with respect to the Issuer or such Guarantor or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Issuer or such Guarantor or Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive calendar days;

(g) any Guarantee ceases to be in full force and effect (except as contemplated by the terms thereof in accordance with this Indenture) or any Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee and such Default continues for ten Business Days; and

(h) the Issuer fails to comply for 15 calendar days after the notice specified below with its obligations contained in the Security Documents, except for a failure with respect to assets or property with an aggregate value of less than $1,000,000.

The foregoing shall constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "Bankruptcy Law" means Title 11, United States Code, or any similar U.S. federal or state law for the relief of debtors (or their non-U.S. equivalents). The term "Custodian" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (d) or (h) above shall not constitute an Event of Default until the Issuer has received from the Trustee or the Holders of at least 25% in principal amount of the outstanding Securities prior written notice (which such notice shall also be received by the Trustee if given by the Holders) of the Default. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default". The Issuer shall deliver to the Trustee within 20 days after obtaining knowledge thereof, written notice in the form of an Officer's Certificate of any event that is, or with the giving of notice or the lapse of time or both would become, an Event of Default, its status and what action the Issuer is taking or proposes to take in respect thereof.

SECTION 6.02. Acceleration. If an Event of Default (other than an Event of Default specified in Section 6.01(e) or 6.01(f) with respect to the Issuer) occurs and is continuing, the Trustee by notice to the Issuer, or the Holders of a majority in principal amount of the then outstanding Securities by written notice to the Issuer and the Trustee, may declare the principal of, and the premium, if any, and accrued but unpaid interest, if any, on, all then outstanding Securities to be due and payable. Upon such a declaration, such principal, premium, if any, and accrued and unpaid interest, if any, shall be due and payable immediately. Upon the occurrence of an Event of Default specified in Section 6.01(e) or 6.01(f) with respect to the Issuer, the principal of, and the premium, if any, and accrued but unpaid interest, if any, on, all the then

outstanding Securities shall *ipso facto* become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders. The Holders of a majority in principal amount of the Securities by notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

If the principal of, or premium, if any, or accrued and unpaid interest, if any, on, the Securities becomes due and payable as provided above (an "Acceleration"), the principal of, and the premium, if any, and accrued but unpaid interest, if any, on, the Securities that becomes due and payable shall equal the optional redemption price in effect on the date of such declaration (or the date set forth in the third sentence of this Section 6.02), as if such Acceleration were an optional redemption of the Securities affected thereby on such date of declaration (or the date set forth in the third sentence of this Section 6.02). The amounts described in the preceding sentence are intended to be liquidated damages and not unmatured interest or a penalty.

In the event of any Event of Default specified in Section 6.01(d), such Event of Default and all consequences thereof (excluding, however, any resulting payment default) shall be annulled, waived and rescinded, automatically and without any action by the Trustee or the Holders of the Securities, if within 30 days after such Event of Default arose the Issuer delivers an Officer's Certificate to the Trustee stating that (x) the Indebtedness or guarantee that is the basis for such Event of Default has been discharged, (y) the Holders thereof have rescinded or waived the acceleration, notice or action (as the case may be) giving rise to such Event of Default or (z) the default that is the basis for such Event of Default has been cured, it being understood that in no event shall an acceleration of the principal amount of the Securities as described above be annulled, waived or rescinded upon the happening of any such events.

Notwithstanding the foregoing, to the extent the Issuer elects, the sole remedy for an Event of Default under Section 6.01(c)(ii) relating to the Issuer's failure to comply with
Section 4.02 will (i) for the first 90 calendar days after the occurrence of such an Event of Default (beginning on, and including, the date on which such an Event of Default first occurs), consist exclusively of the right to receive additional interest on the Securities equal to 0.25% per annum of the principal amount of such Securities outstanding for each day during such 90 calendar day period on which such Event of Default is continuing and (ii) for the period from, and including, the 91st calendar day after the occurrence of such an Event of Default to, and including, the 180th calendar day after the occurrence of such an Event of Default, consist exclusively of the right to receive additional interest on the Securities equal to 0.50% per annum of the principal amount of Securities outstanding for each day during such additional 90 calendar day period on which such Event of Default is continuing. On the 181st calendar day after the date on which such Event of Default occurred (if such Event of Default has not been cured or waived prior to such 181st day), the Securities will be subject to acceleration as provided above. This paragraph will not affect the rights of Holders of Securities in the event of the occurrence of any other Event of Default. In the event the Issuer does not elect to pay additional interest following an Event of Default in accordance with this paragraph or the Issuer elects to make such payment but does not pay the additional interest when due, the Securities will be subject to acceleration upon an Event of Default with regard thereto as provided above. With regard to any violation specified in this paragraph, no additional interest shall accrue, and no right to declare

the principal or other amounts due and payable in respect of the Securities shall exist, after such violation has been cured.

In order to elect to pay the additional interest as the sole remedy during the first 180 days after the occurrence of an Event of Default relating to the failure to comply with the reporting obligations in accordance with the immediately preceding paragraph, the Issuer must notify all Holders of Securities, the Trustee and the Paying Agent of such election prior to the beginning of such 180 day

period. Upon the Issuer's failure to timely give such notice, the Securities will be immediately subject to acceleration as provided above.

Additional interest that is payable pursuant to the foregoing provisions will be payable in arrears on each Payment Date following accrual in the same manner as regular interest on the Securities.

In no event shall additional interest payable at the Issuer's election for failure to comply with its reporting obligations pursuant to Section 6.01 accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such additional interest. All references to interest in this Indenture shall include such additional interest unless expressly set forth.

SECTION 6.03. Other Remedies. If an Event of Default occurs and is continuing, the Trustee may, but only at the written direction of Holders of a majority in principal amount of the then outstanding Securities, pursue any available remedy at law or in equity to collect the payment of principal of or interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. To the extent required by law, all available remedies are cumulative.

SECTION 6.04. Waiver of Past Defaults. Provided the Securities are not then due and payable by reason of a declaration of acceleration, the Holders of a majority in principal amount of the then outstanding Securities by written notice to the Trustee may waive an existing Default and its consequences except (a) a Default in the payment of the principal of or interest on a Security, (b) a Default arising from the failure to redeem or purchase any Security when required pursuant to the terms of this Indenture or (c) a Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected. When a Default is waived, it is deemed cured and the Issuer, the Trustee and the Holders will be restored to their former positions and rights under this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any consequent right. Any past Default or compliance with any provisions may be waived with the consent of the Holders of a majority in principal amount of the Securities then outstanding.

SECTION 6.05. Control by Majority. The Holders of a majority in principal amount of the then outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under this Indenture, the Trustee shall be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

SECTION 6.06. Limitation on Suits.

(a) Except to enforce the right to receive payment of principal, premium (if any) or interest when due, no Holder may pursue any remedy with respect to this Indenture or the Securities unless:

(i) the Holder gives the Trustee written notice stating that an Event of Default is continuing;

(ii) the Holders of at least 25% in principal amount of the then outstanding Securities make a written request to the Trustee to pursue the remedy;

(iii) such Holder or Holders offer to the Trustee security or indemnity satisfactory to it against any loss, liability or expense;

(iv) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity; and

(v) the Holders of a majority in principal amount of the then outstanding Securities do not give the Trustee a direction inconsistent with the request during such 60-day period.

(b) A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder.

SECTION 6.07. Rights of the Holders to Receive Payment. Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal of and interest on the Securities held by such Holder, on or after the respective due dates expressed or provided for in this Indenture or in the Securities, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

SECTION 6.08. Collection Suit by Trustee. If an Event of Default specified in Section 6.01(a) or Section 6.01(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer or any other obligor on the Securities for the whole amount then due and owing (together with interest on overdue principal and (to the extent lawful) on any unpaid interest at the rate provided for in the Securities) and the amounts provided for in Section 7.06.

SECTION 6.09. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation, expenses disbursements and advances of the Trustee (including counsel, accountants, experts or such other professionals as the Trustee deems necessary, advisable or appropriate)) and the Holders allowed in any judicial proceedings relative to the Issuer or any Guarantor, their creditors or their property, shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such matters and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions and be a member of a creditors' or other similar committee, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.06.

SECTION 6.10. Priorities. If the Trustee collects any money or property pursuant to this Article 6 or any Security Document, the Trustee (after giving effect to Section 5.2 of the Security Agreement) shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 7.06;

SECOND: to the Holders for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal, premium, if any, and interest, respectively; and

THIRD: to the Issuer or, to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall provide to each Holder and the Issuer a written notice that states the record date, the payment date and amount to be paid.

SECTION 6.11. Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture or in any

suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in principal amount of the Securities.

SECTION 6.12. Waiver of Stay or Extension Laws. Neither the Issuer nor any Guarantor (to the extent it may lawfully do so) shall at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever

enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Issuer and each Guarantor (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law, and shall not hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 6.13. Visitation. The Issuer shall permit the representatives of any Holder (or any holder of beneficial interests in the Securities), if a Default or Event of Default then exists, at the expense of the Issuer, to visit any of the offices or properties of the Issuer and to discuss their affairs, finances and accounts with their officers, in each case, no more than once per calendar year and all during normal business hours and upon reasonable notice.

ARTICLE 7.

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs, except with respect to the obligation to exercise rights and remedies following an Event of Default, which right and remedies shall be performed by the Trustee acting solely upon the direction of Holders of a majority in principal amount of the Securities in accordance with Section 6.03 and Section 6.05.

(b) Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee (it being agreed that the permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty); and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. The Trustee shall be under no duty to make any investigation as to any statement contained in any such instance, but may accept the same as conclusive evidence of the truth and accuracy of such statement or the correctness of such opinions. However, in the case of certificates or opinions required by any provision hereof to be provided to it, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph does not limit the effect of Section 7.01(b);

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 7.01.

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) The Trustee shall not be liable to any Person for special, punitive, indirect, consequential or incidental loss or damage of any kind whatsoever (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01 and, to the extent made expressly applicable by the terms of this Indenture, to the provisions of the TIA.

SECTION 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on the Officer's Certificate or Opinion of Counsel.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within its rights or powers; *provided*, *however*, that the Trustee's conduct does not constitute willful misconduct or negligence.

(e) The Trustee may consult with counsel of its own selection and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel or Opinion of Counsel.

(f) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, bond, debenture, note or other paper or document unless requested in writing to do so by the Holders of a majority in principal amount of the Securities at the time outstanding, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney, at the expense of the Issuer and shall incur no liability of any kind by reason of such inquiry or investigation.

(g) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee in its sole discretion against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be compensated, reimbursed and indemnified as provided in Section 7.06, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including as Collateral Agent), and each agent, custodian and other Person employed to act hereunder.

(i) The Trustee shall not be liable for any action taken or omitted by it in good faith at the direction of the Holders of a majority in principal amount of the Securities as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture.

(j) Any action taken, or omitted to be taken, by the Trustee in good faith pursuant to this Indenture upon the request or authority or consent of any person who, at the time of making such request or giving such authority or consent, is the Holder of any Security shall be conclusive and binding upon future Holders of Securities and upon Securities executed and delivered in exchange therefor or in place thereof.

(k) In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 7.03. Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuer or its Affiliates with the same rights it would have if it were not Trustee. The Trustee and its Affiliates have engaged, currently are engaged and may in the future engage in financial or other transactions with the Issuer and its Affiliates in the ordinary course of their respective businesses. Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10.

SECTION 7.04. Trustee's Disclaimer. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, any Guarantee, the Securities or any Security Documents, it shall not be accountable for the Issuer's use of the proceeds from the Securities, and it shall not be responsible for any statement of the Issuer or any Guarantor in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication. The Trustee shall not be charged with knowledge of any Default or Event of Default under Section 6.01(c), 6.01(d), 6.01(e), 6.01(f), 6.01(g) or 6.01(h) unless either (a) a Trust Officer shall have actual knowledge thereof or (b) the Trustee shall have received written notice thereof in accordance with Section 12.01 from the Issuer, any Guarantor or any Holder. The Trustee shall have no obligation to determine the applicable interest rate in accordance with this Indenture or the Securities.

SECTION 7.05. Notice of Defaults. If a Default occurs and is continuing and if it is actually known to a responsible officer of the Trustee, the Trustee shall provide to each Holder written notice of the Default within 30 days after it is actually known to a Trust Officer or written notice referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default", is received by the Trustee in accordance with Section 12.01. Except in the case of a Default in the payment of principal of or premium (if any) or interest on any Security, the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is in the interests of the Holders.

SECTION 7.06. Compensation and Indemnity. The Issuer shall pay to the Trustee from time to time reasonable compensation for its services, as agreed between the Issuer and the Trustee. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee upon request for all reasonable and

documented out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Such expenses shall include the reasonable and documented compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuer and each Guarantor, jointly and severally, shall indemnify the Trustee against any and all loss, liability, claim, damage or expense (including reasonable and documented attorneys' fees and expenses) incurred by or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture or a Guarantee against the Issuer or a Guarantor (including this Section 7.06) and defending itself against or investigating any claim (whether asserted by the Issuer, any Guarantor, any Holder or any other Person). The obligation to pay such amounts shall survive the discharge of this Indenture, the payment in full or defeasance of the Securities or the removal or resignation of the Trustee. The Trustee shall notify the Issuer of any claim for which it may seek indemnity promptly upon obtaining actual

knowledge thereof; *provided*, *however*, that any failure so to notify the Issuer shall not relieve the Issuer or any Guarantor of its indemnity obligations hereunder. The Issuer shall defend the claim and the indemnified party shall provide reasonable cooperation at the Issuer's expense in the defense. Such indemnified parties may have separate counsel and the Issuer and the Guarantors, as applicable, shall pay the fees and expenses of such counsel; *provided*, *however*, that the Issuer shall not be required to pay such fees and expenses if it assumes such indemnified parties' defense and, in such indemnified parties' reasonable judgment, there is no conflict of interest between the Issuer and the Guarantors, as applicable, and such parties in connection with such defense. Notwithstanding the foregoing, the Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by an indemnified party through such party's own willful misconduct or gross negligence (as determined by a final, non-appealable order of a court of competent jurisdiction).

To secure the Issuer's and the Guarantors' payment obligations in this Section 7.06, the Trustee shall have a Lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of, and premium, if any, and interest on, particular Securities.

The Issuer's and the Guarantors' payment obligations pursuant to this Section 7.06 shall survive the satisfaction or discharge of this Indenture, any rejection or termination of this Indenture under any bankruptcy law or the resignation or removal of the Trustee. Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses after the occurrence of a Default specified in Section 6.01(e) or Section 6.01(f) with respect to the Issuer, the expenses are intended to constitute expenses of administration under the Bankruptcy Law.

No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if repayment of such funds or adequate indemnity against such risk or liability is not assured to its satisfaction.

SECTION 7.07. Replacement of Trustee.

(a) The Trustee may resign in writing at any time upon 30 days prior notice to the Issuer by so notifying the Issuer. The Holders of a majority in principal amount of the Securities may remove the Trustee by so notifying the Trustee and may appoint a successor Trustee. The Issuer shall remove the Trustee if:

(i) the Trustee fails to comply with Section 7.09;

(ii) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a receiver or other public officer takes charge of the Trustee or its property; or

(iv) the Trustee otherwise becomes incapable of acting.

(b) If the Trustee resigns or is removed by the Issuer or by the Holders of a majority in principal amount of the Securities and such Holders do not reasonably promptly appoint a successor Trustee, or if a vacancy exists in the office of Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Issuer shall promptly appoint a successor Trustee.

(c) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall provide a written notice of its succession to the Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the Lien provided for in Section 7.06.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of 10% in principal amount of the Securities may petition at the expense of the Issuer any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee fails to comply with Section 7.09, unless the Trustee's duty to resign is stayed as provided in Section 310(b) of the TIA, any Holder who has been a bona fide holder of a Security for at least six months may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) Notwithstanding the replacement of the Trustee pursuant to this Section 7.07, the obligations of the Issuer and the Guarantors under Section 7.06 shall continue for the benefit of the retiring Trustee.

SECTION 7.08. Successor Trustee by Merger. If the Trustee consolidates with, merges with or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; and in all such cases such certificates shall have the full force that it is anywhere in the Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 7.09. Eligibility; Disqualification. The Trustee shall at all times satisfy the requirements of Section 310(a) of the TIA. The Trustee shall have a combined capital and surplus of at least $100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with Section 310(b) of the TIA, subject to its right to apply for a stay of its duty to resign under the penultimate paragraph of Section 310(b) of the TIA;

provided, *however*, that there shall be excluded from the operation of Section 310(b)(1) of the TIA any series of securities issued under this Indenture and any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Issuer is outstanding if the requirements for such exclusion set forth in Section 310(b)(1) of the TIA are met.

SECTION 7.10. Preferential Collection of Claims Against the Issuer. The Trustee shall comply with Section 311(a) of the TIA, excluding any creditor relationship listed in Section 311(b) of the TIA. A Trustee who has resigned or been removed shall be

subject to Section 311(a) of the TIA to the extent indicated.

SECTION 7.11. Confidential Information. The Trustee, in its individual capacity and as Trustee, agrees and acknowledges that all confidential information provided to the Trustee by the Issuer or any Subsidiary (or any direct or indirect equityholder of the Issuer or such Subsidiary) or any Holder (or holder of a beneficial interest in the Securities) that is expressly identified as relating to the Indenture and the Security Documents ("Confidential Information") shall be considered to be proprietary and confidential information; provided, that any information provided to the Trustee that is not so identified, or that is provided to U.S. Bank National Association in its capacity as trustee or collateral agent for the 6% Convertible Notes or any other debt of the Issuer, shall not be considered Confidential Information. The Trustee agrees to take reasonable precautions to keep Confidential Information confidential, which precautions shall be no less stringent than those that the Trustee employs to protect its own confidential information. The Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Trustee's rights and the performance of its obligations under this Indenture, any Confidential Information without the prior written consent of the Issuer or such Holder (or such holder of a beneficial interest in the Securities), as applicable. The Trustee shall limit access to Confidential Information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of Confidential Information is necessary for the purposes described above; *provided*, *however*, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.11.

The Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, does not have any responsibility whatsoever for any reliance on Confidential Information by the Trustee or by any Person to whom such information is disclosed in connection with this Indenture, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, the Trustee agrees that the Issuer or any Holder (or any holder of a beneficial interest in the Securities), as applicable, makes no representation or warranty whatsoever to it with respect to Confidential Information or its suitability for such purposes. The Trustee further agrees that it shall not acquire any rights against the Issuer or any of its Subsidiaries or any employee, officer, director, manager, representative or agent of the Issuer or any of its Subsidiaries or any Holder (or any holder of a beneficial interest in the Securities), as applicable (together with the Issuer, "Confidential Parties") as a result of the disclosure of Confidential Information to the Trustee and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

In the event the Trustee is required to disclose any Confidential Information received hereunder in order to comply with any laws, regulations or court orders, it may disclose such information only to the extent necessary for such compliance; *provided*, *however*, that it shall give the Issuer reasonable advance written notice of any court proceeding in which such disclosure may be required pursuant to a court order so as to afford the Issuer full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with the Issuer in opposing such court order and in securing confidential treatment of any such information to be disclosed or obtaining a protective order narrowing the scope of such disclosure (in each case, at the Issuer's sole cost and expense and to the extent permitted pursuant to such applicable law, regulation or court order).

Each of the Paying Agent and the Registrar agrees to be bound by this Section 7.11 to the same extent as the Trustee.

ARTICLE 8.

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Discharge of Liability on Securities; Defeasance. This Indenture shall be discharged and shall cease to be of

further effect (except as to surviving rights of registration of transfer or exchange of Securities and certain rights of the Trustee, as expressly provided for in this Indenture) as to all outstanding Securities, and the Guarantees will be terminated, when:

(a) either (i) all the Securities theretofore authenticated and delivered (other than Securities pursuant to Section 2.08 that have been replaced or paid and Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid by the Issuer or discharged from such trust) have been delivered to the Trustee for cancellation or (ii) all of the Securities not theretofore delivered for cancellation (a) have become due and payable, (b) will become due and payable at their Stated Maturity within one year or (c) if redeemable at the option of the Issuer, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Securities not theretofore delivered to the Trustee for cancellation, for principal of, and premium, if any, and interest on, the Securities to the date of deposit, together with amounts sufficient to pay all other Obligations under this Indenture that are then due and payable and for which demand for payment has been made upon the Issuer and irrevocable instructions from the Issuer directing the Trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;

(b) the Issuer or the Guarantors have paid or caused to be paid all other sums due and payable under this Indenture; and

(c) the Issuer has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

(d) Notwithstanding clauses (a) and (b) above, the Issuer's obligations in Sections 2.04, 2.05, 2.06, 2.07, 2.08, 2.09, 6.07, 7.06 and 7.07 and in this Article 8 shall survive until the Securities have been paid in full. Thereafter, the Issuer's obligations in Sections 7.06, 8.05 and 8.06 shall survive such satisfaction and discharge.

(e) Subject to Section 8.01(d) and Section 8.02, the Issuer at any time may terminate (i) all its obligations under the Securities and this Indenture (with respect to such Securities) ("legal defeasance option") or (ii) its obligations under Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.10, 4.11, 4.12, 4.13, 4.14, 4.16, 4.17, 4.18 and 4.19 and the operation of Section 4.08, Article 5 and Sections 6.01(c), 6.01(d), 6.01(e) (with respect to Restricted Subsidiaries of the Issuer only), 6.01(f) (with respect to Restricted Subsidiaries of the Issuer only), 6.01(g) and 6.01(h) ("covenant defeasance option"). The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option. In the event that the Issuer terminates all of its obligations under the Securities and this Indenture (with respect to such Securities) by exercising its legal defeasance option or its covenant defeasance option, the obligations of each Guarantor under its Guarantee of such Securities shall be terminated simultaneously with the termination of such obligations.

If the Issuer exercises its legal defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default. If the Issuer exercises its covenant defeasance option, payment of the Securities so defeased may not be accelerated because of an Event of Default specified in Section 6.01(c), 6.01(d), 6.01(e) (to the extent such Section 6.01(e) applies to Subsidiaries), 6.01(f) (to the extent such Section 6.01(f) applies to Subsidiaries), 6.01(g) or 6.01(h) or because of the failure of the Issuer to comply with Article 5.

Upon satisfaction of the conditions set forth herein and upon request of the Issuer, the Trustee shall acknowledge in writing the discharge of those obligations that the Issuer terminates.

SECTION 8.02. Conditions to Defeasance.

(a) The Issuer may exercise its legal defeasance option or its covenant defeasance option only if:

(i) the Issuer irrevocably deposits in trust with the Trustee cash in U.S. Dollars, U.S. Government Obligations or a combination thereof in an amount sufficient, or U.S. Government Obligations, the principal of and the interest on which will be sufficient, or a combination thereof sufficient, to pay the principal of and premium (if any) and interest on the Securities when due at maturity or redemption, as the case may be, including interest thereon to maturity or such

Redemption Date;

(ii) the Issuer delivers to the Trustee a certificate from a firm of independent accountants expressing its opinion that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the Securities to maturity or redemption, as the case may be;

(iii) 123 days pass after the deposit is made and during the 123-day period no Default specified in Section 6.01(e) or Section 6.01(f) with respect to the Issuer occurs that is continuing at the end of the period;

(iv) the deposit does not constitute a default under any other agreement binding on the Issuer;

(v) in the case of the legal defeasance option, the Issuer shall have delivered to the Trustee an opinion of tax counsel of recognized standing in the United States stating that (1) the Issuer has received from, or there has been published by, the IRS a ruling, or (2) since the date of this Indenture there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such opinion of tax counsel of recognized standing in the United States shall confirm that, the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vi) in the case of the covenant defeasance option, the Issuer shall have delivered to the Trustee an opinion of tax counsel of recognized standing in the United States to the effect that the Holders will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such deposit and defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred;

(vii) the right of any Holder to receive payment of principal of, and premium, if any, and interest on, such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities shall not be impaired; and

(viii) the Issuer delivers to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the Securities to be so defeased and discharged as contemplated by this Article 8 have been complied with.

(b) Before or after a deposit, the Issuer may make arrangements satisfactory to the Trustee for the redemption of such Securities at a future date in accordance with Article 3.

SECTION 8.03. Application of Trust Money. The Trustee shall hold in trust money or U.S. Government Obligations (including proceeds thereof) deposited with it pursuant to this Article 8. It shall apply the deposited money and the money from U.S. Government Obligations through each Paying Agent and in accordance with this Indenture to the payment of principal of and interest on the Securities so discharged or defeased.

SECTION 8.04. Repayment to Issuer. Each of the Trustee and each Paying Agent shall promptly turn over to the Issuer upon request any money or U.S. Government Obligations held by it as provided in this Article 8 that, in the written opinion of a firm of independent public accountants recognized in the United States delivered to the Trustee (which delivery shall only

be required if U.S. Government Obligations have been so deposited), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent discharge or defeasance in accordance with this Article 8.

Subject to any applicable abandoned property law, the Trustee and each Paying Agent shall pay to the Issuer upon written request any money held by them for the payment of principal or interest that remains unclaimed for two years, and, thereafter,

Holders entitled to the money must look to the Issuer for payment as general creditors, and the Trustee and each Paying Agent shall have no further liability with respect to such monies.

SECTION 8.05. Indemnity for Government Obligations. The Issuer shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against deposited U.S. Government Obligations or the principal and interest received on such U.S. Government Obligations.

SECTION 8.06. Reinstatement. If the Trustee or any Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with this Article 8 by reason of any legal proceeding or by reason of any order or judgment of any Governmental Authority enjoining, restraining or otherwise prohibiting such application, the Issuer's obligations under this Indenture and the Securities so discharged or defeased shall be revived and reinstated as though no deposit had occurred pursuant to this Article 8 until such time as the Trustee or any Paying Agent is permitted to apply all such money or U.S. Government Obligations in accordance with this Article 8; *provided*, *however*, that, if the Issuer has made any payment of principal of or interest on any such Securities because of the reinstatement of its obligations, the Issuer shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Obligations held by the Trustee or any Paying Agent.

ARTICLE 9.

AMENDMENTS AND WAIVERS

SECTION 9.01. Without Consent of the Holders. Notwithstanding Section 9.02, the Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities or the Security Documents, and may waive any provision thereof, without notice to or consent of any Holder:

(i) to cure any ambiguity, omission, mistake, defect or inconsistency;

(ii) to provide for the assumption by a Successor Company of the obligations of the Issuer under this Indenture and the Securities in accordance with the terms of this Indenture or otherwise to comply with Article 5;

(iii) to provide for the assumption by a Successor Guarantor of the obligations of a Guarantor under this Indenture and its Guarantee;

(iv) to provide for uncertificated Securities in addition to or in place of certificated Securities; *provided*, *however*, that the uncertificated Securities are issued in

registered form for purposes of Sections 871(h)(2)(B) and 881(c)(2)(B) of the Code and United States Treasury Regulation Section 5f.103-1(c);

(v) to add additional Guarantees with respect to the Securities in accordance with the terms of this Indenture or to evidence the release, termination or discharge of any Guarantee when such release, termination or discharge is permitted or required by this Indenture;

(vi) to add to the covenants of the Issuer and its Subsidiaries for the benefit of the Holders or to surrender any right or power conferred herein upon the Issuer or any of its Subsidiaries in accordance with the terms of this Indenture;

(vii) to comply with any requirement of the SEC in connection with qualifying or maintaining the qualification of this Indenture under the TIA (to the extent any such qualification is required);

(viii) to make any change that would provide additional rights or benefits to the Holders or to make any change that does not adversely affect the legal rights of any Holder;

(ix) to add additional assets as Notes Collateral to secure the Securities;

(x) to release Notes Collateral from the Lien pursuant to Section 11.03 or Section 8.12 of the Security Agreement;

(xi) to modify the Security Documents to accommodate and implement the Liens contemplated by clause (19)(z) of the definition of "Permitted Liens";

(xii) to evidence and provide for the acceptance and appointment under this Indenture of a successor Trustee hereunder pursuant to the requirements hereof;

(xiii) to provide for or confirm the issuance of Additional Securities or to provide for the increased stated rate of interest on the Original Securities pursuant to and contemplated by Section 2.01(c);

(xiv) to make any amendment to the provisions of this Indenture relating to the transfer and legending of Securities as permitted by this Indenture, including, to facilitate the issuance and administration of the Securities; *provided*, *however*, that (A) compliance with this Indenture as so amended would not result in Securities being transferred in violation of the Securities Act or any applicable securities law and (B) such amendment does not materially and adversely affect the rights of Holders to transfer Securities; or

(xv) to amend the table set forth in Section 4.01(b) in accordance with the terms thereof.

Upon the request of the Issuer, and upon receipt by the Trustee of the documents described in Section 9.05, the Trustee shall join with the Issuer in the execution of any amended or supplemental Indenture authorized or permitted by the terms of this Indenture and to make

any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such modified or amended indenture that affects its own rights, duties or immunities under this Indenture or otherwise. After an amendment under this Section 9.01 becomes effective, the Issuer shall provide to the Holders and the Trustee a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

SECTION 9.02. With Consent of the Holders.

(a) The Issuer, the Collateral Agent, the Guarantors and the Trustee may amend or supplement this Indenture, the Securities and the Security Documents, and may waive any provision thereof (including the provisions of Section 4.08 and, subject to Section 6.04, any past Default), with the written consent of the Holders of a majority in principal amount of the Securities then outstanding voting as a single class (including consents obtained in connection with a tender offer or exchange for the Securities). However, without the consent of each Holder of an outstanding Security affected, an amendment, supplement or waiver may not:

(i) reduce the principal amount of Securities whose Holders must consent to an amendment;

(ii) reduce the rate of or extend the time for payment of interest on any Security;

(iii) reduce the principal of or change the Stated Maturity of any Security (or reduce the amount of any payment of any installment of principal or change the due date in respect of the payment of any installment of principal);

(iv) reduce the premium payable upon the redemption of any Security or change the time at which any Security may be redeemed in accordance with Article 3;

(v) make any Security payable in currency other than that stated in such Security;

(vi) expressly subordinate the Securities or any Guarantees in right of payment to any other Indebtedness of the Issuer or any Guarantor or adversely affect the priority of any Liens securing the Securities;

(vii) impair the right of any Holder to receive payment of principal of or premium, if any, and interest on such Holder's Securities on or after the due dates (or the due date in respect of the payment of any installment of principal) therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;

(viii) make any change in Section 6.04 or the second sentence of this Section 9.02;

(ix) make any change to the proviso of the second sentence of Section 2.01(c);

or

(x) except as expressly permitted by this Indenture, modify any Guarantee in any manner adverse to the Holders.

Without the consent of the Holders of at least two-thirds in aggregate principal amount of the Securities then outstanding, no amendment, supplement or waiver may release all or substantially all of the Notes Collateral from the Lien provided under this Indenture and the Security Documents with respect to the Securities or revise the proviso in Section 4.13(e). Notwithstanding the foregoing (including Section 9.02(a)(vii)), and for the avoidance of doubt, only the consent of the Holders of a majority in aggregate principal amount of the Securities then outstanding shall be required to approve any amendment, supplement or waiver to release any portion of the Notes Collateral that is less than all or substantially all of the Notes Collateral from the Lien provided under this Indenture and the Security Documents with respect to the Securities.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(b) After an amendment under this Section 9.02 becomes effective, the Issuer shall provide to the Holders a written notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.02.

SECTION 9.03. Revocation and Effect of Consents and Waivers.

(a) A consent to an amendment, supplement or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent, supplement or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent, supplement or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date on which the Trustee receives an Officer's Certificate from the Issuer certifying that the requisite principal amount of Securities have consented. After an amendment, supplement or waiver becomes effective, it shall bind every Holder. An amendment, supplement or waiver becomes effective upon the (i) receipt by the Issuer or the Trustee of consents by the Holders of the requisite principal amount of Securities, (ii) satisfaction of conditions to effectiveness as set forth in this Indenture and any indenture supplemental hereto containing such amendment, supplement or waiver, (iii) execution of such amendment or waiver (or supplemental indenture) by the Issuer, each Guarantor party hereto at such time, the Trustee and the Collateral Agent (if applicable) and (iv) delivery to the Trustee of the Officer's Certificate and Opinion of Counsel required under Article 12.

(b) The Issuer may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding Section 9.03(a), those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons

continue to be Holders after such record date. No such consent shall be valid or effective for more than 120 days after such record date.

SECTION 9.04. Notation on or Exchange of Securities. If an amendment, supplement or waiver changes the terms of a Security, the Issuer may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation

on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Issuer or the Trustee so determines, the Issuer in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment, supplement or waiver.

SECTION 9.05. Trustee to Sign Amendments. The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment, the Trustee shall be entitled to receive indemnity satisfactory to it and shall be provided with, and (subject to Section 7.01) shall be fully protected in relying upon, an Officer's Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and the Guarantors, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03).

SECTION 9.06. Payment for Consent. Neither the Issuer nor any Affiliate of the Issuer shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Securities unless such consideration is offered to be paid to all Holders that so consent, waive or agree to amend in the time frame set forth in solicitation documents relating to such consent, waiver or agreement.

SECTION 9.07. Additional Voting Terms; Calculation of Principal Amount. All Securities issued under this Indenture shall vote and consent together on all matters (as to which any of such Securities may vote) as one class. Determinations as to whether Holders of the requisite aggregate principal amount of Securities have concurred in any direction, waiver or consent shall be made in accordance with this Article 9 and Section 2.14.

ARTICLE 10.

GUARANTEES

SECTION 10.01. Guarantees.

(a) Each Guarantor hereby jointly and severally with each other Guarantor irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety on a senior unsecured basis to each Holder, the Trustee, the Collateral Agent and their respective successors and assigns (i) the full and punctual payment when due, whether on a Payment Date, at Stated Maturity, by acceleration, repurchase, or redemption or otherwise, of all obligations of the Issuer under this Indenture (including obligations to the Trustee) and the Securities, whether

for payment of principal of, or premium, if any, or accrued and unpaid interest, if any, on, the Securities and all other monetary obligations of the Issuer under this Indenture, the Securities and the Security Documents, and (ii) the full and punctual performance within applicable grace periods of all other obligations of the Issuer, whether for fees, expenses, indemnification or other amounts provided for under this Indenture, the Securities and the Security Documents (all the foregoing being hereinafter collectively called the "Guaranteed Obligation").

(b) Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Guarantor, and that each such Guarantor shall remain bound under this Article 10 notwithstanding any extension or renewal of any Guaranteed Obligation.

(c) Each Guarantor waives to the extent permitted by applicable law presentation to, demand of payment from and protest to the Issuer of any of the Guaranteed Obligations and also waives to the extent permitted by applicable law notice of protest for nonpayment. Each Guarantor waives to the extent permitted by applicable law notice of any default under the Securities or the

Guaranteed Obligations. The obligations of each Guarantor hereunder shall not be affected by (i) the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person under this Indenture, the Securities, any Security Document, or any other agreement or otherwise; (ii) any extension or renewal of this Indenture, the Securities, any Security Document or any other agreement; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Securities, any Security Document or any other agreement; (iv) the release of any security held by any Holder, the Trustee or the Collateral Agent for the Guaranteed Obligations or any Guarantor; (v) the failure of any Holder, the Trustee or the Collateral Agent to exercise any right or remedy against any other guarantor of the Guaranteed Obligations; or (vi) any change in the ownership of such Guarantor, except as provided in Section 10.02(b).

(d) Each Guarantor hereby waives to the extent permitted by applicable law any right to which it may be entitled to have its obligations hereunder divided among the Guarantors, such that such Guarantor's obligations would be less than the full amount claimed. Each Guarantor hereby waives to the extent permitted by applicable law any right to which it may be entitled to have the assets of the Issuer or any other Guarantor first be used and depleted as payment of the Issuer's or such Guarantor's obligations hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. Each Guarantor hereby waives to the extent permitted by applicable law any right to which it may be entitled to require that the Issuer be sued prior to an action being initiated against such Guarantor.

(e) Each Guarantor further agrees that its Guarantee herein constitutes a guarantee of payment, performance and compliance when due (and not a guarantee of collection) and waives to the extent permitted by applicable law any right to require that any resort be had by any Holder, the Trustee or the Collateral Agent to any security held for payment of the Guaranteed Obligations.

(f) Except as expressly set forth in Sections 8.01 and 10.02, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination

for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination
whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder, the Trustee or the Collateral Agent to assert any claim or demand or to enforce any remedy under this Indenture, the Securities, any Security Document or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the obligations, or by any other act or thing or omission or delay to do any other act or thing that may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(g) Except as expressly set forth in Sections 8.01 and 10.02, each Guarantor agrees that its Guarantee shall remain in full force and effect until payment in full of its Guaranteed Obligations (other than Contingent Obligations for which no claim has been made). Except as expressly set forth in Sections 8.01 and 10.02, each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder or the Trustee upon the bankruptcy or reorganization of the Issuer or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right that any Holder, the Trustee or the Collateral Agent has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Issuer to pay the principal of or interest on any Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, or to perform or comply with any other Guaranteed Obligation, each Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee in accordance with this Indenture, forthwith pay, or cause to be paid, in cash, to the Holders, the Trustee or the Collateral Agent an amount equal to the sum of (i) the unpaid principal amount of such Guaranteed Obligations, (ii) accrued and unpaid interest on such Guaranteed Obligations (but only to the extent not prohibited by applicable law) and (iii) all other monetary obligations of the Issuer then due to the Holders, the Trustee and the Collateral Agent in respect of the Guaranteed Obligations.

(i) Each Guarantor agrees that it shall not be entitled to exercise or assert any right of subrogation in relation to the Holders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations (other than Contingent Obligations for which no claim has been made). Each Guarantor further agrees that, as between it, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed

hereby may be accelerated as provided in Article 6 for the purposes of any Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 6, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purposes of this Section 10.01.

(j) Each Guarantor also agrees to pay any and all costs and expenses (including reasonable and documented attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Section 10.01.

(k) Each Guarantor shall execute and deliver such further instruments and do such further acts as the Trustee may reasonably request that may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 10.02. Limitation on Liability.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Guarantor shall not exceed the maximum amount that, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, can be guaranteed hereby without rendering the Guarantee, as it relates to such Guarantor, void or voidable under applicable laws relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

(b) Notwithstanding Section 10.01, a Guarantee as to any Guarantor shall terminate and be of no further force or effect and such Guarantor shall be deemed to be automatically and without any further action released from all obligations under this Article 10 upon:

(i) the sale, disposition, exchange or other transfer (including through merger, consolidation, amalgamation or otherwise) of the Capital Stock of the applicable Guarantor if (x) such sale, disposition, exchange or other transfer is made to a Person that is not the Issuer in a manner not in violation of this Indenture and (y) after giving effect to such sale, disposition, exchange or other transfer, such Guarantor is no longer a Restricted Subsidiary;

(ii) the Issuer designating such Guarantor to be an Unrestricted Subsidiary in accordance with the provisions set forth in Section 4.04 and the definition of "Unrestricted Subsidiary";

(iii) the Issuer's exercise of the Issuer's legal defeasance option or covenant defeasance option in accordance with Section 8.01 or if the obligations of the Issuer and such Guarantor under this Indenture are discharged in accordance with the terms of this Indenture;

(iv) the liquidation or dissolution of a Guarantor if permitted by the terms of this Indenture (other than in connection with any insolvency or bankruptcy of such Guarantor); or

(v) such Guarantor becoming a Foreign Subsidiary, Receivables Subsidiary or PPA Company.

SECTION 10.03. Successors and Assigns. This Article 10 shall be binding upon each Guarantor and its successors and assigns and shall inure to the benefit of the Trustee, the Collateral Agent and the Holders and their successors and assigns and, in the event of any transfer or assignment of rights by any Holder, the Collateral Agent or the Trustee, the rights and privileges conferred

upon that party in this Indenture and in the Securities shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 10.04. No Waiver. Neither a failure nor a delay on the part of the Trustee, the Collateral Agent or the Holders in exercising any right, power or privilege under this Article 10 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. The rights, remedies and benefits of the Trustee, the Collateral Agent and the Holders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits that any of them may have under this Article 10 at law, in equity, by statute or otherwise.

SECTION 10.05. Execution of Supplemental Indenture for Future Guarantors. Each Person that is required to become a Guarantor after the Issue Date pursuant to Section 4.10 shall promptly execute and deliver to the Trustee a supplemental indenture in the form of Exhibit C pursuant to which such Person shall become a Guarantor under this Article 10 and shall guarantee the Guaranteed Obligations. Concurrently with the execution and delivery of such supplemental indenture, the Issuer shall deliver to the Trustee an Opinion of Counsel and an Officer's Certificate to the effect that such supplemental indenture has been duly authorized, executed and delivered by such Person and that, subject to the application of Bankruptcy Laws and to the principles of equity, whether considered in a proceeding at law or in equity, and other customary exceptions or qualifications, the Guarantee of such Guarantor is a legal, valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with its terms.

SECTION 10.06. No Impairment. The failure to endorse a Guarantee on any Security shall not affect or impair the validity thereof. If an Officer whose signature is on this Indenture or the notation of Guarantee no longer holds that office at the time the Trustee authenticates the Securities, the Guarantee shall be valid nevertheless.

ARTICLE 11.

SECURITY DOCUMENTS

SECTION 11.01. Collateral and Security Documents. The full and punctual payment of the principal of and interest on the Securities when and as the same shall be due and payable, whether on a Payment Date, at Stated Maturity, or by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest on the Securities and performance of all other obligations of the Issuer to the Holders, the Trustee or the Collateral Agent under this Indenture, the Securities and the Security Documents, according to the terms hereunder or thereunder, shall be secured as provided in the Security Documents. The Trustee and the Issuer hereby acknowledge and agree that the Collateral Agent holds the Notes Collateral in trust for the benefit of itself, the Trustee and the Holders, in each case pursuant to the terms of the

Security Documents. Each Holder, by accepting a Security, appoints U.S. Bank National Association as Collateral Agent and consents and agrees to the terms of the Security Documents (including the provisions providing for the possession, use, release and foreclosure of Notes Collateral) as the same may be in effect or may be amended from time to time in accordance with their respective terms and this Indenture, and authorizes and directs the Trustee to enter into the Security Documents and to bind the Holders to the terms thereof and to perform its obligations and exercise its rights thereunder in accordance therewith. The Issuer shall deliver to the Trustee (if it is not then also appointed and serving as Collateral Agent) copies of all documents delivered to the Collateral Agent pursuant to the Security Documents, and will do or cause to be done all such acts and things as may be reasonably required by the next sentence of this Section 11.01, to assure and confirm to the Trustee and the Collateral Agent the Liens on the Notes Collateral contemplated hereby, by the Security Documents or by any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured hereby, according to the intent and purposes herein expressed. The Issuer shall take any and all actions specified herein or in the Security Documents and reasonably required to cause the Security Documents to create and maintain at all times, as security for the Obligations of the Issuer,

a valid and enforceable perfected Lien on all of the Notes Collateral (subject to the terms of the Security Documents), in favor of the Collateral Agent for the benefit of itself, the Trustee and the Holders under the Security Documents. Notwithstanding anything to the contrary in this Indenture or any Security Document, in no event shall the Collateral Agent be responsible for, or have any duty or obligation with respect to, the recording, filing, registering, perfection, protection or maintenance of the security interests or other Liens intended to be created by this Indenture or the Security Documents (including the filing or continuation of any Uniform Commercial Code financing or continuation statements or similar documents or instruments), nor shall the Collateral Agent be responsible for, and the Collateral Agent makes no representation regarding, the validity, effectiveness or priority of any of the Security Documents or the security interests or other Liens intended to be created thereby.

SECTION 11.02. Recordings and Opinions. The Issuer shall furnish to the Collateral Agent and the Trustee on or before the time when the Issuer is required to provide annual financials pursuant to Section 4.02 with respect to the preceding fiscal year an Opinion of Counsel:

(i) stating substantially to the effect that, in the opinion of such counsel, other than actions that have been taken, no further action was necessary to maintain the perfection of the security interest in the collateral described in both the applicable UCC-1 financing statement and the Security Agreement and for which perfection under the Uniform Commercial Code as in effect from time to time in the State of Delaware may occur by the filing of a UCC-1 financing statement with the appropriate filing office of the State of Delaware; or

(ii) to the effect that, in the opinion of such counsel, no such action is necessary to maintain such Lien under this Indenture and the Security Documents.

SECTION 11.03. Release of Collateral.

(a) Subject to Sections 11.03(b) and 11.04, the Notes Collateral securing the Securities will automatically and without the need for any further action be released:

(1) in whole, upon payment in full of the principal of, together with premium, if any, and accrued and unpaid interest on, the Securities and all other Obligations (other than Contingent Obligations for which no demand has been made to the Issuer) under this Indenture, the Guarantees and the Security Documents that are due and payable at or prior to the time such principal, together with accrued and unpaid interest, are paid (including pursuant to a satisfaction and discharge of this Indenture in accordance with Article 8);

(2) in whole, upon a legal defeasance or covenant defeasance under this Indenture in accordance with Article 8;

(3) in part, as to any property that is sold, transferred or otherwise disposed of by the Issuer in a transaction that is not prohibited by this Indenture at the time of such sale, transfer or disposition;

(4) in part, in accordance with the applicable provisions of the Security Documents; and

(5) as provided in Section 4.13.

Upon receipt of an Officer's Certificate certifying that all conditions precedent under this Indenture and the Security Documents, if any, to such release have been met and any necessary or proper (as determined by the Issuer) instruments of termination, satisfaction or release have been prepared by the Issuer, the Collateral Agent shall execute, deliver or acknowledge (at the Issuer's expense) such instruments or releases to evidence the release of any Notes Collateral permitted to be released pursuant to this Indenture or the Security Documents and shall be deemed not to hold a Lien in the applicable Notes Collateral on behalf of the

Trustee and shall do or cause to be done all further acts reasonably requested by the Issuer to release such Lien as soon as is reasonably practicable, any such release to be made without any recourse, representation or warranty of the Collateral Agent.

(b) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Securities has been accelerated (whether by declaration or otherwise) and the Trustee (if not then also appointed and serving as Collateral Agent) has delivered a notice of acceleration to the Collateral Agent, no release of Notes Collateral pursuant to the provisions of this Indenture or the Security Documents will be effective as against the Holders.

SECTION 11.04. Permitted Releases Not To Impair Lien. The release of any Notes Collateral from the terms hereof and of the Security Documents or the release of, in whole or in part, the Liens created by the Security Documents, will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Notes Collateral or Liens are released pursuant to the applicable Security Documents and the terms of this Article 11. Each of the Holders acknowledges that a release of Notes Collateral or a Lien in

accordance with the terms of the Security Documents and of this Article 11 will not be deemed for any purpose to be in contravention of the terms of this Indenture. The Issuer and the Guarantors will not be required to comply with Section 314(d) of the TIA in connection with any release of Notes Collateral.

SECTION 11.05. Suits To Protect the Collateral. Subject to the provisions of Article 7, the Trustee in its sole discretion and without the consent of the Holders, on behalf of the Holders, may or may direct the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(a) enforce any of the terms of the Security Documents; and

(b) collect and receive any and all amounts payable in respect of the obligations of the Issuer hereunder or under any Securities or the Security Documents.

Subject to the provisions of the Security Documents, the Trustee shall have the power (but not the obligation) to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Notes Collateral by any acts that may be unlawful or in violation of any of the Security Documents or this Indenture, and such suits and proceedings as the Trustee, in its sole discretion, may deem expedient to preserve or protect its interests and the interests of the Holders in the Notes Collateral (including the power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the Lien on the Notes Collateral or be prejudicial to the interests of the Holders or the Trustee).

SECTION 11.06. Authorization of Receipt of Funds by the Trustee Under the Security Documents. The Trustee is authorized (a) to receive any funds for the benefit of the Holders distributed under the Security Documents and (b) to make further distributions of such funds to the Holders according to the provisions of this Indenture.

SECTION 11.07. Purchaser Protected. In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see to the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article 11 to be sold be under any obligation to ascertain or inquire into the authority of the Issuer to make any such sale or other transfer.

SECTION 11.08. Powers Exercisable by Receiver or Trustee. In case the Notes Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 11 upon the Issuer with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Issuer or of any officer or officers thereof required by the provisions of this Article 11; and if the Trustee

shall be in the possession of the Notes Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee.

SECTION 11.09. Collateral Agent.

(a) U.S. Bank National Association shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents, neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Notes Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Notes Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Notes Collateral or any part thereof. Notwithstanding any provision to the contrary contained elsewhere in this Indenture or the Security Documents, the duties of the Collateral Agent shall be ministerial and administrative in nature, and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth in this Indenture and in the Security Documents to which the Collateral Agent is a party, nor shall the Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder, the Issuer or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture or the Security Documents or shall otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" or "Agent" in this Indenture and the Security Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an administrative relationship between independent contracting parties. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own willful misconduct or gross negligence (as determined by a final, non-appealable order of a court of competent jurisdiction).

(b) The Collateral Agent is authorized and directed to (i) enter into the Security Documents, (ii) bind the Holders on the terms as set forth in the Security Documents and (iii) perform and observe its obligations under the Security Documents.

(c) The Collateral Agent shall act pursuant to the instructions of the Holders and the Trustee with respect to the Security Documents and the Notes Collateral. For the avoidance of doubt, the Collateral Agent shall have no discretion under this Indenture or the Security Documents and shall not be required to make or give any determination, consent, approval, request or direction without the written direction of the requisite Holders or the Trustee, as applicable. After the occurrence of an Event of Default, the Trustee may direct the Collateral Agent in connection with any action required or permitted by this Indenture or the Security Documents.

(d) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee, a Holder or the Issuer referring to this Indenture, describing such

Default or Event of Default and stating that such notice is a "notice of default". The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee or the Holders of a majority in aggregate principal amount of the Securities subject to this Article 11.

(e) No provision of this Indenture or any Security Document shall require the Collateral Agent (or the Trustee) to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders (or the Trustee in the case of the Collateral Agent) if it shall have reasonable grounds for believing that repayment of such funds is not assured to it. Notwithstanding anything to the contrary contained in this Indenture or the Security Documents, in the event the

Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Notes Collateral, the Collateral Agent shall not be required to commence any such action, exercise any remedy, inspect or conduct any studies of any property or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Notes Collateral or such property of any hazardous substances unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form all satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this Section 11.09(e) if it no longer reasonably deems any indemnity, security or undertaking from the Issuer or the Holders to be sufficient.

(f) The Collateral Agent shall not be responsible in any manner to any of the Trustee or any Holder for the validity, effectiveness, genuineness, enforceability or sufficiency of this Indenture or the Security Documents or for any failure of the Issuer, any Guarantor or any other party to this Indenture or the Security Documents to perform its obligations hereunder or thereunder. The Collateral Agent shall not be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture or the Security Documents or to inspect the properties, books or records of the Issuer.

(g) The parties hereto and the Holders hereby agree and acknowledge that the Collateral Agent shall not assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of this Indenture or the Security Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that, in the exercise of its rights under this Indenture and the Security Documents, the Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent in the Notes Collateral and that any such actions taken by the Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Notes Collateral.

(h) Upon the receipt by the Collateral Agent of a written request of the Issuer signed by two Officers pursuant to this Section 11.09(i) (a "Security Document Order"), the Collateral Agent is hereby authorized to execute and enter into, and shall execute and enter into, without the further consent of any Holder or the Trustee, any Security Document to be executed after the Issue Date. Such Security Document Order shall (i) state that it is being delivered to the Collateral Agent pursuant to, and is a Security Document Order referred to in, this Section 11.09(i) and (ii) instruct the Collateral Agent to execute and enter into such Security Document. Any such execution of a Security Document shall be at the direction and expense of the Issuer, upon delivery to the Collateral Agent of an Officer's Certificate stating that all conditions precedent to the execution and delivery of such Security Document have been satisfied. The Holders, by their acceptance of the Securities, hereby authorize and direct the Collateral Agent to execute such Security Documents.

(i) The Collateral Agent's resignation or removal shall be governed by provisions equivalent to Section 7.07(a), Section 7.07(b), Section 7.07(c), Section 7.07(d) and Section 7.07(f).

(j) The Collateral Agent shall be entitled to all of the protections, immunities, indemnities, rights and privileges of the Trustee set forth in this Indenture, and all such protections, immunities, indemnities, rights and privileges shall apply to the Collateral Agent in its roles under any Security Document, whether or not expressly stated therein.

ARTICLE 12.

MISCELLANEOUS

SECTION 12.01. Notices.

(a) Any notice or communication required or permitted hereunder shall be in writing and delivered in person, via facsimile, via overnight courier or via first-class mail addressed as follows:

if to the Issuer or a Guarantor:

Bloom Energy Corporation

4353 North First Street
San Jose, California 95134
Attention: General Counsel

if to the Trustee or to the Collateral Agent:

U.S. Bank National Association
Global Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough (Bloom Energy 2020 Indenture)

The Issuer or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice, direction, request or demand hereunder to or upon the Trustee or the Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, upon actual receipt by the Trustee or the Collateral Agent if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format.

(b) Any notice or communication mailed to a Holder shall be mailed, first-class mail, or may be sent via overnight courier, to the Holder at the Holder's address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed or deposited with the overnight courier within the time prescribed. Any notice or communication to be delivered to a Holder of Global Securities shall be delivered in accordance with the applicable procedures of the Depository and shall be sufficiently given to such Holder if so delivered to the Depository within the time prescribed.

(c) Failure to provide a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given and provided, whether or not the addressee receives it, except that notices to the Trustee are effective only if received.

(d) Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Security provides for notice of any event (including any notice of repurchase) to a Holder (whether by mail or otherwise), such notice shall be sufficiently given (in the case of a Global Security) if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depository.

SECTION 12.02. Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Issuer to the Trustee to take or refrain from taking any action under this Indenture, the Issuer shall furnish to the Trustee at the request of the Trustee:

(a) an Officer's Certificate to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 12.03. Statements Required in Certificate or Opinion. Each Officer's Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture (other than pursuant to Section 4.02(c)) shall include:

(a) a statement that the Person making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or

opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with; *provided*, *however*, that with respect to matters of fact an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

SECTION 12.04. When Securities Disregarded. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Issuer, any Guarantor or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer or any Guarantor shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities that the Trustee knows are so owned shall be so disregarded. Subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination. Notwithstanding the foregoing, if any such Person or Persons owns 100% of the Securities, such Securities shall not be so disregarded as aforesaid.

SECTION 12.05. Rules by Trustee, Paying Agent and Registrar. The Trustee may make reasonable rules for action by or a meeting of the Holders. The Registrar and a Paying Agent may make reasonable rules for their functions.

SECTION 12.06. Legal Holidays. If a Payment Date, Stated Maturity in respect of the Securities, Change of Control Repurchase Date or Redemption Date is not a Business Day, payment shall be made on the next succeeding day that is a Business Day, and no interest shall accrue on any amount that would have been otherwise payable on such initial date if it were a Business Day for the intervening period. If a Record Date is not a Business Day, the Record Date shall not be affected.

SECTION 12.07. **GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF IMMUNITY. THIS INDENTURE, THE SECURITIES AND THE SECURITY DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 51401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW) EXCEPT TO THE EXTENT THAT LOCAL LAW GOVERNS THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF SECURITY INTERESTS.** The Issuer, the Guarantors, the Trustee and, by its acceptance of a Security, each Holder (and holder of beneficial interests in a Security) hereby submit to the non-exclusive jurisdiction of the federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Indenture or the transactions contemplated hereby. To the extent that the Issuer or any Guarantor may in any jurisdiction claim for itself or its assets immunity (to the extent such immunity may now or hereafter exist, whether on the grounds of sovereign immunity or otherwise) from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process (whether through service of notice or otherwise), and to the extent that in any such jurisdiction there may

be attributed to itself or its assets such immunity (whether or not claimed), such Issuer or Guarantor, as applicable, irrevocably agrees with respect to any matter arising under this Indenture for the benefit of the Holders not to claim, and irrevocably waives,

such immunity to the full extent permitted by the laws of such jurisdiction.

SECTION 12.08. No Recourse Against Others. No director, officer, employee, manager, incorporator or holder of any Equity Interests in the Issuer or in any Guarantor, as such, shall have any liability for any obligations of the Issuer or the Guarantors under the Securities, this Indenture or the Guarantees or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

SECTION 12.09. Successors. All agreements of the Issuer and each Guarantor in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors.

SECTION 12.10. Multiple Originals. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

SECTION 12.11. Table of Contents; Headings. The table of contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 12.12. Indenture Controls. If and to the extent that any provision of the Securities limits, qualifies or conflicts with a provision of this Indenture, such provision of this Indenture shall control.

SECTION 12.13. Severability. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

SECTION 12.14. Currency of Account; Conversion of Currency; Currency Exchange Restrictions.

(a) U.S. Dollars are the sole currency of account and payment for all sums payable by the Issuer and the Guarantors under or in connection with the Securities, the Guarantees and this Indenture, including damages related thereto. Any amount received or recovered in a currency other than U.S. Dollars by a Holder (whether as a result of, or as a result of the enforcement of, a judgment or order of a court of any jurisdiction, in the winding-up or dissolution of the Issuer or otherwise) in respect of any sum expressed to be due to it from the Issuer or a Guarantor shall

only constitute a discharge to the Issuer or any such Guarantor to the extent of the U.S. Dollar amount, which the recipient is able to purchase with the amount so received or recovered in that other currency on the date of that receipt or recovery (or, if it is not practicable to make that purchase on that date, on the first date on which it is practicable to do so). If that U.S. Dollar amount is less than the U.S. Dollar amount expressed to be due to the recipient under the applicable Securities, the Issuer and the Guarantors shall indemnify it against any loss sustained by it as a result as set forth in Section 12.14(b). In any event, the Issuer and the Guarantors shall indemnify the recipient against the cost of making any such purchase. For the purposes of this Section 12.14, it will be sufficient for the Holder of a Security to certify in a satisfactory manner (indicating sources of information used) that it would have suffered a loss had an actual purchase of U.S. Dollars been made with the amount so received in that other currency on the date of receipt or recovery (or, if a purchase of U.S. Dollars on such date had not been practicable, on the first date on which it would have been practicable, it being required that the need for a change of date be certified in the manner mentioned above).

(b) The Issuer and the Guarantors, jointly and severally, covenant and agree that the following provisions shall apply to conversion of currency in the case of the Securities, the Guarantees and this Indenture:

(i) if for the purpose of obtaining judgment in, or enforcing the judgment of, any court in any country, it becomes necessary to convert into a currency (the "Judgment Currency") an amount due in any other currency (the "Base

Currency"), then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine);

(ii) if there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of receipt of the amount due, the Issuer and the Guarantors will pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency when converted at the rate of exchange prevailing on the date of receipt will produce the amount in the Base Currency originally due; and

(iii) in the event of the winding-up of the Issuer or any Guarantor at any time while any amount or damages owing under the Securities, the Guarantees and this Indenture, or any judgment or order rendered in respect thereof, shall remain outstanding, the Issuer and the Guarantors shall indemnify and hold the Holders and the Trustee harmless against any deficiency arising or resulting from any variation in rates of exchange between (A) the date as of which the non-U.S. currency equivalent of the amount due or contingently due under the Securities, the Guarantees and this Indenture (other than under this subsection (b)(iii)) is calculated for the purposes of such winding-up and (B) the final date for the filing of proofs of claim in such winding-up (which shall be the date fixed by the liquidator or otherwise in accordance with the relevant provisions of applicable law as being the latest practicable date as at which liabilities of the Issuer or such Guarantor may be ascertained for such winding-up prior to payment by the liquidator or otherwise in respect thereof).

(c) The obligations contained in this Section 12.14 shall constitute separate and independent obligations from the other obligations of the Issuer and the Guarantors under this Indenture, shall give rise to separate and independent causes of action against the Issuer and the Guarantors, shall apply irrespective of any waiver or extension granted by any Holder or the Trustee or either of them from time to time and shall continue in full force and effect notwithstanding any judgment or order or the filing of any proof of claim in the winding-up of the Issuer or any Guarantor for a liquidated sum in respect of amounts due hereunder (other than under subsection (b)(iii) above) or under any such judgment or order. Any such deficiency as aforesaid shall be deemed to constitute a loss suffered by the Holders or the Trustee, as the case may be, and no proof or evidence of any actual loss shall be required by the Issuer or any Guarantor or the liquidator or otherwise or any of them. In the case of subsection (b)(iii) above, the amount of such deficiency shall not be deemed to be reduced by any variation in rates of exchange occurring between the said final date and the date of any liquidating distribution.

(d) For purposes of this Section 12.14, the term "rate(s) of exchange" shall mean the rate of exchange quoted by Reuters at 10:00 a.m. (New York City time) for spot purchases of the Base Currency with the Judgment Currency and includes any premiums and costs of exchange payable.

SECTION 12.15. Tax Matters.

(a) The Issuer has entered into this Indenture, and the Securities will be issued, with the intention that, for all tax purposes, the Securities will qualify as indebtedness. The Issuer, by entering into this Indenture, and each Holder and beneficial owner of Securities, agree to treat the Securities as indebtedness for all tax purposes.

(b) Unless otherwise required by applicable law, if Definitive Securities are issued, so long as a Holder shall have delivered to the Issuer with respect to itself or a beneficial owner (if other than such Holder) a properly completed IRS Form W-9 (establishing that such Holder or the beneficial owner is not subject to backup withholding), an applicable IRS Form W-8 or other applicable IRS form (in each case establishing such Holder's or beneficial owner's complete exemption from U.S. withholding tax) or, in the case of a Holder (or a beneficial owner, if other than such Holder) claiming the exemption from U.S. federal withholding tax under Section 871(h) of the Code or Section 881(c) of the Code with respect to payments of "portfolio interest", the appropriate properly completed IRS form together with a certificate substantially in the form of Exhibit G, neither the Issuer nor the Trustee shall withhold U.S. federal taxes on payments of interest made to any such Holder or beneficial owner. Each Holder or beneficial owners agrees that if any form or certification it previously delivered pursuant to this paragraph (b) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Issuer and the Trustee in writing of its legal inability to do so.

(c) If any withholding tax is imposed on the Issuer's payment under the Securities to any Holder or beneficial holder of Securities, such tax shall reduce the amount otherwise distributable to such Holder or beneficial holder, as the case may be. The

Trustee is hereby authorized and directed to retain from amounts otherwise distributable to any Holder or beneficial holder of Securities sufficient funds for the payment of any withholding tax that is legally owed by the Issuer (but such authorization shall not prevent the Trustee from contesting

any such withholding tax in appropriate proceedings and withholding payment of such tax, if permitted by applicable law, pending the outcome of such proceedings). The amount of any withholding tax imposed with respect to any Holder or beneficial holder of Securities shall be treated as cash distributed to such Holder or beneficial holder, as the case may be, at the time it is withheld by the Trustee and remitted to the appropriate taxing authority. If there is a possibility that withholding tax is payable with respect to a payment under the Securities, the Trustee may (but shall have no obligation to) withhold such amounts in accordance with this Section 12.15. Nothing herein shall impose an obligation on the part of the Trustee to determine the amount of any tax or withholding obligation on the part of the Issuer or in respect of the Securities.

SECTION 12.16. USA PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each Person that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

SECTION 12.17. WAIVER OF TRIAL BY JURY. EACH OF THE ISSUER, EACH GUARANTOR, THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 12.18. Limited Incorporation of the TIA. This Indenture is not subject to the mandatory provisions of the TIA. The provisions of the TIA are not incorporated by reference in or made part of this Indenture unless specifically provided herein.

{Remainder of page intentionally left blank}

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed as of the date first written above.

BLOOM ENERGY CORPORATION a Delaware corporation

By:
Name: Randy Furr
Title: Chief Financial Officer and Secretary

RYE CREEK LLC
a Delaware limited liability company

By:
Name: Randy Furr
Title: Chief Financial Officer and Secretary

[*Signature Page to the Indenture*]

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:
Name: Bradley E. Scarbrough
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

By:
Name: Bradley E. Scarbrough
Title: Vice President

[*Signature Page to the Indenture*]

APPENDIX A

PROVISIONS RELATING TO SECURITIES

1. Definitions.

1.1 Definitions.

For the purposes of this Appendix A, the following terms shall have the meanings indicated below (and if not defined in this Appendix A, capitalized terms used herein shall have the meaning set forth in this Indenture):

"Accredited Investor" means an institutional "accredited investor" as defined in Rule 501 that is not (i) a QIB or (ii) a Person other than a U.S. Person that acquires Securities in reliance on Regulation S.

"Definitive Security" means a certificated Security (bearing the Restricted Securities Legend or the Regulation S Legend if the transfer of such Security is restricted by applicable law) that does not include the Global Securities Legend.

"Depository" means The Depository Trust Company, its nominees and their respective successors.

"Global Securities Legend" means the legend set forth in Section 2.2(f)(i)(C) herein.

"Global Security" means a certificated Security (bearing the Restricted Securities Legend or the Regulation S Legend if the transfer of such Security is restricted by applicable law) that includes the Global Securities Legend. The term "Global Securities" includes Rule 144A Global Securities and Regulation S Global Securities.

"Purchase Agreement" means the Note Purchase Agreement dated [●], 2020, among the Issuer, the guarantor party thereto and the investors party thereto.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Regulation S" means Regulation S under the Securities Act.

"Regulation S Legend" means the legend set forth in Section 2.2(f)(i)(B) herein.

"Regulation S Securities" means all Securities offered and sold outside the United States in reliance on Regulation S.

"Restricted Period", with respect to any Regulation S Securities, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Securities are first offered to persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Issuer to the Trustee, and (b) the date of issuance of such Securities.

"Restricted Securities Legend" means the legend set forth in Section 2.2(f)(i)(A) herein.

"Rule 144A" means Rule 144A under the Securities Act.

"Rule 144A Securities" means all Securities privately placed with QIBs.

"Rule 501" means Rule 501(a) under the Securities Act.

"Rule 506" means Rule 506 under the Securities Act.

"Securities Custodian" means the custodian with respect to a Global Security (as appointed by the Depository) or any successor person thereto, who shall initially be the Trustee.

"Transfer Restricted Definitive Securities" means Definitive Securities that bear or are required to bear or are subject to the Restricted Securities Legend or the Regulation S Legend.

"Transfer Restricted Global Securities" means Global Securities that bear or are required to bear or are subject to the Restricted Securities Legend or the Regulation S Legend.

"Unrestricted Definitive Securities" means Definitive Securities that are not required to bear, and are not subject to, the Restricted Securities Legend or the Regulation S Legend.

"Unrestricted Global Securities" means Global Securities that are not required to bear, and are not subject to, the Restricted Securities Legend or the Regulation S Legend.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

1.2 Other Definitions:

Term:	Defined in Section:
Agent Members	2.1(b)
Regulation S Global Securities	2.1(b)
Rule 144A Global Securities	2.1(b)

2. The Securities.

2.1 Form and Dating; Global Securities.

(a) Issuance and Transfers. The Securities issued by the Issuer will be (i) privately placed by the Issuer pursuant to the Purchase Agreement and (ii) sold initially only to (1) QIBs, (2) Persons other than U.S. Persons in reliance on Regulation S and (3) Accredited Investors. Such Securities may thereafter be transferred to, among others, QIBs, purchasers in reliance on Regulation S and Accredited Investors.

(b) Global Securities. (i) Except as provided in clause (c) below, Rule 144A Securities initially shall be represented by one or more Securities in definitive, fully registered, global form without interest coupons (collectively, the "Rule 144A Global Securities").

Regulation S Securities initially shall be represented by one or more Securities in fully registered, global form without interest coupons (collectively, the "Regulation S Global Securities"), which shall be registered in the name of the Depository for the accounts of designated agents.

The Global Securities shall bear the Global Securities Legend. The Global Securities initially shall (i) be registered in the name of the Depository, in each case for credit to an account of an Agent Member, (ii) be delivered to the Securities Custodian, (iii) bear the Restricted Securities Legend and (iv) if applicable, bear the Regulation S Legend.

Members of, or direct or indirect participants in, the Depository (collectively, the "Agent Members") shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Securities. The Depository may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of the Global Securities for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository, or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

The Registrar shall retain copies of all letters, notices, Confidentiality Agreements and other written communications received pursuant to this Section 2.1 or Section 2.2 herein. The Issuer, at its sole cost and expense, shall have the right to inspect and make copies of all such letters, notices, Confidentiality Agreements or other written communications at any reasonable time upon the giving of reasonable written notice to the Registrar.

(ii) Transfers of Global Securities shall be limited to transfer in whole, but not in part, to the Depository. Interests of beneficial owners in the Global Securities may be transferred or exchanged for Definitive Securities only in accordance with the applicable rules and procedures of the Depository and the provisions of Section 2.2 herein. In addition, a Global Security shall be exchangeable for Definitive Securities if (x) the Depository (1) notifies the Issuer that it is unwilling or unable to continue as depository for such Global Security and the Issuer thereupon fails to appoint a successor depository or (2) has ceased to be a clearing agency registered under the Exchange Act or (y) there shall have occurred and be continuing an Event of Default with respect to such Global Security. In all cases, Definitive Securities delivered in exchange for any Global Security or beneficial interests therein shall be registered in the names, and issued in any approved denominations, requested by or on behalf of the Depository in accordance with its customary

procedures.

(iii) In connection with the transfer of a Global Security as an entirety to beneficial owners pursuant to Section 2.1(b)(ii) herein, such Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Issuer shall execute, and the Trustee shall authenticate and make available for delivery, to each beneficial owner identified by the Depository in writing in exchange for its beneficial interest in such Global Security, an equal aggregate principal amount of Definitive Securities of authorized denominations.

(iv) Any Transfer Restricted Definitive Security delivered in exchange for an interest in a Global Security pursuant to Section 2.2 herein shall, except as otherwise provided in Section 2.2 herein, bear the Restricted Securities Legend and, if applicable, the Regulation S Legend.

(v) The Holder of any Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

(c) Definitive Securities. To the extent that the purchaser of a Security is an Accredited Investor or otherwise cannot or opts not to hold a beneficial interest in a Global Security, then such Security shall be represented by one or more Definitive Securities. In addition, prior to the delivery of the Officer's Certificate set forth in Section 2.01(c) of the Indenture, all Original Securities shall be Definitive Securities.

2.2 Transfer and Exchange.

(a) Transfer and Exchange of Global Securities. A Global Security may not be transferred as a whole except as set forth in Section 2.1(b) herein. Global Securities will not be exchanged by the Issuer for Definitive Securities except under the circumstances described in Section 2.1(b)(ii) herein. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Sections 2.08 and 2.10 of this Indenture. Beneficial interests in a Global Security may be transferred and exchanged as provided in Section 2.2(b) herein or Section 2.2(g) herein.

(b) Transfer and Exchange of Beneficial Interests in Global Securities. The transfer and exchange of beneficial interests in the Global Securities shall be effected through the Depository, in accordance with the provisions of this Indenture and the applicable rules and procedures of the Depository. Beneficial interests in Transfer Restricted Global Securities shall be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers and exchanges of beneficial interests in the Global Securities also shall require compliance with either subparagraph (i) or (ii) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(i) Transfer of Beneficial Interests in the Same Global Security. Beneficial interests in any Transfer Restricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Transfer Restricted Global Security in accordance with the transfer restrictions set forth in the Restricted Securities Legend and the Regulation S Legend, as applicable; *provided*, *however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in a Regulation S Global Security may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than to a QIB in reliance on Rule 144A). A beneficial interest in an Unrestricted Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.2(b)(i).

(ii) All Other Transfers and Exchanges of Beneficial Interests in Global Securities. In connection with all transfers and exchanges of beneficial interests in any Global Security that is not subject to Section 2.2(b)(i) herein, the transferor of such

beneficial interest must deliver to the Registrar (1) a written order from an Agent Member given to the Depository in accordance with the applicable rules and procedures of the Depository directing the Depository to credit or cause to be credited a beneficial interest in another Global Security in an amount equal to the beneficial interest to be transferred or exchanged and (2) instructions given in accordance with the applicable rules and procedures of the Depository containing information regarding the Agent Member account to be credited with such increase. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Securities contained in this Indenture and the Securities or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Security pursuant to Section 2.2(g) herein.

(iii) Transfer of Beneficial Interests to Another Transfer Restricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Transfer Restricted Global Security if the transfer complies with the requirements of Section 2.2(b)(ii) herein and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in a Rule 144A Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security; and

(B) if the transferee will take delivery in the form of a beneficial interest in a Regulation S Global Security, then the transferor must deliver a certificate in the form attached to the applicable Security.

(iv) Transfer and Exchange of Beneficial Interests in a Transfer Restricted Global Security for Beneficial Interests in an Unrestricted Global Security. A beneficial interest in a Transfer Restricted Global Security may be exchanged by any holder thereof for a beneficial interest in an Unrestricted Global Security or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security if the exchange or transfer complies with the requirements of Section 2.2(b)(ii) herein and the Registrar receives the following:

(A) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security; or

(B) if the holder of such beneficial interest in a Transfer Restricted Global Security proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Issuer and the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act. If any such transfer or exchange is effected pursuant to this subparagraph (iv) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred or exchanged pursuant to this subparagraph (iv).

(v) Transfer and Exchange of Beneficial Interests in an Unrestricted Global Security for Beneficial Interests in a Transfer Restricted Global Security. Beneficial interests in an Unrestricted Global Security cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(c) Transfer and Exchange of Beneficial Interests in Global Securities for Definitive Securities. A beneficial interest in a Global Security may not be exchanged for a Definitive Security except under the circumstances described in Section 2.1(b)(ii) herein. A beneficial interest in a Global Security may not be transferred to a Person who takes delivery thereof in the form of a Definitive Security except under the circumstances described in Section 2.1(b)(ii) herein or Section 2.1(c) herein.

(d) Transfer and Exchange of Definitive Securities for Beneficial Interests in Global Securities. Transfers and exchanges of Definitive Securities for beneficial interests in Global Securities also shall require compliance with either subparagraph (i), (ii), (iii) or (iv) below, as applicable:

(i) Transfer Restricted Definitive Securities to Beneficial Interests in Transfer Restricted Global Securities. If any Holder of a Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in a Transfer Restricted Global Security or to transfer such Transfer Restricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in a Transfer Restricted Global Security, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in a Transfer Restricted Global Security, a certificate from such Holder in the form attached to the applicable Security;

(B) if such Transfer Restricted Definitive Security is being transferred to a QIB in accordance with Rule 144A, a certificate from such Holder in the form attached to the applicable Security;

(C) if such Transfer Restricted Definitive Security is being transferred to a Person that is not a U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904 under the Securities Act, a certificate from such Holder in the form attached to the applicable Security; and

(D) if such Transfer Restricted Definitive Security is being transferred to the Issuer or a Subsidiary thereof, a certificate from such Holder in the form attached to the applicable Security;

the Trustee shall cancel the Transfer Restricted Definitive Security, and increase or cause to be increased the aggregate principal amount of the appropriate Transfer Restricted Global Security. A Transfer Restricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security if such Person is an Accredited Investor.

(ii) Transfer Restricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of a Transfer Restricted Definitive Security may exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Transfer Restricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security only if the Registrar receives the following:

(A) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security; or

(B) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Issuer or the Registrar so requests or if the applicable rules and procedures of the Depository so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act. Upon satisfaction of the conditions of this subparagraph (ii), the Trustee shall cancel the Transfer Restricted Definitive Securities and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Security. If any such transfer or exchange is effected pursuant to this subparagraph (ii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of an written order of the Issuer in the form of an Officer's Certificate, the Trustee shall

authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal

amount of Transfer Restricted Definitive Securities transferred or exchanged pursuant to this subparagraph (ii).

(iii) Unrestricted Definitive Securities to Beneficial Interests in Unrestricted Global Securities. A Holder of an Unrestricted Definitive Security may exchange such Unrestricted Definitive Security for a beneficial interest in an Unrestricted Global Security or transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Unrestricted Definitive Security and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Securities. If any such transfer or exchange is effected pursuant to this subparagraph (iii) at a time when an Unrestricted Global Security has not yet been issued, the Issuer shall issue and, upon receipt of a written order of the Issuer in the form of an Officer's Certificate, the Trustee shall authenticate one or more Unrestricted Global Securities in an aggregate principal amount equal to the aggregate principal amount of Unrestricted Definitive Securities transferred or exchanged pursuant to this subparagraph (iii).

(iv) Unrestricted Definitive Securities to Beneficial Interests in Transfer Restricted Global Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a beneficial interest in a Transfer Restricted Global Security.

(e) Transfer and Exchange of Definitive Securities for Definitive Securities. Upon request by a Holder of Definitive Securities and such Holder's compliance with the provisions of this Section 2.2(e), the Registrar shall register the transfer or exchange of Definitive Securities. Prior to such registration of transfer or exchange, the requesting Holder shall present or surrender to the Registrar the Definitive Securities duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder shall provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.2(e):

(i) Transfer Restricted Definitive Securities to Transfer Restricted Definitive Securities. A Transfer Restricted Definitive Security may be transferred to and registered in the name of a Person who takes delivery thereof in the form of a Transfer Restricted Definitive Security if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A, a certificate in the form attached to the applicable Security;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904 under the Securities Act, a certificate in the form attached to the applicable Security;

(C) if the transfer will be made to an Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (A) and (B) above, a certificate in the form attached

to the applicable Security and a Transferee Letter of Representation in the form of Exhibit B to this Indenture; and

(D) if such transfer will be made to the Issuer or a Subsidiary thereof, a certificate in the form attached to the applicable Security.

(ii) Transfer Restricted Definitive Securities to Unrestricted Definitive Securities. Any Transfer Restricted Definitive Security may be exchanged by the Holder thereof for an Unrestricted Definitive Security or transferred to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security if the Registrar receives the following:

(1) if the Holder of such Transfer Restricted Definitive Security proposes to exchange such Transfer Restricted Definitive Security for an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security; or

(2) if the Holder of such Transfer Restricted Definitive Security proposes to transfer such Transfer Restricted Definitive Security to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Security, a certificate from such Holder in the form attached to the applicable Security,

and, in each such case, if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Issuer to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Restricted Securities Legend and the Regulation S Legend, as applicable, are no longer required in order to maintain compliance with the Securities Act.

(iii) Unrestricted Definitive Securities to Unrestricted Definitive Securities. A Holder of an Unrestricted Definitive Security may transfer such Unrestricted Definitive Security to a Person who takes delivery thereof in the form of an Unrestricted Definitive Security at any time. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Securities pursuant to the instructions from the Holder thereof.

(iv) Unrestricted Definitive Securities to Transfer Restricted Definitive Securities. An Unrestricted Definitive Security cannot be exchanged for, or transferred to a Person who takes delivery thereof in the form of, a Transfer Restricted Definitive Security.

At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be retained and canceled by the Trustee in accordance with Section 2.11 of this Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such

reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(f) Legends.

(i) (A) Each Security certificate evidencing the Global Securities and the Definitive Securities (and all Securities issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

NEITHER THIS NOTE NOR ANY INTEREST HEREIN HAS BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE OR THE SECURITIES LAWS OF ANY OTHER JURISDICTION, NOR IS SUCH REGISTRATION CONTEMPLATED. NEITHER THIS NOTE NOR ANY INTEREST HEREIN MAY BE ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED, SOLD OR OFFERED FOR SALE OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EXEMPTION FROM SUCH REGISTRATION THEREUNDER AND ANY OTHER APPLICABLE SECURITIES LAW REGISTRATION REQUIREMENTS. EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE (1) REPRESENTS THAT (A) IT IS A

QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) AND, IF SUBSEQUENT TO THE INITIAL ACQUISITION HEREOF, IS PURCHASING THIS NOTE IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A UNDER THE SECURITIES ACT, (B) IT IS NOT A U.S. PERSON AND IS ACQUIRING THIS NOTE IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH RULE 903 OR 904 OF REGULATION S UNDER THE SECURITIES ACT OR (C) IT IS AN INSTITUTIONAL ACCREDITED INVESTOR AS DEFINED IN SUBPARAGRAPH (a) OF RULE 501 UNDER THE SECURITIES ACT (AN "ACCREDITED INVESTOR"), HAS SUFFICIENT KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS TO BE CAPABLE OF EVALUATING THE MERITS AND RISKS OF THE PURCHASE OF THIS NOTE AND IS ABLE AND PREPARED TO BEAR THE ECONOMIC RISK OF INVESTING IN AND HOLDING THIS NOTE, (2) AGREES THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR AN INTEREST HEREIN, EXCEPT (A) TO THE ISSUER OR A SUBSIDIARY THEREOF, (B) FOR SO LONG AS THIS NOTE IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO AN ENTITY IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER, TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A UNDER THE SECURITIES ACT, (C) TO PERSONS OR ENTITIES OTHER THAN U.S. PERSONS, INCLUDING DEALERS OR OTHER PROFESSIONAL FIDUCIARIES IN THE UNITED STATES ACTING ON A

DISCRETIONARY BASIS FOR NON-U.S. BENEFICIAL OWNERS (OTHER THAN AN ESTATE OR TRUST), IN OFFSHORE TRANSACTIONS IN RELIANCE UPON, AND IN ACCORDANCE WITH, REGULATION S UNDER THE SECURITIES ACT OR (D) TO AN ACCREDITED INVESTOR THAT IS PURCHASING THIS NOTE OR AN INTEREST HEREIN, AS THE CASE MAY BE, FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON OR ENTITY TO WHOM THIS NOTE OR AN INTEREST HEREIN IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; PROVIDED, THAT THE ISSUER AND THE TRUSTEE SHALL HAVE THE RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (2)(D) OF THIS PARAGRAPH TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THE TERMS "OFFSHORE TRANSACTION", "UNITED STATES" AND "U.S. PERSON" HAVE THE RESPECTIVE MEANINGS GIVEN TO THEM BY REGULATION S UNDER THE SECURITIES ACT. THE INDENTURE REFERRED TO HEREINAFTER CONTAINS A PROVISION REQUIRING THE REGISTRAR APPOINTED THEREUNDER TO REFUSE TO REGISTER ANY TRANSFER OF THIS NOTE IN VIOLATION OF THE FOREGOING RESTRICTIONS.

THIS NOTE MAY NOT BE RESOLD OR TRANSFERRED EXCEPT AS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER, AND, IN ADDITION, EACH PERSON OR ENTITY THAT ACQUIRES OR ACCEPTS THIS NOTE OR AN INTEREST HEREIN BY SUCH ACQUISITION OR ACCEPTANCE AGREES TO COMPLY WITH THE TRANSFER RESTRICTIONS SET FORTH IN SUCH INDENTURE, AND FURTHER ACKNOWLEDGES AND AGREES TO THE PROVISIONS SET FORTH IN SUCH INDENTURE.

(B) Except as permitted by Section 2.2(f)(i)(C) herein, each Security certificate evidencing the Global Securities (and all Securities issued in exchange therefor or in substitution thereof), in the case of Securities offered in reliance on Regulation S, shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only):

THIS NOTE IS A REGULATION S GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE REFERRED TO HEREINAFTER AND IS SUBJECT TO RESTRICTIONS ON THE TRANSFER AND EXCHANGE THEREOF AND ON THE PAYMENT OF INTEREST THEREON AS SPECIFIED IN THE INDENTURE REFERRED TO HEREINAFTER.

(C) Each Global Security shall bear the following legend:

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE

OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON OR ENTITY IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF CEDE & CO. OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS NOTE SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO HEREINAFTER.

(ii) Upon a sale or transfer after the expiration of the Restricted Period of any Security acquired pursuant to Regulation S, all requirements that such Security bear the Regulation S Legend shall cease to apply and the requirements requiring any such Initial Security be issued in global form shall continue to apply.

(g) Cancellation or Adjustment of Global Security. At such time as all beneficial interests in a particular Global Security have been exchanged for Definitive Securities or a particular Global Security has been redeemed, repurchased or canceled in whole and not in part, each such Global Security shall be returned to or retained and canceled by the Trustee in accordance with Section 2.11 of this Indenture. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Definitive Securities, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(h) Obligations with Respect to Transfers and Exchanges of Securities.

(i)To permit registrations of transfers and exchanges, the Issuer shall execute, and the Trustee shall authenticate, Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be imposed by the Issuer, the Trustee or the Registrar for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other than any such transfer taxes, assessments or

similar governmental charge or duty payable upon exchanges pursuant to Sections 3.06, 4.06, 4.08 and 9.04 of this Indenture).

(iii) Prior to the due presentation for registration of transfer of any Security, the Issuer, the Trustee, a Paying Agent or the Registrar may deem and treat the Person in whose name a Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of and interest on such Security and for all other purposes whatsoever, whether or not such Security is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(iv) All Securities issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Securities surrendered upon such transfer or exchange.

(i) No Obligation of the Trustee.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in, the Depository or any other Person with respect to the accuracy of the records of the Depository or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders and all payments to be made to the Holders under the Securities shall be given or made to the registered Holders (which shall be the Depository in the case of a Global Security). Except as may be otherwise permitted pursuant to Section 2.14 of this Indenture, the rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, its participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Depository participants, members or beneficial owners in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Exhibit 4.5

[FORM OF SECURITY]

No. ____ $____

[˜]% Senior Secured Note due 2027

CUSIP No. _____

ISIN No. _____

Bloom Energy Corporation, a Delaware corporation (the "Issuer"), promises to pay to [Cede & Co.] [ ], or its registered assigns, the principal sum [of Dollars] [listed on the Schedule of Increases or Decreases in Global Security attached hereto][1] on or before March 31, 2027 as set forth in this Security.

Payment Dates: March 31, June 30, September 30 and December 31 (each, a "Payment Date")

Record Dates: March 15, June 15, September 15 and December 15 (each, a "Record Date")

Additional provisions of this Security are set forth on the following pages of this Security.

1 Use the Schedule of Increases or Decreases language if Security is in Global Form.

IN WITNESS WHEREOF, the undersigned has caused this Instrument to be duly executed.

BLOOM ENERGY CORPORATION

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE
OF AUTHENTICATION

U.S. BANK NATIONAL ASSOCIATION,
as Trustee, certifies that this is
one of the Securities
referred to in the within-mentioned Indenture.

By: _____Authorized Signatory

Date:

SECURITY AGREEMENT

DATED AS OF [●], 2020

AMONG

BLOOM ENERGY CORPORATION,
as Issuer,

U.S. BANK NATIONAL ASSOCIATION,
as Trustee,

and

U.S. BANK NATIONAL ASSOCIATION,
as Collateral Agent

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SECURITY AGREEMENT

THIS SECURITY AGREEMENT (as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time, this "Agreement") is entered into as of [•], 2020, by and among BLOOM ENERGY CORPORATION, a Delaware corporation (the "Issuer"); U.S. BANK NATIONAL ASSOCIATION, in its capacity as trustee (and its successors under the Indenture (as defined below), in such capacity, the "Trustee"); and U.S. BANK NATIONAL ASSOCIATION, in its capacity as collateral agent for the Secured Parties (as defined below) (and its successors under the Indenture, in such capacity, the "Collateral Agent").

PRELIMINARY STATEMENT

WHEREAS, pursuant to the terms, conditions and provisions of (a) the Indenture dated as of the date hereof (as amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time, the "Indenture"), among the Issuer, the Guarantor (as defined therein), the Trustee and the Collateral Agent; and (b) the Note Purchase Agreement dated March [•], 2020 (the "Note Purchase Agreement"), among the Issuer, the Guarantor (as defined therein) and each Investor (as defined therein) party thereto (collectively, the "Investors"), the Issuer is issuing, and each Investor is purchasing, the Securities, which will be guaranteed on a senior unsecured basis by the Guarantor (as defined in the Indenture);

WHEREAS, the initial aggregate principal amount of the Securities will be $70,000,000;

WHEREAS, additional Securities may be issued pursuant to the terms of the Indenture in an aggregate principal amount up to $80,000,000;

WHEREAS, the Issuer is executing and delivering this Agreement pursuant to the terms of the Indenture to induce the Trustee to enter into the Indenture and, pursuant to the terms of the Note Purchase Agreement, to induce the Investors to purchase the Securities; and

WHEREAS, the Issuer has duly authorized the execution, delivery and performance by it of this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and of the mutual covenants herein contained, and in order to induce the Trustee and the Collateral Agent to enter into the Indenture and the Investors to purchase the Securities, the Issuer, the Trustee and the Collateral Agent, on behalf of itself and each Secured Party (and each of their respective successors or assigns), hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Terms Defined in the Indenture. All capitalized terms used and not otherwise defined herein have the meanings assigned to such terms in the Indenture.

Section 1.2 Terms Defined in UCC. Terms defined in the UCC that are not otherwise defined in this Agreement are used herein as defined in the UCC.

Section 1.3 Definitions of Certain Terms Used Herein. As used in this Agreement, in addition to the terms defined in the preamble and Preliminary Statement above, the following terms have the following meanings:

"Account" means, with respect to a Person, any of such Person's now owned and hereafter acquired or arising "accounts", as defined in the UCC, including any rights to payment for the sale or lease of goods or rendition of services, whether or not they have been earned by performance, and "Accounts" means, with respect to any such Person, all of the foregoing.

"Account Debtor" means each Person obligated on an Account, Chattel Paper or General Intangible.

"Bankruptcy Proceeding" means, with respect to any Person, a general assignment by such Person for the benefit of its creditors, or the institution by or against such Person of any proceeding seeking relief as debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment or composition of such Person or its debts, under any law or regulation relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property.

"Chattel Paper" means any "chattel paper", as such term is defined in the UCC, now owned or hereafter acquired by any Person and, in any event, shall include, all Electronic Chattel Paper and Tangible Chattel Paper.

"Co-Collateral Agent" means a financial institution appointed by the Collateral Agent in accordance with Sections 7.6(a) and 7.7 hereto to act as co-collateral agent for the Secured Parties.

"Collateral" has the meaning specified in Article II.

"Collateral Agent's Liens" means the Liens in the Collateral granted to the Collateral Agent (or any Co-Collateral Agent), for the benefit of the Secured Parties, pursuant to this Agreement and the other Indenture Documents.

"Collection Account" means the account held at U.S. Bank National Association in the name of the Trustee or other Paying Agent, as applicable, or in the name of the Issuer, in each case for the benefit of the Secured Parties with account number 241925301, and any permitted account in replacement thereof with a successor trustee or successor paying agent, as applicable.

"Control" has the meaning assigned to such term in Article 8 of the UCC or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"Effective Date" means the date of this Agreement.

"Electronic Chattel Paper" means any "electronic chattel paper", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Filing Office" means Delaware and, if applicable, any other appropriate office of the state where the Issuer is "located" (as such term is used in Article 9-307 of the UCC).

"Financial Assets" means any "financial asset", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Indenture Documents" means (a) the Indenture and the Securities, (b) each Security Document, including this Agreement and (c) any other related documents or instruments executed and delivered by the Issuer or any Guarantor pursuant to the Indenture or any other Indenture Document, in each case, as such agreements may be amended, extended, renewed, restated, supplemented, waived or otherwise modified from time to time.

"Instrument" means any "instrument", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Majority Holders" means, at any time, the Holders of at least a majority of the aggregate principal amount of the Securities then outstanding.

"Obligations" means all obligations of every nature of the Issuer under the Indenture Documents from time to time owed to the Trustee, any Holder, the Collateral Agent and any other Secured Party, whether for principal, interest (including interest which, but for the filing of a petition in any Bankruptcy Proceeding with respect to the Issuer, would have accrued on any Obligation, whether or not a claim is allowed or allowable against the Issuer for such interest in such proceeding), premium, fees, expenses, indemnification, performance or otherwise.

"Payment Intangible" means any "payment intangible", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Permitted Liens" means (a) Liens for taxes, assessments or other governmental charges or levies not overdue for a period of more than 10 days or not subject to penalties for nonpayment or that are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP; (b) Liens securing the Securities, including Liens arising under or relating to the Security Documents; (c) the Lien securing the Issuer's compensation and indemnity obligations to the Trustee under the Indenture; (d) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts (as defined in Article 9 of the UCC) or other funds maintained with a depository or financial institution; and (e) Liens that are contractual rights of set-off relating to purchase orders and other agreements entered into with customers of the Issuer or any of its Restricted Subsidiaries in the ordinary course of business.

"Proceeds" means any "proceeds", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"Receivables" means, with respect to the Servicing Agreements and Servicing Payments (as applicable), all (i) Accounts, (ii) Chattel Paper, (iii) Payment Intangibles, (iv) Instruments, (v) General Intangibles, and (vi) to the extent not otherwise included in the foregoing, all other rights to payment, whether or not earned by performance or for services rendered or to be

rendered, regardless of how classified under the UCC, in each case with respect to the foregoing clauses (i) through (vi), to the extent representing or evidencing Servicing Payments or the contractual right to receive Servicing Payments.

"Related Person" means, with respect to any specified Person, such Person's Affiliates, and the respective officers, directors, employees, agents and attorneys-in-fact of such Person and its Affiliates.

"Replacement Servicing Agreement" has the meaning specified in Section 4.8(b).

"Requirement of Law" means, as to any Person, any law (statutory or common), treaty, rule, or regulation or determination of an arbitrator or of a Governmental Authority, in each case applicable to or binding upon the Person or any of its property or to which the Person or any of its property is subject.

"Secured Parties" means (a) the Collateral Agent (including any Co-Collateral Agents), (b) each Holder, (c) the Trustee and (d) the successors and permitted assigns of each of the foregoing.

"Securities Account Investment Property" means, with respect to a Person, all of such Person's right, title, and interest in and to any and all "investment property", as defined in the UCC, including, all (a) securities, whether certificated or uncertificated, (b) security entitlements and (c) securities accounts; together with all other units, rights, or other equivalent evidences of ownership (howsoever designated) issued by any Person.

"Servicing Agreements" means each of the agreements listed on Schedule A, including any and all amendments thereto and any and all Replacement Servicing Agreements.

"Servicing Payments" means any and all cash flows payable as servicing, operations and maintenance, warranty or similar fees under the Servicing Agreements on or after [˜][1].

"Tangible Chattel Paper" means any "tangible chattel paper", as such term is defined in the UCC, now owned or hereafter acquired by any Person.

"UCC" means the Uniform Commercial Code (or any successor statute), as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the issue or perfection of security interests.

Section 1.4 Construction; Certain Defined Terms. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument, other document, statute or regulation herein shall be construed as referring

[1] To be the first of the month immediately following the Effective Date.

to such agreement, instrument, other document, statute or regulation as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, but shall not be deemed to include the Subsidiaries of such person unless express reference is made to such Subsidiaries, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Schedules and Exhibits shall be construed to refer to Articles, Sections, Schedules and Exhibits of this Agreement, (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (vi) the term "or" is not exclusive. The Issuer and the Collateral Agent and the Trustee, on behalf of the Secured Parties, hereby acknowledge and agree that the representations and warranties set forth in Article III and the covenants contained in Article IV of this Agreement shall apply only to assets and property of the Issuer that constitute Collateral.

ARTICLE II
GRANT OF SECURITY INTEREST

As security for the Obligations, the Issuer hereby grants to the Collateral Agent, for the benefit of the Secured Parties, a continuing security interest in and lien on, the Issuer's right, title and interest in and to all of the following property and assets of the Issuer, whether now owned or existing or hereafter acquired or arising, regardless of where located:

(a) the Collection Account;

(b) any and all money, cash, checks, funds, Financial Assets, Securities Account Investment Property or other property or assets on deposit in or credited to the Collection Account;

(c) the Servicing Payments;

(d) any and all of the contractual rights of the Issuer under each Servicing Agreement to receive the Servicing Payments thereunder, including any and all Receivables, except to the extent that the grant of the security interest hereunder in such contractual rights requires a consent that has not been obtained under such Servicing Agreement, or would result in a breach or default under, or a termination of (or a right to terminate) such Servicing Agreement; provided, however, that the foregoing exception shall not apply to the extent the relevant term that requires such consent or would result in such breach, default or termination (or right to terminate) is rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the UCC or any other applicable law; and

(e) all Proceeds of the foregoing.

All of the foregoing are herein collectively referred to as the "Collateral"; provided that any of the funds released by the Trustee or other Paying Agent, as applicable, from the Collection Account in accordance with Section 4.13 of the Indenture shall be excluded from the Collateral.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

The Issuer represents and warrants to the Collateral Agent, for the benefit of the Secured Parties, that as of the Effective Date:

Section 3.1 Validity and Priority of Security Interest. This Agreement is effective to create in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral and the proceeds thereof and when (a) financing statements in appropriate form are filed in the Filing Offices, the Lien created under this Agreement and the applicable Security Documents will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Issuer in such Collateral in which a security interest can be perfected by filing a financing statement (subject to Permitted Liens), in each case prior and superior in right to any other Person with respect to such perfection, and (b) when the Indenture has been executed and delivered by the parties thereto, the Lien created under this Agreement will constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Issuer in such Collateral in which a security interest can be perfected by Control (subject to Permitted Liens), in each case prior and superior in right to any other Person with respect to such perfection.

Section 3.2 Location of Issuer and Collateral. Schedule 3.2 correctly and completely identifies the Issuer's jurisdiction of incorporation, where the Issuer is "located" (as such term is used in Article 9-307 of the UCC), the Issuer's chief executive office, the location of its books and records, and the locations of the Collateral.

Section 3.3 Names.

(a) The name in which the Issuer has executed this Agreement is the exact name as it appears in the Issuer's organizational documents, as filed with the Issuer's jurisdiction of incorporation. Since January 1, 2015, the Issuer has not been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or acquired all or substantially all of the assets of any Person.

(b) All trade names, business names or corporate names under which the Issuer creates Accounts that constitute Collateral, or to which Instruments in payment of such Accounts are made payable, are listed on Schedule 3.3.

Section 3.4 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Issuer's Accounts and Chattel Paper that are Collateral are correctly stated, in all material respects, at the time furnished, in all records of the Issuer relating thereto.

Section 3.5 Documents, Instruments, and Chattel Paper. All documents, Instruments, and Chattel Paper of the Issuer evidencing or constituting Collateral, and all signatures and endorsements thereon, are and will be complete, valid, and genuine in all material respects are and will be owned by the Issuer free and clear of all Liens (subject to Permitted Liens). If the Issuer retains possession of any Chattel Paper or other Instruments, at the Collateral Agent's request upon the occurrence and during the continuance of an Event of Default, such Chattel Paper or

instruments shall be marked with the following legend: "This writing and the obligations evidenced or served hereby are subject to the security interest of U.S. Bank National Association, as Collateral Agent, for the benefit of Collateral Agent and certain Secured Parties."

Section 3.6 No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral that has not lapsed or been terminated naming the Issuer as debtor has been filed or is of record in any jurisdiction except for (a) financing statements or security agreements naming the Collateral Agent on behalf of the Secured Parties as the secured party, (b) financing statements in connection with Permitted Liens,

(c) those that are no longer effective, [(d) the financing statement filed with the Delaware Secretary of State on December 15, 2015, naming U.S. Bank National Association as Collateral Agent (UCC initial filing number 2015 6037427), and the related Security Agreement, dated as of December 15, 2015 (as amended by the First Amendment to Security Agreement, dated as of June 29, 2017, the Second Amendment to Security Agreement, dated as of July 7, 2017 and the Third Amendment to Security Agreement dated on or about the date hereof), among the Issuer, the guarantors from time to time party thereto and U.S. Bank National Association, as collateral agent, and (e) the financing statement amendment to be filed on or about the date hereof amending or restating the description of collateral contained in the financing statement described in clause (d) of this Section 3.6].[2]

Section 3.7 Servicing Agreements. As of the Effective Date, the Issuer is solely responsible for operations and maintenance and warranty services (and similar obligations) with respect to energy servers or similar products or platforms under the Servicing Agreements. As of the Effective Date, no Subsidiary of the Issuer receives, or is entitled to receive, any Servicing Payments under any Servicing Agreement.

ARTICLE IV
COVENANTS

From the date hereof, and thereafter until this Agreement is terminated, the Issuer agrees that:

Section 4.1 General.

(a) Collateral Records. The Issuer shall maintain at all times reasonably detailed, accurate (in all material respects) and updated books and records pertaining to the Collateral and promptly furnish to the Collateral Agent such information relating to the Collateral as the Collateral Agent shall from time to time reasonably request.

(b) Authorization to File Financing Statements; Ratification. The Collateral Agent may, and the Issuer hereby authorizes the Collateral Agent to, at any time and from time to time, file financing statements, continuation statements, and amendments thereto that describe the Collateral as described herein and which contain any other information required pursuant to Article 9 of the UCC for the sufficiency of filing office acceptance of any such financing statement, continuation statement, or amendment, and the Issuer agrees to furnish any such information to

[2] Bracketed clauses to be updated as necessary to reflect changes prior to Effective Date.

the Collateral Agent promptly upon request. The Collateral Agent shall inform the Issuer of any such filing either prior to, or reasonably promptly after, such filing and will provide a copy of such filing to Issuer promptly following such filing, though the Collateral Agent shall incur no liability for failing to so notify the Issuer or provide such copy. The Issuer acknowledges that it is not authorized to file any financing statement covering the Collateral or amendment or termination statement with respect to any financing statement covering the Collateral without the prior written consent of the Collateral Agent and agrees that it will not do so without such consent, subject to the Issuer's rights under Section 9-509(d)(2) of Article 9 of the UCC.

(c) Change of Name, Etc. The Issuer agrees to furnish to the Collateral Agent prompt written notice of any change in: (A) the Issuer's name; (B) the Issuer's state or other place of organization or form of organization, in each case at least thirty (30) days prior thereto; or (C) the Issuer's Federal Taxpayer Identification Number or organizational identification number assigned to it by its jurisdiction of incorporation or formation. The Issuer agrees not to effect or permit any change referred to in the preceding sentence unless all filings are promptly made under the UCC that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected, security interest in the Collateral for its benefit and the benefit of the other Secured Parties to the extent such security interest may be perfected by the filing of a financing statement under the UCC.

Section 4.2 Collection Account. The Issuer shall maintain the Collection Account at U.S. Bank National Association (or any successor by merger or consolidation or any successor to the corporate trust business thereof), and such Collection Account shall remain in the name of the Trustee or Paying Agent, as applicable, or a successor trustee or successor paying agent, as applicable or in the name of the Issuer, in each case for the benefit of the Secured Parties. Commencing on the Effective Date, the Issuer shall instruct each Account Debtor under the Servicing Agreements on each invoice issued in respect of each Servicing Agreement, or otherwise notify such Account Debtor, as follows:

> "You are hereby notified that Bloom Energy Corporation has assigned its right to receive payments under its contract with you to U.S. Bank National Association, as collateral agent (in such capacity, including its successors and assigns, the "Collateral Agent"), as collateral security. All payments are to be directed to the following account (or such other account as shall be established in replacement thereof as confirmed in writing by the Collateral Agent): U.S. Bank National Association, ABA No. 091000022, Account No. 180121167365, Account Name: U.S. Bank Corporate Trust Dept., Ref. 241925301."

The Issuer shall not change or revoke such instruction without the prior written consent of the Collateral Agent (acting at the direction of the Majority Holders).

Section 4.3 Securities Account Investment Property. The Issuer shall, at any time and from time to time take such steps as are necessary or as the Collateral Agent may reasonably request (i) for the Collateral Agent to obtain Control of any Securities Account Investment Property, deposit accounts, securities accounts, letter-of-credit rights, or Electronic Chattel Paper constituting Collateral with any agreements establishing Control to be in form reasonably satisfactory to the Collateral Agent and (ii) to otherwise ensure the continued perfection and

priority (subject to Permitted Liens) of the Collateral Agent's security interest in any of the Collateral (to the extent required hereunder) and of the preservation of its rights therein.

Section 4.4 Certificated Securities. If the Issuer shall at any time hold or acquire any certificated securities constituting Collateral, the Issuer shall (i) if the Collection Account is a securities account and such certificated securities are of a type that may be held in such account, promptly deliver such securities into the Collection Account or (ii) otherwise promptly deliver the same to

the Collateral Agent, accompanied by such undated instruments of transfer or assignment duly executed in blank, all in form reasonably satisfactory to transfer such securities to the Collateral Agent.

Section 4.5 Uncertificated Securities. If any securities now or hereafter acquired by the Issuer constituting Collateral are uncertificated and are issued to the Issuer or its nominee directly by the issuer thereof, the Issuer shall promptly notify the Collateral Agent thereof and, pursuant to an agreement in favor of the Collateral Agent sufficient to either (i) cause a Security Entitlement with respect to such uncertificated security to be held in the Collection Account (if the Collection Account is a securities account), (ii) arrange for the Collateral Agent to become the registered owner of such securities or (iii) cause the issuer of such uncertificated securities to agree to comply with instructions from the Collateral Agent as to such securities, without further consent of the Issuer or such nominee.

Section 4.6 Electronic Chattel Paper. If the Issuer at any time holds or acquires an interest in any Collateral comprised of Electronic Chattel Paper or any "transferable record", as that term is defined in Section 201 of the Federal Electronic Signatures in Global and National Commerce Act, or in Section 16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, the Issuer shall promptly notify the Collateral Agent thereof and shall take such action as is necessary to vest in the Collateral Agent Control under UCC Section 9-105 of such Electronic Chattel Paper or control (to the extent the meaning of "control" has not been clearly established under such provisions, "control" in this Section 4.6 to have such meaning as the Collateral Agent shall reasonably specify in writing after consultation with the Issuer) under Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or, as the case may be, Section 16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. The Collateral Agent agrees with the Issuer that the Collateral Agent will arrange, pursuant to procedures reasonably satisfactory to the Collateral Agent and so long as such procedures will not result in the Collateral Agent's loss of Control or control, as applicable, which may be established to the satisfaction of the Collateral Agent pursuant to the delivery to it by the Issuer of an Officers' Certificate or an Opinion of Counsel, for the Issuer to make alterations to the Electronic Chattel Paper or transferable record permitted under UCC Section 9-105 or, as the case may be, Section 201 of the Federal Electronic Signatures in Global and National Commerce Act or Section 16 of the Uniform Electronic Transactions Act for a party in Control to allow without loss of Control or control, as applicable, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by the Issuer with respect to such Electronic Chattel Paper or transferable record.

Section 4.7 Receivables. The Issuer shall keep and maintain at its own cost and expense complete records of each Receivable, including records of all payments received, all credits granted thereon and all other documentation relating thereto. The Issuer shall, at the Issuer's sole

cost and expense, upon the Collateral Agent's demand made at any time after the occurrence and during the continuance of any Event of Default, deliver copies of all tangible evidence of Receivables, including copies of all documents evidencing Receivables and any books and records relating thereto to the Collateral Agent or to its representatives. The Issuer shall legend, at the request of the Collateral Agent made at any time after the occurrence and during the continuance of an Event of Default, and in form and manner satisfactory to the Collateral Agent, the Receivables and the other books, records and documents of the Issuer evidencing or pertaining to the Receivables with an appropriate reference to the fact that the Receivables have been pledged to the Collateral Agent for the ratable benefit of the Secured Parties and that the Collateral Agent has a security interest therein.

Section 4.8 Further Assurances.

(a) Perfection and Protection. The Issuer shall, at its expense, perform all steps as may be required or as reasonably requested by the Collateral Agent (acting at the direction of the Majority Holders) at any time to perfect, maintain, protect, and enforce the Collateral Agent's Liens, including (i) delivering to the Collateral Agent the originals of all Instruments, documents, Chattel Paper and all other Collateral of which the Collateral Agent is required to have or reasonably requests to have physical possession of in order to perfect and protect the Collateral Agent's security interest therein, duly pledged, endorsed, or assigned to the Collateral Agent as provided herein, and (ii) execute and deliver, or cause to be executed and delivered, to the Collateral Agent and/or the Trustee such documents and agreements as the Collateral Agent and/or the Trustee may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Indenture Documents. To the extent permitted by any Requirement of Law, the Collateral Agent may file, without the Issuer's signature, one or more financing statements disclosing the Collateral Agent's Liens.

(b) Replacement Servicing Agreements. Upon the entry into any Servicing Agreement by the Issuer or any Subsidiary of the Issuer that puts in place a new Servicing Agreement to provide for servicing, warranty or operations and maintenance services (or similar) by the Issuer or any Subsidiary of the Issuer in replacement of any existing Servicing Agreement (such new agreement, the "Replacement Servicing Agreement"), the Issuer shall, or shall cause such Subsidiary to, as applicable, execute and deliver such security instruments, financing statements and certificates as shall be reasonably necessary to vest in the Collateral Agent a perfected security interest or other Lien in such Replacement Servicing Agreement (subject to Permitted Liens) and to have such Replacement Servicing Agreement added to the Collateral hereunder (or under such security instrument) and to the Notes Collateral (as defined in the Indenture), and thereupon all provisions of this Agreement relating to the Collateral (if applicable) and all provisions of the Indenture relating to the Notes Collateral, shall be deemed to relate to such Replacement Servicing Agreement to the same extent and with the same force and effect. Such security interests and Liens will be created under security agreements and other instruments and documents in form and substance similar to this Agreement *mutatis mutandis* and otherwise in form reasonably satisfactory to the Collateral Agent, and the Issuer shall deliver or cause to be delivered to the Collateral Agent and the Trustee all such instruments and documents as are necessary or customary or that the Collateral Agent shall reasonably request to evidence compliance with this Section 4.8(b).

ARTICLE V
REMEDIES

Section 5.1 Remedies.

(a) If an Event of Default has occurred and is continuing:

(i) the Collateral Agent shall have, for the benefit of the Secured Parties, in addition to all other rights of the Collateral Agent and the Trustee, the rights and remedies of a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law when a debtor is in default under a security agreement;

(ii) the Collateral Agent may, at any time, take possession of the Collateral and keep it on the Issuer's premises, at no cost to the Collateral Agent, the Trustee or any other Secured Party or remove any part of it to such other place or places as the Collateral Agent may desire, or the Issuer shall, upon the Collateral Agent's demand, at the Issuer's cost, assemble the Collateral and make it available to the Collateral Agent at a place reasonably convenient to the Collateral Agent;

(iii) the Collateral Agent may sell and deliver any Collateral at public or private sales, for cash, upon credit, or otherwise, at such prices and upon such terms as the Collateral Agent deems advisable, in its sole discretion, and may, if the Collateral Agent deems it reasonable, postpone or adjourn any sale of the Collateral by an announcement at the time and place of sale or of such postponed or adjourned sale without giving a new notice of sale; provided that in connection with any such sale of Collateral, the Collateral Agent shall use its reasonable commercial efforts to maintain the confidentiality of any proprietary information of the Issuer (consistent with the confidentiality obligations of the Holders as required by the Indenture Documents);

(iv) the Collateral Agent may give any instruction to the Trustee or Paying Agent, as applicable, with respect to the Collection Account, including notice of sole control or may exercise the rights and remedies provided therein and take any action as provided therein with respect to the Collection Account; and

(v) the Collateral Agent may, concurrently with or following written notice to the Issuer, transfer and register in its name or in the name of its nominee the whole or any part of the Securities Account Investment Property constituting Collateral, exchange certificates or instruments representing or evidencing Securities Account Investment Property constituting Collateral for certificates or instruments of smaller or larger denominations, exercise all rights as a holder with respect thereto, collect and receive all cash dividends, interest, principal and other distributions made thereon and otherwise act with respect to the Securities Account Investment Property constituting Collateral as though the Collateral Agent was the outright owner thereof.

(b) Without in any way requiring notice to be given in the following manner, the Issuer agrees that any notice by the Collateral Agent of any sale, disposition, or other intended action hereunder or in connection herewith, whether required by the UCC or otherwise, shall

constitute reasonable notice to the Issuer if such notice is mailed by registered or certified mail, return receipt requested, postage prepaid, or is delivered personally against receipt, at least ten (10) Business Days prior to such action to the Issuer's address specified in or pursuant to Section 8.1 unless a longer period is required by Requirement of Law.

(c) If any Collateral is sold on terms other than payment in full at the time of sale, no credit shall be given against the Obligations until the Collateral Agent receives payment, and if the buyer defaults in payment, credit shall be limited to amounts actually received and retained by the Collateral Agent in connection with such sale; in such event, the Collateral Agent shall use commercially reasonable efforts to retake possession of any Collateral sold to the defaulting buyer for which payment was not made.

(d) In the event the Collateral Agent seeks to take possession of all or any portion of the Collateral by judicial process, the Issuer irrevocably waives to the extent permitted by applicable law: (i) the posting of any bond, surety, or security with respect thereto which might otherwise be required; (ii) any demand for possession prior to the commencement of any suit or action to recover the Collateral; and (iii) any requirement that the Collateral Agent retain possession and not dispose of any Collateral until after trial or final judgment.

(e) If an Event of Default occurs and is continuing, the Issuer hereby waives, to the extent permitted by applicable law, all rights to a hearing prior to the exercise by the Collateral Agent of the Collateral Agent's rights to repossess the Collateral without judicial process or to replevy, attach, or levy upon the Collateral.

(f) The Issuer acknowledges and agrees that the Collateral Agent has no obligation to preserve rights to the Collateral or marshal any Collateral for the benefit of any Person.

(g) The Issuer acknowledges and agrees that the compliance by the Collateral Agent, on behalf of the Secured Parties, with any applicable state or federal law requirements may be required in connection with a disposition of the Collateral and such compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(h) The Collateral Agent shall have the right upon any public sale or sales and, to the extent permitted by law, upon any private sale or sales, to purchase for the benefit of the Collateral Agent and the other Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Issuer hereby expressly releases.

(i) Until the Collateral Agent is able to effect a sale, transfer or other disposition of Collateral, the Collateral Agent shall have the right, but no duty or obligation, to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or the value of the Collateral, or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, but shall have no obligation to, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(j) Any remedy or enforcement action to be taken hereunder by the Collateral Agent with respect to the Collateral shall be at the written direction of the Trustee (acting pursuant to the direction of the Majority Holders pursuant to the Indenture).

Section 5.2 Application of Proceeds. The Collateral Agent shall apply the proceeds of any foreclosure or other realization upon any Collateral, as well as any Collateral consisting of cash, as follows:

FIRST, to the payment of all reasonable and documented costs and expenses incurred by the Collateral Agent (in its capacity as such hereunder or under the Indenture or any other Indenture Document) and the Trustee in connection with such collection, sale, foreclosure or realization or reasonable costs, expenses, claims or liabilities of the Collateral Agent or the Trustee otherwise relating to or arising in connection with this Agreement, the Indenture or any other Indenture Document or any of the Obligations, including all court costs and the reasonable and documented fees and expenses of its agents and legal counsel, the

repayment of all advances made by the Collateral Agent or the Trustee hereunder or under the Indenture or any other Indenture Document on behalf of the Issuer, any other reasonable and documented costs or expenses incurred by the Collateral Agent or the Trustee in connection with the exercise of any remedy hereunder or under the Indenture or any other Indenture Document, and any indemnification of the Collateral Agent and the Trustee required by the terms hereunder, under the Indenture or any other Indenture Document;

SECOND, to the Trustee for distribution in accordance with the priorities set forth in Section 6.10 of the Indenture.

Except as otherwise provided herein, the Collateral Agent shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Agreement. Upon any sale of Collateral by the Collateral Agent (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Collateral Agent or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Collateral Agent or such officer or be answerable in any way for the misapplication thereof.

Section 5.3 Retention of Rights. So long as the Collateral Agent has not exercised remedies under this Agreement with respect to any Collateral upon the occurrence and during the continuation of an Event of Default, the Issuer reserves all rights with respect to Collateral of the sort described in clause (d) of Article II (except as limited by the Indenture Documents), including all rights to use, apply, modify, dispose of or otherwise deal with such Collateral (except as limited by the Indenture Documents).

ARTICLE VI
CONCERNING THE COLLATERAL AGENT

Section 6.1 Reliance by Collateral Agent; Indemnity Against Liabilities, etc.

(a) Whenever in the performance of its duties under this Agreement or any other Indenture Document, the Collateral Agent shall deem it necessary or desirable that a matter

be proved or established with respect to the Issuer or any other Person in connection with the taking, suffering or omitting of any action hereunder by the Collateral Agent, such matter may be conclusively deemed to be proved or established by a certificate executed by an Officer of such Person, including an Officers' Certificate or an Opinion of Counsel, and the Collateral Agent shall have no liability with respect to any action taken, suffered or omitted in reliance thereon. The Collateral Agent may at any time solicit written confirmatory instructions, including a direction of the Trustee, the Issuer or an order of a court of competent jurisdiction as to any action that it may be requested or required to take or that it may propose to take in the performance of any of its obligations under this Agreement or any other Indenture Document and shall be fully justified in failing or refusing to act hereunder or under any Indenture Document until it shall have received such requisite instruction.

(b) The Collateral Agent shall be fully protected in relying upon any note, writing, affidavit, electronic communication, fax, resolution, statement, certificate, instrument, opinion, report, notice (including any notice of an Event of Default or of the cure or waiver thereof), request, consent, order or other paper or document or oral conversation (including, telephone conversations) which it in good faith believes to be genuine and correct and to have been signed, presented or made by the proper party. The Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any notice, certificate or opinion furnished to the Collateral Agent in connection with this Agreement or any other Indenture Document and upon advice and statements of legal counsel (including counsel to the Issuer or the Issuer, independent accountants and other agents consulted by the Collateral Agent).

Section 6.2 Exercise of Remedies. The remedies of the Collateral Agent hereunder and under the other Security Documents shall include, but not be limited to, the disposition of the Collateral by foreclosure or other sale and the exercising of all remedies of a secured lender under the UCC, bankruptcy laws or similar laws of any applicable jurisdiction.

Section 6.3 Authorized Investments.

(a) So long as no Event of Default has occurred and is continuing, any and all funds held by the Collateral Agent in its capacity as Collateral Agent, whether pursuant to any provision hereof or of any other Security Document or otherwise, shall, to the extent reasonably practicable following receipt by the Collateral Agent from the Issuer of specific written instructions in form and substance reasonably satisfactory to the Collateral Agent delivered to the Collateral Agent at least three (3) Business Days prior to the proposed investment, be invested by the Collateral Agent within a reasonable time in the Cash Equivalents identified in such written instructions. In the absence of written instructions or so long as any Event of Default has occurred and is continuing, such funds may be invested in the U.S. Bank National Association Money Market Deposit Account to the extent such investment is available to the Collateral Agent; provided that the foregoing provisions of this Section 6.3(a) shall not apply to the extent funds are invested pursuant to Section 4.13 of the Indenture.

(b) The Collateral Agent shall not be responsible for any investment losses in respect of any funds invested in accordance with this Section 6.3. The Collateral Agent shall have no duty or obligation regarding the reinvestment of any such funds in the absence of updated

written instructions from the Issuer in form and substance reasonably satisfactory to the Collateral Agent.

Section 6.4 Bankruptcy Proceedings. The following provisions shall apply during any Bankruptcy Proceeding of the Issuer:

(a) The Collateral Agent shall represent all Secured Parties in connection with all matters directly relating to the Collateral, including, any use or sale of Collateral, use of cash collateral, request for relief from the automatic stay and request for adequate protection.

(b) Each Secured Party shall be free to act independently on any issue not affecting the Collateral. Each Secured Party shall give prior notice to the Collateral Agent of any such action that could materially affect the rights or interests of the Collateral Agent or the other Secured Parties to the extent that such notice is reasonably practicable. If such prior notice is not given, such Secured Party shall give prompt notice following any action taken hereunder.

(c) Any proceeds of the Collateral received by any Secured Party as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to the Collateral Agent for distribution in accordance with Section 5.2.

ARTICLE VII
COLLATERAL AGENT AND TRUSTEE RIGHTS, DUTIES AND LIABILITIES; ATTORNEY IN FACT; PROXY

Section 7.1 The Collateral Agent's and the Trustee's Rights, Duties, and Liabilities.

(a) The Issuer assumes all responsibility and liability arising from or relating to the use, sale, collection, foreclosure, realization on, conveyance or other disposition of or involving the Collateral. The Obligations shall not be affected by any failure of the Issuer, the Collateral Agent or the Trustee to take any steps to perfect the Collateral Agent's Liens or to collect or realize upon the Collateral, nor shall loss of or damage to the Collateral release the Issuer from any of the Obligations. Following the occurrence and during the continuation of an Event of Default, the Collateral Agent may (but shall not be required to), and at the direction of the Trustee (acting in accordance with the instructions of the Majority Holders pursuant to the Indenture) shall, subject to the terms of the Indenture, without notice to or consent from the Issuer sue upon or otherwise collect, extend the time for payment of, modify or amend the terms of, compromise or settle for cash, credit, or otherwise upon any terms, grant other indulgences, extensions, renewals, compositions, or releases, and take or omit to take any other action with respect to the Collateral, any security therefor, any agreement relating thereto, or any Person liable directly or indirectly in connection with any of the foregoing, without discharging or otherwise affecting the liability of the Issuer for the Obligations or under the Indenture, any other Indenture Document or any other agreement now or hereafter existing between any Secured Party and the Issuer.

(b) It is expressly agreed by the Issuer that nothing in this Agreement shall release the Issuer from its obligations and liabilities under each of its contracts and each of its licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder. The Collateral Agent and the Trustee shall not have any obligation or liability under any contract or license by reason of or arising out of this Agreement or the granting herein

of a Lien thereon or the receipt by the Collateral Agent or the Trustee of any payment relating to any contract or license pursuant hereto that is applied as required herein. The Collateral Agent and the Trustee shall not be required or obligated in any manner to perform or fulfill any of the obligations of the Issuer under or pursuant to any contract or license, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party

under any contract or license, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

Section 7.2 Right to Cure. The Collateral Agent may (but shall not be required to), in its reasonable discretion, pay any reasonable amount or do any reasonable act required of the Issuer hereunder or under any other Indenture Document in order to preserve, protect, maintain, or enforce the Obligations, the Collateral or the Collateral Agent's Liens therein, and which the Issuer fails to timely pay or do, including payment of any judgment against the Issuer, any insurance premium, any warehouse charge, any finishing or processing charge, any landlord's or bailee's claim, and any other Lien upon or with respect to the Collateral. All payments that the Collateral Agent makes under this Section 7.2 and all reasonable and documented out-of-pocket costs and expenses that the Collateral Agent pays or incurs in connection with any action taken by it hereunder shall be promptly reimbursed by the Issuer. Any payment made or other action taken by the Collateral Agent under this Section 7.2 shall be without prejudice to any right to assert an Event of Default hereunder and to proceed thereafter as herein provided.

Section 7.3 Confidentiality.

(a) The Collateral Agent, in its individual capacity and as Collateral Agent, and the Trustee, in its individual capacity and as Trustee, agree and acknowledge that all information provided to the Collateral Agent or the Trustee by the Issuer or any Subsidiary (or any holder or indirect equityholder of the Issuer or such Subsidiary) that is expressly identified as relating to the Indenture Documents ("Confidential Information") shall be considered to be proprietary and confidential information; provided that any information provided to the Collateral Agent or the Trustee by the Issuer or any Subsidiary (or any holder or indirect equityholder of the Issuer or such Subsidiary) that is not so identified, or that is provided to U.S. Bank National Association in its capacity as trustee or collateral agent for the 5% Convertible Notes, shall not be considered Confidential Information. Each of the Trustee and the Collateral Agent agrees to take all reasonable precautions necessary to keep such Confidential Information confidential, which precautions shall be no less stringent than those that the Collateral Agent and the Trustee, as applicable, employs to protect its own confidential information. Each of the Collateral Agent and the Trustee shall not disclose to any third party other than as set forth herein, and shall not use for any purpose other than the exercise of the Collateral Agent's and the Trustee's rights and the performance of its respective obligations under this Agreement, any such information without the prior written consent of the Issuer. Each of the Collateral Agent and the Trustee shall limit access to such information received hereunder to (a) its directors, officers, managers and employees and (b) its legal advisors, to each of whom disclosure of such information is necessary for the purposes described above; provided, however, that in each case such party has expressly agreed to maintain such information in confidence under terms and conditions substantially identical to the terms of this Section 7.3.

(b) Each of the Collateral Agent and the Trustee agree that, unless otherwise provided hereunder or under the Indenture, the Issuer does not have any responsibility whatsoever for any reliance on Confidential Information by the Collateral Agent or the Trustee or by any Person to whom such information is disclosed in connection with this Agreement, whether related to the purposes described above or otherwise. Without limiting the generality of the foregoing, each of the Collateral Agent and the Trustee agrees that the Issuer makes no representation or warranty whatsoever to it with respect to Confidential Information or its suitability for such purposes. Each of the Collateral Agent and the Trustee further agrees that it shall not acquire any rights against the Issuer or any employee, officer, director, manager, representative or agent of the Issuer (together with the Issuer and any employee, officer, director, manager, representative or agent of the Issuer, "Confidential Parties") as a result of the disclosure of Confidential Information to the Trustee and that no Confidential Party has any duty, responsibility, liability or obligation to any Person as a result of any such disclosure.

(c) In the event the Collateral Agent or the Trustee is required to disclose any Confidential Information received hereunder in order to comply with any applicable laws, regulations or court orders, it may disclose Confidential Information only to the extent necessary for such compliance; provided, however, that it shall give the Issuer, reasonable advance written notice of any such court proceeding in which such disclosure may be required pursuant to a court order so as to afford the Issuer full and fair opportunity to oppose the issuance of such order and to appeal therefrom and shall cooperate reasonably with the Issuer, as applicable, in opposing such order and in securing confidential treatment of any Confidential Information to be disclosed and/or obtaining a protective order narrowing the scope of such disclosure (in each case at the Issuer's sole cost and expense and to

the extent permitted pursuant to such applicable law, regulation or court order).

Section 7.4 Power of Attorney. The Issuer hereby appoints the Collateral Agent and the Collateral Agent's designee as the Issuer's attorney, with power upon the occurrence and during the continuance of an Event of Default: (a) to endorse the Issuer's name on any checks, notes, acceptances, money orders, or other forms of payment or security that come into the Collateral Agent's or any Secured Party's possession; (b) to sign the Issuer's name on any drafts against customers, on assignments of Accounts, on notices of assignment, financing statements, and other public records and to file any such financing statements by electronic means with or without a signature as authorized or required by applicable law or filing procedure; (c) to send requests for verification of Accounts to customers or Account Debtors; and (d) to do all things the Collateral Agent reasonably determines are necessary to carry out the security interest provisions of the Indenture and the provisions of this Agreement. Notwithstanding anything in this Agreement or any Indenture Document to the contrary, none of the Trustee, the Collateral Agent, nor their attorneys, employees or Affiliates will be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than any such liability arising from any such Person's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

Section 7.5 NATURE OF APPOINTMENT; LIMITATION OF DUTY. THE APPOINTMENT OF THE COLLATERAL AGENT AS ATTORNEY-IN-FACT IN THIS ARTICLE VII IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.12. NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT

OR IN ANY INDENTURE DOCUMENT, NEITHER THE COLLATERAL AGENT, NOR ANY SECURED PARTY, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT TO THE EXTENT SUCH DAMAGES ARE ATTRIBUTABLE TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

Section 7.6 Additional Matters Relating to the Collateral Agent.

(a) The Collateral Agent. U.S. Bank National Association shall initially act as Collateral Agent for the Secured Parties and shall be authorized to appoint co-collateral agents as necessary in its sole discretion. U.S. Bank National Association, as Collateral Agent, is authorized and directed to (i) enter into the Indenture Documents, (ii) bind the Secured Parties on the terms as set forth in the Indenture Documents and (iii) perform and observe its obligations under the Indenture Documents.

(b) Role of the Collateral Agent. The rights, duties, liabilities and immunities of the Collateral Agent and its appointment, resignation and replacement hereunder and under the Indenture and the other Indenture Documents shall be governed by this Agreement, Article 11 of the Indenture and the relevant provisions contained in the other Indenture Documents. Without limiting the foregoing, the rights, privileges, protections and benefits given to the Collateral Agent under the Indenture are extended to, and shall be enforceable by, the Collateral Agent in connection with the execution, delivery and administration of this Agreement and the other Indenture Documents and any action taken or omitted to be taken by the Collateral Agent in connection with its appointment and performance under this Agreement and the other Indenture Documents to which it is a party.

(c) Absence of Fiduciary Relation. The Collateral Agent undertakes to perform or to observe only such of its agreements and obligations as are specifically set forth in this Agreement, the Indenture and the other Indenture Documents, and no implied agreements, covenants or obligations with respect to the Issuer or any Affiliate of the Issuer, any Secured Party or any other party shall be read into this Agreement against the Collateral Agent. The Collateral Agent in its capacity as such is not a fiduciary of and shall not owe or be deemed to owe any fiduciary duty to the Issuer or any Related Person of the Issuer.

(d) Exculpatory Provisions.

(i) None of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact or Related Persons shall be responsible or liable in any manner (A) to the Issuer or any of its Related Persons for any action taken or omitted to be taken by it under or in connection with this Agreement in compliance herewith, (B) to any Secured Party or any other Person for any recitals, statements, representations, warranties, covenants or

agreements contained in this

Agreement or in any Indenture Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Agreement or any Indenture Document, (C) to any Secured Party or any other Person for the validity, effectiveness, adequacy, genuineness or enforceability of this Agreement or any Indenture Document, or any Lien purported to be created hereunder or under any Indenture Document, (D) to any Secured Party or any other Person for the validity or sufficiency of the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral or (E) to any Secured Party or other Person for any failure of the Issuer to perform its obligations hereunder or of the Issuer to perform any of the Obligations.

(ii) Notwithstanding anything to the contrary contained in this Agreement, (A) in no event shall the Trustee or the Collateral Agent be responsible for or have any obligation, duty or liability with respect to the creation, perfection, priority, maintenance, protection or enforcement of any Lien on, security interest in, pledge or other encumbrance involving or relating to the Collateral or any other assets, properties or rights of the Issuer, (B) none of the Trustee or the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any Liens in the Collateral and (C) none of the Trustee or the Collateral Agent shall be under any obligation to any Person to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or to inspect the properties or records of the Issuer. The permissive rights of the Collateral Agent to do things enumerated in this Agreement shall not be construed as a duty or obligation. The Collateral Agent may rely conclusively on any Opinions of Counsel rendered to the Collateral Agent under the Indenture in determining any necessary or desirable actions under this Agreement. Notwithstanding anything to the contrary herein, the Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account and the Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. None of the Collateral Agent or the Trustee shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of the Issuer or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(iii) Notwithstanding anything to the contrary contained herein, none of the Collateral Agent, the Trustee or any of their respective officers, directors, employees, agents, attorneys-in-fact, or Related Persons shall be exonerated from any liability arising from its or their own gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction.

(e) Fees and Expenses. The Issuer agrees that it shall upon demand pay to the Collateral Agent and any Secured Party the amount of any and all reasonable and documented out-

of-pocket fees, costs and expenses (including the reasonable and documented out-of-pocket fees and expenses of their respective counsel, any special consultants reasonably engaged (and, unless an Event of Default exists, such special consultants engaged only with the consent of the Issuer) by the Collateral Agent or any Secured Party, as the case may be, in connection with the transactions contemplated hereby) that the Collateral Agent or any Secured Party, as the case may be, may incur in connection with (i) any Event of Default, including the sale or other disposition of, collection from, or other realization upon, any of the Collateral pursuant to the exercise or enforcement of any of their respective rights hereunder, (ii) the exercise of their respective rights under this Agreement or under any Indenture Document, including the custody, preservation, use or operation of, or the sale of, any of the Collateral, (iii) performance by the Collateral Agent of any obligations of the Issuer that the Issuer has failed or refused to perform with respect to the Collateral, (iv) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings and defending or asserting rights and claims of the Collateral Agent in respect thereof, by litigation or otherwise, or (v) the execution and delivery and administration of this Agreement and the other Indenture Documents and, any agreement supplemental hereto or

thereto, and any instruments of amendment, waiver, further assurance, release or termination, including with respect to the termination and/or release of any or all of the Liens in the Collateral provided for in this Agreement and the other Security Documents.

(f) Filing Fees, Taxes, etc. The Issuer shall pay on demand all filing, registration and recording fees or re-filing, re-registration, and re-recording fees, and all federal, state, county, and municipal stamp taxes and other similar taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution and delivery of this Agreement, the Indenture, the other Indenture Documents, and any agreement supplemental hereto or thereto and any instruments of further assurance or termination.

(g) Security Against Costs. The Collateral Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement or any other Indenture Document at the request, order or direction of any Secured Party pursuant to the provisions of the Indenture or any Indenture Document, unless such Secured Party shall have offered to the Collateral Agent security or indemnity satisfactory to the Collateral Agent against the costs, expenses and liabilities which may be incurred by it in compliance with such request, order or direction.

(h) No Responsibility for Investments. In no event shall the Collateral Agent or any Secured Party be liable or responsible for any funds or investments of funds held by the Issuer or any Affiliates thereof.

Section 7.7 Appointment of Co-Collateral Agent. In the event that the Collateral Agent appoints a Co-Collateral Agent, or Co-Collateral Agents, in accordance with the provisions of Section 7.6(a) of this Agreement, such Co-Collateral Agent(s) shall enter into a Co-Collateral Agent Appointment Agreement in a form satisfactory to the Collateral Agent and such Co-Collateral Agent, and upon acceptance of the appointment, such Co-Collateral Agent shall be entitled to all of the rights, privileges, limitations on liability and immunities afforded to and subject to all the duties of the Collateral Agent hereunder, and shall be deemed to be a party to this Agreement for all purposes provided in this Section 7.7, in each case, subject to the specific rights and duties vested in the Co-Collateral Agent pursuant to the Co-Collateral Agent Appointment

Agreement and related Security Documents. It is accepted and acknowledged by the parties hereto that any Co-Collateral Agent appointed in accordance with Section 7.6(a) and this Section 7.7 shall be entitled to the payment of its fees and expenses as agreed to by the Issuer, and without limitation of any of the other provisions of this Agreement, shall be deemed to be an indemnified party under Section 8.16 of this Agreement with respect to any liability arising under this Agreement or the other Indenture Documents without need for further act by the Issuer.

Section 7.8 Collection Account. Unless an Event of Default shall occur and be continuing, the Trustee or other Paying Agent, as applicable, shall administer the Collection Account pursuant to Section 4.13 of the Indenture. The Trustee shall, and shall direct any other Paying Agent to, (i) act as the agent for and representative of the Collateral Agent for purposes of perfecting the security interest granted hereunder in the Collection Account and the funds on deposit therein and (ii) follow the directions of the Collateral Agent with respect to the Collection Account and the funds on deposit therein in the exercise of remedies permitted hereunder or under any Security Document upon the occurrence and during the continuance of an Event of Default.

ARTICLE VIII
GENERAL PROVISIONS

Section 8.1 Notice. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax, as follows:

(a)if to the Collateral Agent, to it at

U.S. Bank National Association
Global Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough (Bloom Energy 2020 Indenture)
Facsimile: (213) 615-6197

(b)if to the Trustee, to it at

U.S. Bank National Association
Global Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Bradley Scarbrough (Bloom Energy 2020 Indenture)
Facsimile: (213) 615-6197

(c)if to the Issuer, at

Bloom Energy Corporation
4353 North First Street
San Jose, California 95134
Attention: General Counsel

Facsimile: (408) 543-1191

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt if delivered by hand or overnight courier service or sent by facsimile or on the date five (5) Business Days after dispatch by certified or registered mail if mailed, in each case delivered, sent or mailed (properly addressed) to such party as provided in this Section 8.1 or in accordance with the latest unrevoked direction from such party given in accordance with this Section 8.1. Notwithstanding the foregoing, notices to the Collateral Agent shall only be effective upon actual receipt.

Section 8.2 Waiver of Notices. Unless otherwise expressly provided herein, the Issuer hereby waives (to the maximum extent permitted by applicable law) presentment, demand, protest or any notice of any kind in connection with this Agreement or any Collateral.

Section 8.3 Limitation on Collateral Agent's and Secured Party's Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to prepare the Collateral for sale. The Collateral Agent and each Secured Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such Secured Party, or any income thereon (other than to account for proceeds therefrom) or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, and to the extent permitted by applicable law, the Issuer acknowledges and agrees that it would be commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition, (ii) to the extent permitted by applicable law, to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as the Issuer, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the

Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other

professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. The Issuer acknowledges that the purpose of this Section 8.3 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.3. Without limitation upon the foregoing, nothing contained in this Section 8.3 shall be construed to grant any rights to the Issuer or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 8.3.

Section 8.4 Compromises and Collection of Collateral. The Issuer and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Accounts, that certain of the Accounts may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Account may exceed the amount that reasonably may be expected to be recovered with respect to an Account. In view of the foregoing, the Issuer agrees that the Collateral Agent may at any time and from time to time if an Event of Default has occurred and is continuing, compromise with the obligor on any Account, accept in full payment of any Account such amount as the Collateral Agent in its sole discretion shall determine or abandon any Account, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

Section 8.5 Specific Performance of Certain Covenants. The Issuer acknowledges and agrees that a breach of any of the covenants contained in Section 4.8, 7.6, 8.16 and 8.17, will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the other Secured Parties to seek and obtain specific performance of other obligations of the Issuer contained in this Agreement, that the covenants of the Issuer contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Issuer.

Section 8.6 Cumulative Remedies; No Prior Recourse to Collateral. The enumeration herein of the Collateral Agent's and the Trustee's rights and remedies is not intended to be exclusive, and such rights and remedies are in addition to and not by way of limitation of any other rights or remedies that the Collateral Agent and the Trustee may have under the UCC, other applicable law or the Indenture Documents. The Collateral Agent and the Trustee shall have the right, in their sole discretion, to determine which rights and remedies are to be exercised and in which order. The exercise of one right or remedy shall not preclude the exercise of any others, all of which shall be cumulative. The Collateral Agent and the Trustee may, without limitation, proceed directly against any Person liable therefor to collect the Obligations without any prior recourse to the Collateral. No failure to exercise and no delay in exercising, on the part of the Collateral Agent or the Trustee, any right, remedy, power, or privilege hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 8.7 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the

extent necessary so that they shall not render this Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

Section 8.8 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation or reorganization, should the Issuer become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any such payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 8.9 Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective representatives, successors, and permitted assigns of the parties hereto; provided, however, the Issuer shall not assign or delegate any of its rights or duties hereunder without the prior written consent of the Collateral Agent and the Trustee (other than pursuant to a transaction permitted under the Indenture), and any attempted assignment without such consent shall be null and void. The rights and benefits of the Collateral Agent and the Trustee hereunder shall, if such Persons so agree, inure to any party acquiring any interest in the Obligations or any part thereof in accordance with the terms hereof or of the Indenture.

Section 8.10 Survival of Representations. All representations and warranties made by the Issuer in the Indenture Documents and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Indenture Document shall be considered to have been relied upon by the Secured Parties and shall survive the execution and delivery of the Indenture Documents and the purchase of the Securities by the Investors, regardless of any investigation made by any Secured Party or on its behalf and notwithstanding that the Collateral Agent, the Trustee or any other Secured Party may have had notice or knowledge of any Default or incorrect representation or warranty. Notwithstanding anything to the contrary set forth herein, the provisions of Sections 7.6(e), 8.16 and 8.17 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Securities or the termination of this Agreement or any other Indenture Document.

Section 8.11 Captions. The captions contained in this Agreement are for convenience of reference only, are without substantive meaning and should not be construed to modify, enlarge, or restrict any provision.

Section 8.12 Termination and Release. This Agreement and the security interests granted hereby shall terminate in accordance with the Indenture. The Collateral Agent shall, from time to time upon the Issuer's written request in accordance with Section 11.03 of the Indenture, execute and deliver to the Issuer such documents as the Issuer shall reasonably request to evidence the termination of the security interest granted herein as to any funds released by the Trustee from the Collection Account in accordance with Section 4.13 of the Indenture.

Section 8.13 Entire Agreement. This Agreement, together with the other Indenture Documents embodies the entire agreement and understanding between the Issuer and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between the Issuer and the Collateral Agent relating to the Collateral.

Section 8.14 Governing Law; Jurisdiction; Consent to Service of Process.

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW), EXCEPT TO THE EXTENT THAT LOCAL LAW GOVERNS THE CREATION, PERFECTION, PRIORITY OR ENFORCEMENT OF SECURITY INTERESTS.

(b) EACH PARTY HERETO HEREBY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS OF COMPETENT JURISDICTION IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN ANY SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY TO THIS AGREEMENT IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 8.1. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY TO THIS AGREEMENT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

Section 8.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 8.16 Indemnity. THE ISSUER AGREES TO DEFEND, INDEMNIFY, AND HOLD THE COLLATERAL AGENT, THE TRUSTEE AND EACH OF THEIR RELATED PERSONS (EACH, AN "INDEMNIFIED PERSON") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES, AND DISBURSEMENTS

(INCLUDING REASONABLE ATTORNEY COSTS) OF ANY KIND OR NATURE WHATSOEVER WHICH MAY AT ANY TIME (INCLUDING AT ANY TIME FOLLOWING THE TERMINATION, RESIGNATION, OR REPLACEMENT OF THE COLLATERAL AGENT OR THE TRUSTEE) BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST ANY SUCH PERSON IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, THE INDENTURE OR ANY OTHER INDENTURE DOCUMENT OR ANY DOCUMENT CONTEMPLATED BY OR REFERRED TO HEREIN OR THEREIN, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR ANY ACTION TAKEN OR OMITTED BY ANY SUCH PERSON UNDER OR IN CONNECTION WITH ANY OF THE FOREGOING, INCLUDING WITH RESPECT TO ANY INVESTIGATION, LITIGATION, OR PROCEEDING (INCLUDING ANY INSOLVENCY PROCEEDING OR APPELLATE PROCEEDING) RELATED TO OR ARISING OUT OF THIS AGREEMENT, THE INDENTURE, ANY OTHER INDENTURE DOCUMENT, OR THE SECURITIES OR THE USE OF THE PROCEEDS THEREOF, WHETHER OR NOT ANY INDEMNIFIED PERSON IS A PARTY THERETO INCLUDING ANY SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, CHARGES, EXPENSES AND REIMBURSEMENTS RESULTING FROM THE NEGLIGENCE OF SUCH INDEMNIFIED PERSON (ALL THE FOREGOING, COLLECTIVELY, THE "INDEMNIFIED LIABILITIES"); PROVIDED THAT THE ISSUER SHALL HAVE NO OBLIGATION HEREUNDER TO ANY INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES TO THE EXTENT SUCH INDEMNIFIED LIABILITIES RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNIFIED PERSON OR ITS RESPECTIVE AFFILIATES, AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION. THE AGREEMENTS IN THIS SECTION 8.16 SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS AND ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY OTHER INDENTURE DOCUMENT.

Section 8.17 Limitation of Liability. NO CLAIM MAY BE MADE BY THE ISSUER OR OTHER PERSON AGAINST THE COLLATERAL AGENT, THE TRUSTEE, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS OR THEIR RESPECTIVE RELATED PERSONS OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE

INDENTURE OR ANY OTHER INDENTURE DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND THE ISSUER HEREBY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IRREVOCABLY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON OR BRING IN ANY JUDICIAL, ARBITRAL OR ADMINISTRATIVE FORUM ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR. THE AGREEMENTS IN THIS SECTION 8.17 SHALL SURVIVE PAYMENT OF ALL OTHER OBLIGATIONS AND ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT OR ANY OTHER INDENTURE DOCUMENT.

Section 8.18 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same Agreement. Any counterpart may be executed by facsimile

or other electronic transmission, and such facsimile or other electronic transmission shall be deemed an original.

Section 8.19 Amendments. Other than as permitted pursuant to the Indenture, neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Collateral Agent, the Trustee and the Issuer with respect to which such waiver, amendment or modification is to apply, subject to any consent that may be required in accordance with Section 9.02 of the Indenture.

Section 8.20 Incorporation by Reference. It is expressly understood and agreed that U.S. Bank National Association is entering into this Agreement solely in its capacity as Collateral Agent and as Trustee as appointed pursuant to the Indenture, and shall be entitled to all of the rights, privileges, immunities and protections under the Indenture as if such rights, privileges, immunities and protections were set forth herein.

Section 8.21 English Language. This Agreement and each other Indenture Document has been negotiated and executed in English. All certificates, reports, notices and other documents and communications given or delivered by any party hereto pursuant to this Agreement or any other Indenture Document shall be in English or, if not in English, accompanied by a certified English translation thereof. The English version of any such document shall control the meaning of the matters set forth herein.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

BLOOM ENERGY CORPORATION

By:
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Collateral Agent

By:
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:
Name:
Title:

{Signature Page to Security Agreement}

Exhibit 4.7

AMENDED AND RESTATED SUBORDINATED SECURED CONVERTIBLE NOTE MODIFICATION AGREEMENT

THIS AMENDED AND RESTATED SUBORDINATED SECURED CONVERTIBLE NOTE MODIFICATION AGREEMENT (this "**Modification**") is made and entered into on March 31, 2020 (the "**Modification Date**"), by and between Bloom Energy Corporation, a Delaware corporation, as issuer (the "**Company**") and Constellation NewEnergy, Inc. or its registered assigns, as holder ("**Investor**").

W I T N E S S E T H:

WHEREAS, the Company issued that certain Amended and Restated Subordinated Secured Convertible Note, dated January 18, 2018 (the "**Note**"), originally issued under the Purchase Agreement, dated as of June 30, 2015 (as amended, modified or supplemented from time to time, the "**Purchase Agreement**"), by and between the Company, Investor, and other the investors that may from time to time become party thereto;

WHEREAS, the Note evidenced the obligation of the Company to repay $33,104,013.71 in accordance with the terms therein;

WHEREAS, as of March 31, 2020, the outstanding principal and interest owed under the Note equals $36,939,868.53;

WHEREAS, the Note matures, and all amounts owing thereunder, including without limitation all principal and interest, will be automatically and immediately due and payable on, the earlier of (A) an Event of Default and (ii) December 31, 2020 (the "**Maturity Date**");

WHEREAS, the Company has issued to other investors set forth on Exhibit A (the "**Other Investors**") convertible notes that will be automatically due and payable on December 1, 2020 (the "**Other Notes**"), and the outstanding principal of, and accrued interest on, the Other Notes as of March 31, 2020 equals approximately $290,745,821.14, per the terms of the Other Notes;

WHEREAS, in July 2018, the Company closed an Initial Public Offering;

WHEREAS, the Company has requested that Investor modify the Note to extend the Maturity Date; and

WHEREAS, Investor is willing to grant such request, subject to (i) the Company modifying the Other Notes on certain terms no more favorable than this Modification (including, for the avoidance of doubt, having such Other Notes become due and payable no earlier than December 31, 2021), and (ii) the fulfillment of the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Defined Terms. All capitalized terms used herein and not otherwise defined herein have the meanings in the Note.

2. Amendment to Note.

(a) The Note is hereby amended by deleting its first paragraph in its entirety and replacing it with the following:

"FOR VALUE RECEIVED, Bloom Energy Corporation, a Delaware corporation (the "Company"), promises to pay to Constellation NewEnergy, Inc. ("Investor"), or its registered assigns, in lawful

money of the United States of America the principal sum of Thirty Six Million Nine Hundred Thirty-Nine Thousand Eight Hundred Sixty-Eight Dollars and Fifty-Three Cents ($36,939,868.53), or such lesser amount as shall equal the outstanding principal amount hereof, together with interest from the date of this Amended and Restated Subordinated Secured Convertible Promissory Note (this "Note") on the unpaid principal balance at a rate equal to ten percent (10%) per annum, compounded monthly, computed on the basis of the actual number of days elapsed and a year of 365 days, subject to Section 8(e). All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the earlier of (i) December 31, 2021 or (ii) when, upon the occurrence and during the continuance of an Event of Default, such amounts are declared due and payable by Investor or made automatically due and payable, in each case, in accordance with the terms hereof (such earlier date, the "Maturity Date").

(b) Section 1 (*Payments*) of the Note is amended by deleting clause (b) (*Voluntary Prepayment*) in its entirety and replacing it with the following:

"(b) The Company may prepay the Note for the Prepayment Amount on any business day upon delivery of at least 5 business days' prior written notice to Investor."

(c) Section 7 (*Definitions*) of the Note is amended by deleting the definition of "Conversion Price" and replacing in its entirety with the following:

"**Conversion Price**" means, whether with respect to shares of Series G Preferred Stock or shares of Common Stock, a price per share equal to $8.00, subject in each case, to appropriate adjustment from time to time for any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event."

(d) Section 7 (*Definitions*) of the Note is amended by adding the following definitions:

"**Applicable Percentage**" means, as of a given date of determination, the percentage set forth below for the applicable period during which such date occurs:

Period	**Applicable Percentage**
Modification Date – six-month anniversary thereof, inclusive	0%
Six-month anniversary of Modification Date – nine-month anniversary thereof, inclusive	25%
Nine-month anniversary of the Modification Date – thirteen- month anniversary thereof, inclusive	50%
Thirteen-month anniversary of the Modification Date until the Maturity Date.	100%

"**Discount Rate**" means, as of a given date of determination, the *product* of (A) the Treasury Rate as of such date of determination, plus fifty (50) basis points, and (B) the Applicable Percentage.

"**Prepayment Amount**" means, as of a given date of determination, an amount equal to (i) the principal amount of the Note outstanding as of such date, *plus* (ii) accrued and unpaid interest thereon up to, but not including, such date, *plus* (iii) the aggregate of all remaining scheduled interest payments due on and after such date, discounted at the Discount Rate as of such date of determination.

"**Treasury Rate**" means, as of a given date of determination, the yield to maturity, as of such date, of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) business days before such date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the Maturity Date; *provided*, *however*, that if such period is less than one (1) year, then the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one (1) year will be used.

3. MFN for Other Notes.

(a) If, at any time that the Note remains outstanding, the Company amends, modifies, or restates any of the Other Notes with a Core Term that is more favorable than such Core Term in the Note, the Company shall provide Investor with written notice thereof within five (5) business days of such amendment, modification, or restatement, and upon the request of Investor, the Company will provide Investor with any additional information it may reasonable request. If Investor determines that such Core Term in any Other Note is preferable to the Core Term of the Note, Investor may notify the Company in writing of such determination within fifteen (15) business days after Investor's receipt of the foregoing information. Promptly, but in any event within ten (10) business days following notice from Investor, the Company and Investor shall amend the Note to incorporate such more favorable Core Term.

(b) "**Core Term**" means, with respect to any of the Other Notes, any of (i) the interest rate, (ii) the conversion price, or (iii) the maturity date.

4. Modification of Other Notes. On or before March 31, 2020, the Company will: (i) modify the Other Notes on Core Terms no more favorable to the holder thereof than this Modification; and (ii) modify the Other Notes to provide that (A) no more than $70,000,000 will be due and payable on or before September 1, 2020 and (B) the remainder will be due and payable no later than December 31, 2021.

5. Events of Default. The Company agrees that the Note shall carry an interest rate of 18% per annum for so long as an event of default on the part of the Company occurs, and remains uncured ninety (90) days after the Company first has notice of the event or failure giving rise to such Seller Default (as defined in the applicable agreement), under (i) the Amended and Restated Purchase, Use and Modification Agreement of 2014 ESA Holdco, LLC, a Delaware limited liability company, as amended from time to time, or (ii) the Amended and Restated Purchase, Use and Modification Agreement of 2015 ESA Holdco, LLC, a Delaware limited liability company, as amended from time to time.

6. Conversion. Notwithstanding anything to the contrary in this Modification or the Note, no Note may be submitted for conversion, and the Company will not be required to settle the conversion of the Note, before the date the stockholder approval allowing the Note to be converted into Common Stock under the applicable NYSE rules is obtained. In furtherance of the foregoing, and as a material inducement to Investor entering into this Modification upon the terms and conditions set forth herein, the Company agrees to take all actions necessary to obtain stockholder approval of the transactions contemplated herein ("**the Stockholder Approval**") as promptly as reasonably practicable, including the following:

(a) The Company will take all actions necessary to call and hold a stockholders meeting (the "**Stockholders Meeting**") for the purpose of obtaining stockholder approval of the transactions contemplated herein (the "**Stockholder Approval**") as promptly as reasonably

practicable and will use its reasonable best efforts to obtain the Stockholder Approval at the Stockholders Meeting.

(b) The Company will (i) as promptly as practicable, but in no event later than thirty business days, after the date of this Modification, prepare and file with the Securities and Exchange Commission ("**SEC**") a proxy statement (the "**Proxy Statement**") for the Stockholder Approval at the Stockholders Meeting, (ii) respond as promptly as practicable to any comments from the SEC on the Proxy Statement, (iii) mail to its stockholders as promptly as practicable the Proxy Statement for the Stockholders Meeting, and (iv) otherwise comply with all requirements of law applicable to the Stockholders Meeting.

(c) The Company represents and warrants to Investor that KR Sridhar, the Company's Chief Executive Officer (the "**CEO**"), has the right to vote approximately 55% of the Company's outstanding voting capital stock at the Stockholders Meeting and the CEO has agreed to vote all of such shares in favor of the transactions contemplated herein (the "**Support Agreement**"). The Company shall enforce the obligations of the CEO, including through the exercise of proxies provided thereunder, to the extent necessary or appropriate to cause the CEO to (i) appear at the Stockholders Meeting or otherwise cause the shares of common stock outstanding and beneficially owned by him to be counted as present thereat for purposes of calculating a quorum, and (ii) vote, or cause to be voted, all of the shares of common stock outstanding and beneficially owned by such stockholder in favor of the transactions contemplated herein at the Stockholders Meeting.

(d) If stockholder approval of the transactions contemplated herein has not been obtained at the Stockholders Meeting on or before September 1, 2020, the interest rate of the Note, set forth in Section 2(a) above, shall become eighteen percent per annum (18%) effective on September 2, 2020 and shall continue as such unless and until stockholder approval of the transactions contemplated herein has been obtained.

7. Effectiveness. In accordance with Section 6(a) of the Purchase Agreement and Section 8(b) of the Note, the modification provided in Section 2 is effective upon the execution and delivery of this Modification by Investor, as a Majority in Interest of Investors under the Purchase Agreement, and Company.

8. Limited Purpose. Notwithstanding anything contained herein, this Modification is a limited amendment and does not waive, alter or amend any term of the Note or any Transaction Document other than as expressly set forth herein.

9. Ratification. Except as expressly amended hereby or otherwise provided herein, all of the terms and conditions of the Note and the other Transaction Documents remain in full force and effect. All references to the Note and the other Transaction Documents, and any documents, instruments and agreements related to them, shall hereafter refer to the Note as amended by this Modification. This Modification shall be deemed a Transaction Document.

10. Mutatis Mutandis. The provisions of Sections 8(g) through (h) of the Note shall apply to this Modification, *mutatis mutandis*, as if they had been fully set forth herein.

11. Reaffirmation of Transaction Documents. All other items of the Note shall continue to be in effect. Notwithstanding the foregoing, the parties acknowledge that an Initial Public Offering occurred and, accordingly, all items in the Note relating to any obligations or covenants by Investor related events occurring before an Initial Public Offering or related to the closing of an Initial Public Offering (including, for the avoidance of doubt, Sections 2(f), 4(a), 4(h), and 8(a)(ii)) shall be null and void and of no further force and effect.

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

IN WITNESS WHEREOF, Company and Investor have caused their duly authorized officers to set their hands and seals as of the day and year first above written.

Company:
BLOOM ENERGY CORPORATION

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

Title: EVP General Counsel and Secretary

Investor:
CONSTELLATION NEWENERGY, INC.

By: /s/Harold Coulby, Jr.
Name: Harold Coulby, Jr.
Title: Assistant Treasurer

Exhibit A
The Other Investors

CPPIB

NEA

KPCB

Credit Cuisse

DE Shaw

Exhibit 10.1

BLOOM ENERGY CORPORATION

CONVERTIBLE NOTE PURCHASE AGREEMENT

March 31, 2020

BLOOM ENERGY CORPORATION

CONVERTIBLE NOTE PURCHASE AGREEMENT

This Convertible Note Purchase Agreement (this "Agreement") is made as of March 31, 2020 by and between Bloom Energy Corporation, a Delaware corporation (the "Company"), Rye Creek LLC, a Delaware limited liability company (the "Guarantor") and each of the purchasers listed on Exhibit A attached to this Agreement (each a "Purchaser" and together the "Purchasers").

RECITALS

The Company desires to issue and sell and each Purchaser desires to purchase, an aggregate principal amount of 10.0% Convertible Senior Secured Notes due 2021 (the "Notes"), which Notes shall contain provisions and be substantially in the form set forth in the form of Amended & Restated Indenture attached to this Agreement as Exhibit B (the "Indenture"), and which shall be convertible on the terms stated therein into equity securities of the Company. The due and punctual payment of the principal of, premium, if any, and interest on the Notes and amounts due under the Indenture will be secured by that certain Security Agreement, dated as of December 15, 2015, made by among the Company, the guarantors from time to time party thereto and the collateral agent party thereto (as amended by the First Amendment to Security Agreement dated as of June 29, 2017, as further amended by the Second Amendment to the Security Agreement, dated as of July 7, 2017, as to be further amended by the Third Amendment to the Security Agreement, the form of which is attached to this Agreement as Exhibit C (the "Security Agreement Amendment") and as otherwise amended, restated, supplemented or otherwise modified from time to time, the "Security Agreement"). The Notes and the equity securities issuable upon conversion thereof are collectively referred to herein as the "Securities."

AGREEMENT

In consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Purchase and Sale of Notes.**

(a) Sale and Issuance of Notes. Subject to the terms and conditions of this Agreement, each Purchaser agrees to purchase and the Company agrees to sell and issue to each Purchaser (i) an aggregate principal amount of Notes in the principal amount set forth opposite such Purchaser's name on Exhibit A. The purchase price of the Notes as to each Purchaser shall be equal to 100% of the principal amount of such Notes. The Company's agreements with each of the Purchasers are separate agreements, and the sales of the Notes to each of the Purchasers are separate sales.

(b) Closing; Delivery.

(i) The purchase price for the Notes shall be paid to the Company either (1) by check payable to the Company or (2) by wire transfer to a bank designated by the Company

no later than 2:00 p.m. New York City time on March 31, 2020 (the "Closing"). Delivery of the Notes shall be made by the Company as soon as practicable thereafter, but in any event no later than April 20, 2020. At Closing, or as soon as practicable thereafter, each Purchaser will deliver a validly completed and executed IRS Form W-8 BEN or IRS Form W-9, as applicable,

establishing such Purchaser's exemption from withholding tax.

2. **Representations and Warranties of the Company and the Guarantor.** Each of the Company and the Guarantor hereby represents and warrants to each Purchaser that:

(a) Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business or properties. The Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and has all requisite power and authority to carry on its business as now conducted and as proposed to be conducted. The Guarantor is duly qualified to transact business and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect on its business or properties.

(b) Authorization. All corporate action on the part of the Company, the Guarantor and their respective officers, managers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the authorization, sale, issuance and delivery of the Notes (including the guarantee thereof by the Guarantor), the shares of the Company's capital stock issuable on conversion thereof, and the performance of all obligations of the Company hereunder has been taken or will be taken prior to the Closing. This Agreement constitutes, and the Notes the Indenture and the Security Agreement Amendment, when executed and delivered by the Company, shall constitute, valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies. This Agreement constitutes, and the Indenture and the guarantee of the Notes, when executed and delivered by the Guarantor, shall constitute valid and legally binding obligations of the Guarantor, enforceable against the Guarantor in accordance with their respective terms except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

3. **Representations and Warranties of the Purchasers.** Each Purchaser hereby represents and warrants to the Company and the Guarantor that:

(a) **Authorization.** Such Purchaser has full power and authority to enter into this Agreement. This Agreement, when executed and delivered by the Purchaser, will constitute a valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms,

except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of a specific performance, injunctive relief, or other equitable remedies.

(b) Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company and the Guarantor, which by the Purchaser's execution of this Agreement, the Purchaser hereby confirms, that the Securities to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities. The Purchaser has not been formed for the specific purpose of acquiring any of the Securities.

(c) Knowledge. The Purchaser is aware of the Company's business affairs and financial condition and has acquired sufficient information about the Company to reach an informed and knowledgeable decision to acquire the Securities.

(d) Restricted Securities. The Purchaser understands that the Securities have not been, and will not be, registered under the Securities Act of 1933, as amended (the "Securities Act"), by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent

and the accuracy of the Purchaser's representations as expressed herein. The Purchaser understands that the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Purchaser must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Purchaser acknowledges that the Company has no obligation to register or qualify the Securities for resale. The Purchaser further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Purchaser's control, and which the Company is under no obligation and may not be able to satisfy.

(e) **Legends.** The Purchaser understands that the Securities, and any securities issued in respect thereof or exchange therefor, will bear a restricted securities legend.

(f) **Accredited Investor.** The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

4. **Conditions of the Purchasers' Obligations at Closing.** The obligations of each Purchaser to the Company and the Guarantor under this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived:

(a) **Representations and Warranties.** The representations and warranties of the Company and the Guarantor contained in Section 2 shall be true on and as of the Closing.

(b) **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing.

5. **Conditions of the Company's and the Guarantor's Obligations at Closing.** The obligations of the Company and the Guarantor to each Purchaser under this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived:

(a) **Representations and Warranties.** The representations and warranties of each Purchaser contained in Section 3 shall be true on and as of the Closing.

(b) **Qualifications.** All authorizations, approvals or permits, if any, of any governmental authority or regulatory body of the United States or of any state that are required in connection with the lawful issuance and sale of the Securities pursuant to this Agreement shall be obtained and effective as of the Closing.

6. **Miscellaneous.**

(a) **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

(b) **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

(c) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The words "signed," "signature," and words of like import in this Letter Agreement shall be deemed to include signature conveyed by email or PDF, and electronic signatures and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may

be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(d) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(e) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email or fax (upon customary confirmation of receipt), or forty-eight (48) hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address or fax number as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(f) Amendments and Waivers. Any term of this Agreement may be amended or waived only with the written consent of the Company. The Guarantor and the holders of at least a majority in interest of the Notes to be issued and sold pursuant to this Agreement. Any amendment or waiver effected in accordance with this Section 6(f) shall be binding upon each Purchaser and each transferee of the Securities, each future holder of all such Securities, and the Company.

(g) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(h) Entire Agreement. This Agreement, and the documents referred to herein constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing between the parties hereto are expressly canceled.

(i) Exculpation Among Purchasers. Each Purchaser acknowledges that it is not relying upon any person, firm or corporation, other than the Company, the Guarantor and their respective officers and directors, in making its investment or decision to invest in the Company. Each Purchaser agrees that no Purchaser nor the respective controlling persons, officers, directors, partners, agents, or employees of any Purchaser shall be liable for any action heretofore or hereafter taken or omitted to be taken by any of them in connection with the Securities.

[Signature Pages Follow]

The parties have executed this Convertible Note Purchase Agreement as of the date first written above.

THE COMPANY:

BLOOM ENERGY CORPORATION

By:/s/Shawn M. Soderberg
Name: Shawn M. Soderberg
Title: EVP General Counsel and Secretary

Address:
4353 N. First Street
San Jose, CA 95134 Fax: 408-543-1505 **THE GUARANTOR:** RYE CREEK LLC

By: /s/Shawn M. Soderberg
Name: Shawn M. Soderberg
Title: EVP General Counsel and Secretary

ADDRESS:
4353 N. FIRST STREET SAN JOSE, CA 95134 FAX: 408-543-1505

DocuSign Envelope ID: BD49EC6A-3436-4E0A-ACB0-895357B859A5

The parties have executed this Convertible Note Purchase Agreement as of the date first written above.

THE PURCHASERS: FORIS VENTURES, LLC

(PRINT NAME)

By:/s/Barbara Hager

DocuSigned by:



By:
(Signature)
Name: Barbara Hager
Title: Authorized Signatory

DocuSign Envelope ID: C5303845-C60B-4F3A-9346-942A52A42D9A

The parties have executed this Convertible Note Purchase Agreement as of the date first written above.

THE PURCHASERS:

NEW ENTERPRISE ASSOCIATES 10, LIMITED PARTNERSHIP

By: NEA Partners 10, LP (PRINT NAME)

By: /s/Louis S. Citron
Name: Louis S. Citron
Title: Chief Legal Officer and Attorney
in Fact

[*Signature Page to Bloom Convertible Note Purchase Agreement*]

EXHIBIT A

SCHEDULE OF PURCHASERS

Name and Address	Note Principal Amount
Foris Ventures, LLC	$10,000,000
New Enterprise Associates 10, Limited Partnership	$20,000,000

Exhibit 10.2

SUPPORT AGREEMENT

March 31, 2020

Bloom Energy Corporation
4353 North First Street
San Jose, California 95134

Re: Support Agreement

This Support Agreement (this "***Support Agreement***"), dated as of March 31, 2020, is entered into by and among KR Sridhar (the "***Stockholder***") and each of the undersigned beneficial owners of the Notes (as defined here in) (each, an "***Investor***" and collectively, the "***Investors***").

Reference is made to that certain Indenture, dated as of December 15, 2015, between Bloom Energy Corporation, a Delaware corporation (the "***Company***"), and U.S. Bank National Association (as amended by the First Supplemental Indenture, dated as of September 26, 2016, the Second Supplemental Indenture, Omnibus Amendment to Notes and Limited Waiver, dated as of June 29, 2017, and the Third Supplemental Indenture and Omnibus Amendment to Notes, dated as of January 18, 2018, the "***Indenture***") pursuant to which the Company issued Convertible Senior Secured Notes due 2020 (the "***6% Notes***"). The Company intends to enter into an Amended and Restated Indenture (the "***Amended and Restated Indenture***"), pursuant to which the Company will amend and restate, with the consent of the holders thereof, the provisions of the Indenture, including the interest rate, maturity date, redemption rights and conversion rate of the 6% Notes, as well as certain other negative covenants applicable to the Company under the Indenture. Reference is also made to that certain Amended and Restated Subordinated Secured Convertible Note, dated January 18, 2018, issued by the Company to Constellation NewEnergy, Inc. (the "***5% Note***" and together with the 6% Notes, the "***Notes***"). The Company intends to enter into an Amended and Restated Subordinated Secured Convertible Note Modification Agreement (the "***Constellation Note Modification Agreement***"), pursuant to which the Company will amend and restate the provisions of its outstanding 5% Note (as so amended and restated, the "***Amended and Restated 5% Note***"). The Notes are convertible into the Company's class B common stock, par value $0.0001 per share (the "***Class B Common Stock***"). Capitalized terms used in this Support Agreement and not otherwise defined herein shall have the meanings ascribed to them in the Amended and Restated Indenture.

As of the date hereof, the Stockholder holds approximately *55*% of the outstanding voting power of the Company pursuant to (i) Stockholder being the record or beneficial owner (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, which meaning will apply for all purposes of this Acknowledgment and Support Agreement whenever the term "beneficial owner" or "beneficially own" is used) of 139,298 shares of class A common stock, par value $0.0001 per share of the Company (the "***Class A Common Stock***"), (ii) Stockholder being the record or beneficial owner of 4,356,982 shares of Class B Common Stock, and (iii) those certain voting agreements, attached as Exhibit A hereto, between Stockholder and the shareholders of the Company party thereto (Each, a "***Proxy Investor***") (collectively, the "***Voting Agreements***")

granting Stockholder voting power over the Proxy Investors' shares of Class A Common Stock and Class B Common Stock. Such voting power pursuant to the Voting Agreements, together with Stockholder being the being the record or beneficial owner of Stockholder's Class A Common Stock and Class B Common Stock, give Stockholder greater than 50% of the outstanding voting power of the Company (such voting power, the "***Stockholder's Voting Shares***").

Stockholder acknowledges and agrees that the execution of this Support Agreement and its delivery to each Investor is a material inducement to the beneficial holders of the Notes to consent to entering into the Amended and Restated Indenture and the Constellation Note Modification Agreement, as applicable. Stockholder hereby acknowledges and agrees to the following:

1. Stockholder Vote.

(a) At any meeting of the stockholders of the Company, however called, or at any adjournment thereof, or in any other circumstance in which the vote, consent or other approval of the stockholders of the Company is sought (including any written consent of such stockholders) (each, a "***Company Stockholders Meeting or Consent***"), Stockholder shall (i) appear at each such meeting (if applicable) or otherwise cause all Stockholder's Voting Shares to be counted as present thereat for purposes of calculating a quorum and (ii) vote (or cause to be voted), or execute and deliver a written consent (or cause a written consent to be executed and delivered) covering, all Stockholder's Voting Shares:

(i) in favor of permitting the Company to settle all conversions of Notes pursuant to the Amended and Restated Indenture and the Amended and Restated 5% Note, as applicable, in shares of Class A Common Stock or Class B Common Stock, as applicable, in compliance with all applicable NYSE Rules (the "***Stockholder Approval***"),

(ii) in favor of any other matter considered at any Company Stockholders Meeting or Consent which the Board of Directors of the Company has determined is necessary or appropriate in connection with the Stockholder Approval,

(iii) in favor of any adjournment or postponement recommended by the Company in order to obtain the Stockholder Approval, and

(iv) against any shareholder proposal that does or would oppose, impede, frustrate, prevent or nullify the Stockholder Approval, any provision of this Support Agreement or any matter that is proposed in furtherance thereof.

2. No Inconsistent Arrangements. Until the Stockholder Approval is obtained, Stockholder shall not, directly or indirectly, (a) transfer, sell, assign, gift, hedge, pledge, tender or otherwise dispose of, create or permit to exist any Lien on, or grant any proxy, power of attorney or other authorization in respect of (collectively, "***Transfer***"), or enter into any contract or other arrangement with respect to any Transfer of, the Stockholder's Voting Shares or any interest therein, (b) deposit or permit the deposit of the Stockholder's Voting

Shares into a voting trust or enter into a tender, support, voting or similar agreement or arrangement with respect to the Stockholder's Voting Shares or (c) otherwise take any action with respect to any of the Stockholder's Voting Shares that would restrict, limit or interfere with the performance of any of Stockholder's obligations under this Support Agreement or otherwise make any representation or warranty of Stockholder contained herein untrue or incorrect. Notwithstanding the foregoing, Stockholder may make Transfers of Stockholder's Voting Shares (A) by will or for other bona fide estate planning purposes, or (B) to any of its Affiliates, in each case, only so long as the Stockholder's Voting Shares shall continue to be bound by this Support Agreement and provided that each transferee thereof agrees in a writing reasonably acceptable to Investors to be bound by the terms and conditions of this Support Agreement.

3. Representations and Warranties of Stockholder.

(a) Stockholder hereby represents and warrants as follows:

(i) Stockholder has full voting power with respect to the Stockholder's Voting Shares, full power to issue instructions with respect to the matters set forth herein and full power to agree to all of the matters set forth in this Support Agreement, in each case, with respect to all of the Stockholder's Voting Shares. None of the Stockholder's Voting Shares are subject to any proxy, voting trust or other agreement or arrangement with respect to the voting of the Stockholder's Voting Shares with respect to the matters contemplated herein.

(ii) The execution, delivery and performance by Stockholder of this Support Agreement do not and will not (a) result in the creation of any Lien on the Stockholder's Voting Shares, or (b) violate, conflict with, result in any material breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both,

would become a default) under, or result in or give to others any material rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the Stockholder's Voting Shares pursuant to, any contract to which Stockholder is a party or by which any of the Stockholder's Voting Shares is bound.

4. Miscellaneous.

(a) This Support Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the state of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the state of Delaware. Any dispute relating hereto shall be heard first in the Delaware Court of Chancery, and, if applicable, in any state or federal court located in of Delaware in which appeal from the Court of Chancery may validly be taken under the laws of the State of Delaware (each a "***Chosen Court***" and collectively, the "***Chosen Courts***"), and the parties agree to the exclusive jurisdiction and venue

of the Chosen Courts. Such Persons further agree that any proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Support Agreement or the transactions contemplated hereby or by any matters related to the foregoing (the "***Applicable Matters***") shall be brought exclusively in a Chosen Court, and that any proceeding arising out of this Support Agreement or any other Applicable Matter shall be deemed to have arisen from a transaction of business in the state of Delaware, and each of the foregoing Persons hereby irrevocably consents to the jurisdiction of such Chosen Courts in any such proceeding and irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection that such Person may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such Chosen Court or that any such proceeding brought in any such Chosen Court has been brought in an inconvenient forum. Such Persons further covenant not to bring a proceeding with respect to the Applicable Matters (or that could affect any Applicable Matter) other than in such Chosen Court and not to challenge or enforce in another jurisdiction a judgment of such Chosen Court. Process in any such proceeding may be served on any Person with respect to such Applicable Matters anywhere in the world, whether within or without the jurisdiction of any such Chosen Court. AS A SPECIFICALLY BARGAINED FOR INDUCEMENT FOR EACH OF THE PARTIES HERETO TO ENTER INTO THIS SUPPORT AGREEMENT (AFTER HAVING THE OPPORTUNITY TO CONSULT WITH COUNSEL), EACH PARTY HERETO EXPRESSLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING IN ANY WAY FROM THIS SUPPORT AGREEMENT OR THE MATTERS CONTEMPLATED HEREBY.

(b) This Support Agreement may be amended only by an instrument in writing signed by each Investor and Stockholder.

(c) Stockholder may not assign this Support Agreement by operation of law or otherwise without the prior written consent of each Investor. Subject to the foregoing, this Support Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and permitted assigns.

(d) This Support Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on each party hereto. The words "signed," "signature," and words of like import in this Support Agreement shall be deemed to include signature conveyed by email or PDF, and electronic signatures and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act. Neither party hereto or to any

such agreement or instrument shall raise the use of electronic transmission by a facsimile machine or via email to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

(e) Neither party hereto shall be deemed to have waived any claim arising out of this Support Agreement, or any power, right,

privilege or remedy under this Support Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given. No failure on the part of either party to exercise any power, right, privilege or remedy under this Support Agreement, and no delay on the part of either party in exercising any power, right, privilege or remedy under this Support Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

* * * * *

IN WITNESS WHEREOF, the parties have executed this Support Agreement as of the date first written above.

STOCKHOLDER:

By: /s/ KR Sridhar _

Name: KR Sridhar
Title: Chief Executive Officer

Acknowledged and agreed, as of the date first written above, by:

CANADA PENSION PLAN INVESTMENT BOARD

/s/ Mike Koen
Name: Mike Koen
Title: Managing Director, Head of Relationship Investments

/s/ Wendy Franks
Name: Wendy Franks
Title: Senior Principal

Acknowledged and agreed, as of the date first written above, by:

Credit Suisse Securities (USA) LLC

By: /s/ Gregg R. Edell
Name: Gregg R. Edell Title: Director

Acknowledged and agreed, as of the date first written above, by:

KPCB Holdings, Inc., as nominee

By: /s/ Susan Biglieri

Name: Susan Biglieri
Title:CFO

Confirmed and accepted:

New Enterprise Associates 10, Limited Partnership By NEA Partners 10, LP, its general partner

By:/s/ Louis Citron
Name: Louis Citron
Title: Chief Legal Officer

Acknowledged, as of the date first written above, by:

D. E. Shaw Valence Portfolios, L.L.C.

By: /s/Stephen Eilenberg
Name: Stephen Eilenberg
Title: Authorized Signatory

Exhibit 10.3

NOTE PURCHASE AGREEMENT

This Note Purchase Agreement (this "**Agreement**"), dated March 30, 2020 (the "**Execution Date**"), is entered into by and among Bloom Energy Corporation, a Delaware corporation (the "**Company**"), the entity listed on **Schedule I** hereto, as guarantor (the "**Guarantor**"), and the entities listed on the Schedule of Investors attached hereto as **Schedule II** (each, an "**Investor**" and, collectively, the "**Investors**").

RECITALS

A. The Company proposes, subject to the terms and conditions stated herein, to issue and sell to the Investors $70,000,000 aggregate principal amount of its 10.25% Senior Secured Notes due 2027 (the "**Notes**") pursuant to an indenture (the "**Indenture**") to be dated as of the Closing Date (as defined herein) and entered into among the Company, the Guarantor and U.S. Bank National Association, as trustee (the "**Trustee**") and as collateral agent (the "**Collateral Agent**") in the form attached as Exhibit A.

B. The Notes and the Guarantee (as defined in Exhibit A) will be offered and sold to the Investors who are (1) qualified institutional buyers ("**QIBs**") within the meaning of Rule 144A ("**Rule 144A**") under the Securities Act of 1933, as amended (the "**Securities Act**"), (2) not U.S. persons (as defined in Regulation S under the Securities Act ("**Regulation S**")) in an offshore transaction in compliance with Regulation S or (3) institutional "accredited investors" ("**IAIs**") within the meaning of Rule 501(a) of Regulation D under the Securities Act ("**Regulation D**"), in each case, without being registered, in reliance upon the exemption from registration provided by Section 4(a)(2) of the Securities Act.

C. Each of (i) this Agreement, (ii) the Notes, (iii) the Guarantee, (iv) the Indenture, (v) the security agreement (the "**Security Agreement**") to be dated as of the Closing Date and entered into among the Company, the Trustee and the Collateral Agent in the form attached as Exhibit B and (vi) the other Security Documents (as defined in Exhibit A) is referred to herein as a "**Transaction Document**" and are referred to herein collectively as the "**Transaction Documents**."

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and the representations, warranties, and conditions set forth below, the parties hereto, intending to be legally bound, hereby agree as follows:

1. ***The Notes and the Guarantee***.

(a) *Issuance of the Notes and the Guarantee*. Subject to all of the terms and conditions herein, the Company and the Guarantor agree to issue and sell to each of the Investors on the Closing Date, and each of the Investors severally agrees to purchase on the Closing Date, at a purchase price of 100% of the principal amount thereof (the "**purchase price**"), the aggregate principal amount of the Notes (and the related Guarantee) set forth opposite the respective Investor's name on **Schedule II** hereto. The obligations of the Investors to purchase Notes (and the related Guarantee) are several and not joint. The Company shall not be obligated to deliver, and no Investor shall be required to purchase, any of the Notes except upon delivery of and payment for all the Notes to be purchased by the Investors under this Agreement on the Closing Date and subject to the satisfaction or waiver of the terms and conditions hereunder.

(b) *Delivery*. The sale and purchase of the Notes and the Guarantee shall take place at a closing (the "**Closing**") to be held at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 on the business day after (x) all of the conditions to Closing set forth in Section 5 are either satisfied or waived by the Investors and (y) all of the conditions to Closing set forth in Section 6 are either satisfied or waived by the Company (other than in each case conditions that, by their nature, are to be satisfied on the day of such Closing), or such other business day as determined by mutual agreement of the parties hereto, but in any case not later than May 29, 2020 (the "**Cut-Off Date**"), with the Company providing the Investors with written notice of the business day identified for Closing at least five business days prior to the proposed date of Closing (which notice shall provide reasonable detail as to how the conditions set forth in Section 5(p) are expected to be satisfied) (the business day so identified, the "**Closing Date**"). At the Closing, the Company will deliver the Definitive Securities (as defined in Exhibit A) to the Investors evidencing the aggregate principal amount of Notes to be acquired by all Investors pursuant to this Agreement. Delivery to each Investor of the Notes shall be made directly to the Investors on the Closing Date upon payment therefor by each such Investor of its respective portion of the aggregate purchase price less such Investor's respective portion of the Ticking Fee (as defined herein), if any, by wire transfer of immediately available funds to the following account of the Trustee: 180121167365 (the "**Trustee Closing Account**"). The Investors shall deliver all funds required to be paid by such Investors under this Agreement to the Trustee Closing Account no later than 3:00 p.m. (New York City time) on the Closing Date. The Company shall cause the Trustee to hold all such funds in trust for the Investors pending completion of the closing of the transactions contemplated by this Agreement. Upon receipt by the Trustee of the aggregate purchase price from all Investors and the satisfaction or waiver of the conditions to Closing set

forth in Section 5, the Company shall cause the Trustee to disburse the purchase price from the Trustee Closing Account in accordance with written instructions provided by the Company to the Trustee. If the aggregate purchase price shall not have been received by the Trustee by 3:00 p.m. (New York City time) on the Closing Date, or if the closing of the transactions contemplated by this Agreement shall not otherwise be capable of being consummated by 3:00 p.m. (New York City time) on the Closing Date, then each Investor who has paid its respective portion of the purchase price shall have the right to instruct the Trustee in writing at or after 3:00 p.m. (New York City time) on the Closing Date to return, and the Company shall cause the Trustee to return, such portion of the purchase price to such Investor prior to the close of business on the Closing Date or as soon thereafter as reasonably practicable.

2. ***Representations and Warranties of the Company and the Guarantor***. Each of the Company and the Guarantor, jointly and severally, hereby represents and warrants as follows to each of the Investors, on and as of the Execution Date and the Closing Date:

(a) *Due Incorporation, Qualification, etc*. Each of the Company and the Guarantor (i) is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation; (ii) has the power and authority to own, lease and operate its properties and carry on its business as now conducted; and (iii) is duly qualified, licensed to do business and in good standing as a foreign corporation or foreign limited liability company in each jurisdiction where the failure to be so qualified or licensed could reasonably be expected to have a material adverse effect on (A) the properties, business, prospects, operations, earnings, assets, liabilities or condition (financial or otherwise) of the Company and the Guarantor, taken as a whole, (B) the ability of the Company and the Guarantor to perform their respective obligations in all material respects under any Transaction Document, (C) the validity or enforceability of any Transaction Document or the attachment, perfection or priority of any of the liens or security interests intended to be created by any Security Document or (D) the consummation of any of the transactions contemplated by the Transaction Documents (each, a "**Material Adverse Effect**"). Each of the Company and the Guarantor has made available to such Investor or its counsel copies of its respective Certificate of Incorporation, Bylaws or other equivalent organizational documents (as amended, collectively, the "**Charter Documents**"). Said copies are true, correct, and complete and contain all amendments as of the Execution Date and the Closing Date.

(b) *Authority*. The execution, delivery and performance by the Company and the Guarantor of each Transaction Document to be executed by the Company or the Guarantor and the

consummation of the transactions contemplated thereby (i) are within the power of the Company or the Guarantor, as applicable, and (ii) have been duly authorized by all necessary actions on the part of the Company or the Guarantor.

(c) *Authorization of the Agreement*. This Agreement has been duly authorized, executed and delivered by the Company and the Guarantor and, when duly executed and delivered by the Investors, will constitute a valid and binding agreement of the Company and the Guarantor, enforceable against the Company and the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law) (the "**Enforceability Exceptions**").

(d) *Authorization of the Indenture.* The Indenture has been duly authorized by the Company and the Guarantor and, as of the Closing Date, will be duly executed and delivered by the Company and the Guarantor and, when duly executed and delivered by the Trustee and the Collateral Agent, will constitute a valid and binding agreement of the Company and the Guarantor, enforceable against the Company and the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by the Enforceability Exceptions.

(e) *Authorization of the Security Documents*. Each of the Security Documents to be delivered on or prior to the Closing Date has been duly authorized by the Company and, as of the Closing Date, will be duly executed and delivered by the Company and, when duly executed and delivered by the Trustee and the Collateral Agent, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as the enforcement thereof may be limited by the Enforceability Exceptions.

(f) *Authorization of the Notes*. The Notes have been duly authorized by the Company and, as of the Closing Date, will be duly executed by the Company and, when authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by the Enforceability Exceptions, and the Notes will be in the form contemplated by, and entitled to the benefits of, the Indenture and the Security Documents.

(g) *Authorization of the Guarantee*. The Guarantee has been duly authorized by the Guarantor and, when the Notes have been authenticated, issued and delivered in the manner provided for in the Indenture and delivered against payment of the purchase price therefor as provided in this Agreement, the Guarantee will constitute a valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except as the enforcement thereof may be limited by the Enforceability Exceptions, and the Guarantee will be in the form contemplated by, and entitled to the benefits of, the Indenture.

(h) *Notes Collateral*.

(i) In the case of Notes Collateral (as defined in Exhibit A) a Lien (as defined in Exhibit A) in which may be perfected by filing of an initial financing statement in the appropriate filing office, upon the filing of such financing statement in such filing office, together with the payment of the requisite filing fees related thereto, and in the case of any other Notes Collateral a Lien in which is perfected by possession or control, when the Collateral Agent obtains possession or control thereof, in each case, to the extent required by and in accordance with the Security Documents, the Liens granted pursuant to the

Security Documents in such Notes Collateral will constitute valid and enforceable perfected Liens, in each case prior and superior in right to any other Lien (except for any Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of Permitted Liens (as defined in Exhibit A)).

(ii) As of the Closing Date, there will be no currently effective financing statement, security agreement or other document filed or recorded with any filing records, registry or other public office that purports to cover, affect or give notice of any present or possible future Lien on any assets or property constituting Notes Collateral or any rights thereunder, except for any Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of Permitted Liens.

(iii) The representations and warranties of the Company in the Security Documents delivered on the Closing Date will be true and correct in all material respects as of the Closing Date.

(i) *Non-Contravention*. The execution and delivery by the Company and the Guarantor of the Transaction Documents executed by the Company and the Guarantor, the issuance of the Notes and the Guarantee, and the performance and consummation of the transactions contemplated hereby and thereby do not and will not (i) violate the Charter Documents or any material judgment, order, writ, decree, statute, rule or regulation applicable to the Company or the Guarantor; (ii) violate any provision of, or result in the breach or the acceleration of, or entitle any other Person (as defined in Exhibit A) to accelerate (whether after the giving of notice or lapse of time or both), any mortgage, indenture, agreement, instrument or contract to which the Company or the Guarantor is a party or by which the Company or the Guarantor is bound; or (iii) result in the creation or imposition of any Lien upon any property, asset or revenue of the Company or the Guarantor (other than any Lien arising under the Transaction Documents) or the suspension, revocation, impairment, forfeiture, or nonrenewal ("**Revocations**") of any material permit, license, authorization or approval applicable to the Company or the Guarantor, or any of their respective businesses or operations, or any of their respective assets or properties, except for such violations, breaches or Revocations under clauses (ii) and (iii) above that would not reasonably be expected to result in a Material Adverse Effect.

(j) *Subsidiaries*. Except as set forth in **Item 2(j)** of the Disclosure Schedule attached hereto (the "**Disclosure Schedule**"), the Company has no subsidiaries or affiliated companies and does not otherwise own or control, directly or indirectly, any equity interest in any corporation, association, joint venture, partnership, limited liability company or similar business entity. The subsidiaries and affiliated companies listed in **Item 2(j)** of the Disclosure Schedule have been duly organized and are validly existing under, and by virtue of, the laws of their respective jurisdictions of organization and have requisite authority to own, lease, and operate their properties and assets and to carry on their business as presently conducted. Other than directors' qualifying shares, the Company owns directly or indirectly all of the outstanding equity interests of any subsidiary or affiliated company listed on **Item 2(j)** of the Disclosure Schedule. No options, warrants, subscriptions, or purchase rights of any nature (including any conversion or preemptive rights) to acquire from the subsidiaries or affiliated companies listed in **Item 2(j)** of the Disclosure Schedule shares of capital stock or other securities are authorized, issued, or outstanding, nor are the subsidiaries or affiliated companies listed in **Item 2(j)** of the Disclosure Schedule obligated under their respective charter documents or under any agreement by which the subsidiaries or affiliated companies listed in **Item 2(j)** of the Disclosure Schedule are bound to issue shares of capital stock or other securities.

(k) *Approvals*. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority or other Person (including, without limitation, the shareholders of any Person) is required in connection with the execution and delivery of the Transaction Documents executed by the Company and the Guarantor and the performance and consummation of the

transactions contemplated hereby and thereby, other than (i) such as shall have been obtained on or before the Closing Date and remain in full force and effect on the Closing Date, in each case, as set forth in **Item 2(k)** of the Disclosure Schedule or (ii) such qualifications or filings under applicable securities laws as may be required in connection with the transactions contemplated by this Agreement.

(l) *No Violation or Default*. None of the Company or its subsidiaries is in violation of or in default with respect to (i) its Charter Documents or other organizational documents or any judgment, order, writ, decree, statute, rule or regulation applicable to the Company or such subsidiaries; or (ii) any mortgage, indenture, agreement, instrument or contract to which the Company or such subsidiaries is a party or by which it is bound (nor is there any waiver in effect which is subject to revocation and which, if not in effect, would result in such a violation or default), except (other than with respect to the Charter Documents of the Company or the organizational documents of such subsidiaries) for such violations or defaults that would not reasonably be expected to have a Material Adverse Effect.

(m) *Litigation*. Except as set forth in **Item 2(m)** of the Disclosure Schedule, there are no claims, actions, suits, proceedings or investigations ("**Actions**") pending or, to the knowledge of the Company and the Guarantor, threatened, nor have any verdicts

or judgments been entered, against the Company, its subsidiaries or its subsidiaries' properties, or against any current or former employee, officer, consultant or director of the Company or its subsidiaries in his or her capacity as such or in connection with actions taken on behalf of the Company or its subsidiaries by any such Person, in each case, before any court or governmental agency (nor, to the best of the Company's and the Guarantor's knowledge, is there any reasonable basis therefor or threat thereof). Except as set forth in **Item 2(m)** of the Disclosure Schedule, neither the Company nor its subsidiaries, nor any current or former employee, officer, consultant or director of the Company or its subsidiaries in his or her capacity as such, are, to the knowledge of the Company and the Guarantor, a party or subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality. There is no Action by the Company or its subsidiaries currently pending or that the Company or its subsidiaries intend to initiate.

(n) *Title*. Except as set forth in **Item 2(n)** of the Disclosure Schedule, the Company and its subsidiaries own and have good and marketable title in fee simple absolute to, or a valid leasehold interest in, all their respective real properties and good title to their other respective assets and properties as reflected in the Exchange Act Documents (as defined below) (except those assets and properties disposed of in the ordinary course of business since the most recent date of the Exchange Act Documents) and all respective assets and properties acquired by the Company and its subsidiaries since such date (except those disposed of in the ordinary course of business). Except as set forth in **Item 2(n)** of the Disclosure Schedule, such assets and properties are subject to no Lien other than (i) Liens for current taxes not yet due and payable, or being contested in good faith through appropriate proceedings and for which reserves have been established in accordance with GAAP (as defined in Exhibit A), (ii) Liens imposed by law and incurred in the ordinary course of business for obligations not past due, (iii) Liens in respect of pledges or deposits under workers' compensation laws or similar legislation, (iv) Liens, encumbrances and defects in title which do not in any case materially detract from the value of the property subject thereto or have a Material Adverse Effect, and which have not arisen otherwise than in the ordinary course of business, and (v) any Lien arising or permitted under the Transaction Documents. With respect to the property and assets it leases, each of the Company and its subsidiaries is in material compliance with such leases.

(o) *Intellectual Property*. The Company (and any subsidiary of the Company) has full legal title and ownership of the patents and patent applications set forth in **Item 2(o)** of the Disclosure Schedule. To the Company's and the Guarantor's knowledge, the Company has full legal title and ownership or right to use or can obtain on commercially reasonable terms, the patents, patent rights, other patent applications, permits, licenses, trade secrets, trademarks, trademark rights, service marks, trade

names, trade name rights, franchises, domain names, copyrights, inventions and intellectual property rights (the **"IP Rights**") necessary to conduct its business and its subsidiaries' business, taken as a whole, as now operated and as now proposed to be operated; and the Company and the Guarantor have no actual knowledge or reason to believe and have received no notice (in writing or otherwise) that the conduct of its and its subsidiaries' business as now operated and as now proposed to be operated conflicts with, infringes upon or misappropriates, or will conflict with, infringe upon or misappropriate, the IP Rights of any other Person. **Item 2(o)** of the Disclosure Schedule contains a complete list of patents and pending and provisional patent applications of the Company or any subsidiary. To the Company's and the Guarantor's knowledge, no product presently made, used or proposed to be made, marketed, offered for sale, sold or used by the Company or any subsidiary will violate any license, infringe on or misappropriate any IP Rights of any other Person, and neither the IP Rights of the Company or its subsidiaries nor the operation or proposed operation of their respective businesses infringes on the copyrights, misappropriates the trade secrets of or is known to conflict with the asserted IP Rights of others, nor does there exist any known basis for any such conflict, infringement or misappropriation except for such violations, infringements or conflicts that would not reasonably be expected to have a Material Adverse Effect. The Company and the Guarantor have no actual knowledge or reason to believe and have received no notice (in writing or otherwise) to the effect that any such IP Rights owned or licensed by the Company or any subsidiary, or which the Company or any subsidiary otherwise has the right to use, is invalid or unenforceable by the Company or such subsidiary, or infringes, misappropriates or otherwise interferes with the IP Rights of any other Person, and the Company or any subsidiary has no reason to believe that any IP Rights owned or used by the Company or any subsidiary may be invalid. Neither the Company nor any subsidiary has any obligation to compensate any Person for the use of any such IP Rights, and neither the Company nor any subsidiary has granted any Person any license or other rights to use in any manner any of the IP Rights of the Company or any subsidiary, whether requiring the payment of royalties or not. Except as set forth in **Item 2(o)** of the Disclosure Schedule, there are no outstanding options, licenses or agreements of any kind relating to the foregoing proprietary rights, nor is the Company or any subsidiary bound by or a party to any options, licenses or agreements of any kind with respect to the IP Rights of any other Person other than such licenses or agreements arising from the purchase of "off the shelf" software or standard products.

(p) *Exchange Act Documents*. Except as set forth in **Item 2(p)** of the Disclosure Schedule, the documents filed by the Company with the U.S. Securities and Exchange Commission (the "**Commission**") pursuant to the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), since the end of the Company's most recent audited fiscal year (excluding any documents or portions thereof furnished to, rather than filed with, the Commission) (such documents not so excluded, the "**Exchange Act Documents**"), when they were filed with the Commission, conformed as to form in all material respects with the requirements of the Exchange Act, and none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(q) *Financial Statements*. Except as set forth in **Item 2(q)** of the Disclosure Schedule, the financial statements included in the Exchange Act Documents, together with the related notes and schedules, (i) are prepared in accordance with the books and records of the Company and its subsidiaries and have been maintained in accordance with good business practice; (ii) have been prepared in

all material respects in conformity with GAAP applied on a consistent basis during the respective periods covered thereby, except as may be expressly stated in the related notes thereto and, in the case of unaudited financial statements, subject to normal and recurring year-end adjustments that, if presented, would not differ materially from that included in the audited financial statements; and (iii) fairly present, in all material respects, the consolidated financial position of the Company and its subsidiaries as of the respective dates presented therein and the results of operations, changes in financial positions or cash flows, as the case may be, for the respective periods presented therein. The other financial and accounting data of the Company

and its subsidiaries contained in the Exchange Act Documents are fairly presented and prepared on a basis consistent with the financial statements or the books and records of the Company and its subsidiaries in all material respects. None of the Company or any of its subsidiaries has any contingent obligations, liability for taxes or other outstanding obligations which are material in the aggregate, except as disclosed in the Exchange Act Documents filed prior to the Execution Date. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Exchange Act Documents fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(r) *Equity Securities*. The Company's total authorized and issued capitalization is as set forth in **Item 2(r)** of the Disclosure Schedule. The equity securities ("**Equity Securities**") of the Company have the respective rights, preferences and privileges set forth in the Company's Charter Documents in effect on the Execution Date. All of the outstanding Equity Securities of the Company have been duly authorized and are validly issued, fully paid and nonassessable. Except as expressly set forth in **Item 2(r)** of the Disclosure Schedule, there are, as of the Execution Date and the Closing Date, no options, warrants, subscriptions, calls, or commitments of sales to acquire, or rights to purchase, or instruments convertible or exchangeable for Equity Securities of the Company authorized, issued or outstanding, and the Company is not obligated in any other manner to issue shares of its Equity Securities.

(s) *Employees.* To the Company's and the Guarantor's knowledge, no current or former employee, officer or consultant of the Company or its subsidiaries is in violation of, nor will be by continued employment or service, as applicable, in violation of, any term of any employment contract, patent disclosure agreement, consulting agreement or any other contract or agreement relating to the relationship of such employee, officer or consultant with the Company, its subsidiaries or any other party because of the nature of the business conducted or proposed to be conducted by the Company or its subsidiaries. Neither the Company nor its subsidiaries have received any notice alleging that any such violation has occurred. Each current and former employee, officer, and consultant of the Company and its subsidiaries has executed a proprietary information agreement in the Company's or its subsidiaries', as the case may be, standard form, and to the knowledge of the Company and the Guarantor, none of such employees, officers, or consultants is in violation thereof. Except as set forth in **Item 2(s)** of the Disclosure Schedule, to the Company's and the Guarantor's knowledge, no former or current employee, officer or consultant of the Company or its subsidiaries has (i) excluded works or inventions made prior to his or her employment or service, as applicable, with the Company or its subsidiaries from his or her assignment of inventions pursuant to such employee, officer or consultant's proprietary information agreement or (ii) failed to affirmatively indicate in such proprietary information agreement that no such works or inventions made prior to his or her employment or service, as applicable, with the Company or its subsidiaries exist. The Company and the Guarantor are not aware that any of the Company's or the Company's subsidiaries' employees, officers or consultants is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or its subsidiaries or that would conflict with the Company's or its subsidiaries' business as proposed to be conducted. The Company and the Guarantor do not believe it is or will be necessary to utilize any inventions of any employee, officer or consultant (or individual the Company or its subsidiaries presently intend to employ or engage, as applicable) made prior to his or her employment or service, as applicable, with the Company or its subsidiaries.

(t) *Brokers or Finders.* The Company and the Guarantor have not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company or the Guarantor, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the

Transaction Documents other than to Jefferies LLC, as placement agent (the "**Placement Agent**") for the offering of the Notes and Guarantee.

(u) *Agreements; Action.*

(i) Except as set forth in **Item 2(u)** of the Disclosure Schedule, there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs, or decrees to which the Company or its subsidiaries is a party or by which it is bound (a) that may involve the transfer or license of any IP Rights to or from the Company or its subsidiaries (other than commercial software rights generally available to the public and used in the Company's or its subsidiaries' business), (b) that include provisions restricting or affecting the development, manufacture or distribution of the Company's or its subsidiaries' products or services, or (c) that provide for indemnification by the Company or its subsidiaries with respect to infringements of proprietary rights.

(ii) Except as set forth in **Item 2(u)** of the Disclosure Schedule, neither the Company nor its subsidiaries have (a) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock, (b) incurred or guaranteed any indebtedness for money borrowed, (c) made any loans or advances to any Person, other than ordinary advances for travel expenses, or (d) sold, exchanged, or otherwise disposed of any of its assets or rights.

(v) *Changes.* Except as set forth in **Item 2(v)** of the Disclosure Schedule or in the Exchange Act Documents filed prior to the Execution Date or for agreements expressly contemplated hereby, subsequent to the respective dates as of which information is given in the Exchange Act Documents filed prior to the Execution Date, there has not been:

(i) any damage, destruction or loss, whether or not covered by insurance, having a Material Adverse Effect;

(ii) any waiver by the Company or its subsidiaries of a material right or of a material debt owed to it;

(iii) any satisfaction or discharge of any Lien, claim, or encumbrance or payment of any obligation by the Company or its subsidiaries, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results, or business of the Company or its subsidiaries (as such business is presently or proposed to be conducted);

(iv) any material change or amendment to a material contract or arrangement by which the Company, its subsidiaries, or any of its or its subsidiaries' assets or properties is bound or subject;

(v) receipt of notice that there has been a loss of, or material order cancellation by, any major customer of the Company or any of its subsidiaries; or

(vi) to the Company's and the Guarantor's knowledge, any other event or condition of any character which did or might, individually or in the aggregate, have a Material Adverse Effect.

(w) *Regulatory Permits.* The Company and its subsidiaries have all franchises, permits, licenses, and any similar authority necessary for the conduct of their businesses as now being conducted, the lack of which would have a Material Adverse Effect. The Company believes it can obtain, without undue burden or expense, any similar authority for the conduct of its business (or the businesses of

its subsidiaries) as planned to be conducted. To the Company's and the Guarantor's knowledge, neither the Company nor any subsidiary is in default in any material respect under any of such franchises, permits, licenses, or other similar authority.

(x) *Employee Benefit Plans; ERISA*.

(i) Except as set forth in **Item 2(x)** of the Disclosure Schedule, neither the Company nor any subsidiary sponsors, maintains, administers or contributes to, or has any liability in respect of, any "Employee Benefit Plan" as that term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder (**"ERISA**"), or any other compensation, benefit, employment, consulting or similar plan, agreement, arrangement or policy (whether or not written, and whether or not subject to the requirements of ERISA). Neither the Company nor any of its ERISA Affiliates (nor any predecessor of any such entity) sponsors, maintains, administers or contributes to (or has any obligation to contribute to), or has in the past six years sponsored, maintained, administered or contributed to (or had any obligation to contribute to), or has or is reasonably expected to have any liability with respect to any plan subject to Title IV of ERISA or Section 412 of the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (the **"Code**"). An "**ERISA Affiliate**" with respect to any entity means any other entity that, together with such first entity, would be treated as a single employer under Section 414 of the Code.

(ii) The execution and delivery of this Agreement and the issuance and sale of the Notes and Guarantees hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c)(1)(A)–(D) of the Code. The representation by the Company and the Guarantor to each Investor in the first sentence of this clause (ii) is made in reliance upon and subject to the accuracy of such Investor's representation in Section 3(g) as to the sources of the funds to be used to pay the purchase price of the Notes to be purchased by such Investor.

(y) *Interested Party Transactions.* Except as set forth in **Item 2(y)** of the Disclosure Schedule, no officer or director of the Company or its subsidiaries or, to the knowledge of the Company, any "affiliate" or "associate" (as those terms are defined in Rule 405 under the Securities Act) of any such person has had, either directly or indirectly, a material interest in: (i) any Person which purchases or licenses from or sells, licenses or furnishes to the Company or its subsidiaries any goods, property, technology, intellectual or other property rights or services; or (ii) any contract or agreement to which the Company or its subsidiaries is a party or by which it may be bound or affected. Except as set forth in **Item 2(y)** of the Disclosure Schedule, there are no obligations of the Company or its subsidiaries to officers, directors, stockholders, or employees of the Company or its subsidiaries other than (a) compensation for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company or its subsidiaries and (c) for other standard employee benefits made generally

available to all employees (including stock option agreements outstanding under any stock option plan approved by the Board of Directors of the Company or its subsidiaries).

(z) *Labor Agreements and Actions; Employee Compensation.* Neither the Company nor its subsidiaries are bound by or subject to (and none of its assets or properties is bound by or subject to) any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the best of the Company's and the Guarantor's knowledge, has sought to represent any of the employees, representatives or agents of the Company or its subsidiaries. There is no strike or other labor dispute involving the Company or its subsidiaries pending, or to the best of the Company's and the Guarantor's knowledge, threatened, nor is the Company or the Guarantor aware of any labor organization activity involving its or its subsidiaries' employees. Except as set forth in **Item 2(z)** of

the Disclosure Schedule, the Company and the Guarantor are not aware that any officer or key employee, or that any group of key employees or officers, intends to terminate their employment with the Company or its subsidiaries, nor does the Company or its subsidiaries have a present intention to terminate the employment of any of the foregoing. Except as set forth in **Item 2(z)** of the Disclosure Schedule, the employment of each officer and employee of the Company and its subsidiaries is terminable at the will of the Company or its subsidiaries, as the case may be, without any obligation on the part of the Company or its subsidiaries to make any payment in connection therewith or to accelerate the vesting of any rights or securities. The Company is in compliance, and has in the past complied, in all material respects with all applicable state and federal equal employment opportunity and other laws related to labor and employment. Except as set forth in **Item 2(u)** of the Disclosure Schedule, neither the Company nor its subsidiaries are a party to or bound by (or currently negotiating in connection with entering into) any employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement, severance agreement, equity-based plan or other employee compensation or benefit agreement.

(aa) *Insurance.* Except as set forth in **Item 2(aa)** of the Disclosure Schedule, each of the Company and the Guarantor maintains, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including deductibles, co-insurance and self-insurance, if adequate reserves are maintained with respect thereto) as they deem to be materially adequate and customary for entities of established reputations engaged in the same or a similar business and similarly situated.

(bb) *Environmental Matters.* Except as set forth in **Item 2(bb)** of the Disclosure Schedule, to the Company's and the Guarantor's knowledge, there is no pending or threatened investigation, suit, claim, action or proceeding against the Company or any of its subsidiaries relating to or arising under any applicable Environmental Laws or any statute, law or regulation relating to occupational health and safety. "**Environmental Laws**" means any law, regulation, or other applicable requirement relating to (x) releases or threatened release of Hazardous Substances; (y) pollution or protection of employee health or safety, public health or the environment; or (z) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances. "**Hazardous Substances**" means (a) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and mold and (b) any other chemical, material or substance defined as toxic or hazardous or as a pollutant, contaminant or waste or words of similar import, or regulated or that can form the basis for liability, under Environmental Laws.

(cc) *Tax Returns and Payments.* The Company and its subsidiaries have filed all income and other material tax returns and reports (including information returns and reports) as required by law. These returns and reports are true and correct in all material respects. The Company or a subsidiary, as applicable, has paid all material taxes and other assessments due, except those contested by it in good faith as set forth in **Item 2(cc)** of the Disclosure Schedule. Neither the Company nor any subsidiary has ever had any tax deficiency proposed or assessed against it in writing nor has the Company or any subsidiary executed any waiver of any statute of limitations on the assessment or collection of any tax or governmental charge that remains in effect. None of the income tax returns or franchise tax or sales or use tax returns of the Company or any subsidiary has ever been audited by governmental authorities. The provision for taxes of the Company as shown in the Exchange Act Documents is adequate in all material respects for taxes due or accrued as of the Execution Date or the Closing Date. Since the end of the Company's most recent audited fiscal year, neither the Company nor any subsidiary has incurred any material taxes, assessments or governmental charges other than in the ordinary course of business and the Company has made adequate provisions on its books of account for all material taxes, assessments and governmental charges with respect to the businesses, properties and operations of the Company and its subsidiaries for such period. The

Company and its subsidiaries have withheld or collected from each payment made to each of its employees, the amount of all material taxes (including, but not limited to, federal income taxes, Federal Insurance Contribution Act taxes and Federal Unemployment Tax Act taxes)

required to be withheld or collected therefrom, and has paid the same to the proper tax receiving officers or authorized depositories.

(dd) *No General Solicitation or Directed Selling Efforts*. None of the Company or the Guarantor has (i) offered or sold the Notes or the Guarantee by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act (or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act) or (ii) engaged in any directed selling efforts within the meaning of Rule 902(c) of Regulation S.

(ee) *No Integration*. Within the preceding six months, neither the Company nor any other Person acting on behalf of the Company has offered or sold to any Person any security that is integrated with the sale of the Notes or the Guarantee offered and to be sold to the Investors hereunder in a manner that would require registration of the Notes or the Guarantee under the Securities Act.

(ff) *No Registration*. Assuming the accuracy of the representations and warranties of the Investors contained in Section 3 and their compliance with their agreements set forth therein, it is not necessary, in connection with the issuance and sale of the Notes and the Guarantee to the Investors by the Company and the Guarantor in the manner contemplated by this Agreement and the Indenture to register the Notes or the Guarantee under the Securities Act or to qualify the Indenture under the Trust Indenture Act of 1939.

(gg) *Rule 144A(d)((3) Compliance.* The Notes and the Guarantee will satisfy the requirements of Rule 144A(d)(3) under the Securities Act.

(hh) *Investment Company Act*. Neither the Company nor the Guarantor is required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(ii) *Improper Payments*. Neither the Company nor any of its subsidiaries, nor any director, officer or employee of the Company or any of its subsidiaries, nor, to the Company's or the Guarantor's knowledge, any of the Company's or Guarantor's affiliates, or any agent or representative of the Company or of any of its subsidiaries or affiliates, has taken any action in furtherance of an offer, payment, promise to pay or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage, or made, offered, agreed requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit, in each case, related to the Company's and its subsidiaries' business; and the Company and its subsidiaries and affiliates have conducted their businesses in compliance in all material respects with applicable anti-corruption laws (including, without limitation, the Foreign Corrupt Practices Act of 1977, as amended, any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the Bribery Act 2010 of the United Kingdom) and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(jj) *Anti-Money Laundering*. The operations of the Company and its subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company and its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Anti-Money Laundering Laws**"), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company and the Guarantor, threatened.

(kk) *Sanctions*.

(i) Neither the Company nor any of its subsidiaries, nor any director, officer, or employee thereof, nor, to the Company's and the Guarantor's knowledge, any agent, affiliate or representative of the Company or any of its subsidiaries, is an individual or entity (any such individual or entity, a "**Sanction Person**") that is, or is owned or controlled by a Sanction Person that is:

(A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), nor

(B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering of the Notes, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Sanction Person:

(A) to fund or facilitate any activities or business of or with any Sanction Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

(B) in any other manner that will result in a violation of Sanctions by any Sanction Person (including any Sanction Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past five years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any Sanction Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ll) *No Stabilization or Manipulation*. Prior to the Execution Date and the Closing Date, neither the Company nor any of its affiliates nor any Person acting on its or their behalf has taken any action that is designed to or that has constituted or that might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Notes and the Guarantee.

(mm) *Use of Proceeds; Margin Regulations*. No part of the proceeds from the sale of the Notes or the Guarantee under the Transaction Documents will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock within the meaning of, and in contravention of, Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of purchasing or carrying or trading in any securities under such circumstances as to involve the Company or the Guarantor in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220). Neither the Company nor the Guarantor is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock within the meaning of, and in contravention of, Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221). As used in this Section 2(mm), the terms "margin stock" and "purpose of purchasing or carrying" shall have the meanings ascribed to them in said Regulation U.

(nn) *Disclosure Controls*. The Company has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-15 under the Exchange Act) that (i) are designed to ensure that material information relating to the Company is made known to the Company's principal executive officer and principal financial officer by others within the Company, (ii) provide for the periodic evaluation of the effectiveness of such disclosure controls and procedures as of the end of the period covered by the Company's most recent annual or quarterly report filed with the Commission and (iii) are effective in all material respects to perform the functions for which they were established.

(oo) *Accounting Controls*.

(i) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (a) transactions are executed in accordance with management's general or specific authorizations, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (c) access to assets is permitted only in accordance with management's general or specific authorization and (d) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(ii) Except as disclosed in **Item 2(oo)** of the Disclosure Schedule, the Transaction Documents and the Exchange Act Documents filed prior to the Execution Date, there are no material weaknesses in the Company's internal controls over financial reporting. The Company's auditors and the Audit Committee of the Board of Directors of the Company have been advised of: (a) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which have adversely affected or are reasonably likely to adversely affect the Company'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 Company's internal controls over financial reporting.

(pp) *Solvency*. After giving effect to the transactions contemplated by this Agreement, the Company and the Guarantor, taken as a whole, will continue to be solvent.

(qq) *Servicing Agreements.*

(i) Each of the Servicing Agreements (as defined in Exhibit B) is in full force and effect and is the legal, valid and binding obligation of the Company and, to the knowledge of the Company, any other party thereto, enforceable against the Company and, to the knowledge of the Company, any other party thereto in accordance with its respective terms, subject, as to enforcement of remedies, to bankruptcy, insolvency, reorganization, moratorium or similar applicable laws affecting creditors' rights

generally, general equitable principles and principles of public policy. The execution and delivery of, and performance of obligations under and in compliance with, each of the Servicing Agreements were and are within the powers of the Company and, to the knowledge of the Company, any other party thereto. Each of the Servicing Agreements was duly authorized by all necessary action on the part of, and validly executed and delivered by, the Company and, to the knowledge of the Company, any other party thereto. Neither the Company nor, to the knowledge of the Company, any other party thereto is in breach or violation of or in default under any of the Servicing Agreements and, in the performance of its obligations under the Servicing Agreements, the Company has not engaged in fraud or willful misconduct with respect to such Servicing Agreements. There is no event or circumstance that, upon notice or the passage of time, or both, could constitute or give rise to any breach or default in the performance of any of the Servicing Agreements by the Company or, to the knowledge of the Company, any other party thereto.

(ii) Except as set forth in **Item 2(qq)** of the Disclosure Schedule, the Company has not waived any rights or defaults under the Servicing Agreements or released any other party thereto, in whole or in part, from any of its obligations under any of the Servicing Agreements. To the knowledge of the Company, there are no oral waivers or modifications (or pending requests therefor) in respect of any of the Servicing Agreements. Neither the Company nor any other party to any of the Servicing Agreements has agreed to amend or waive any provision of the Servicing Agreements, and there is no current proposal to do so.

(iii) Except as set forth in **Item 2(qq)** of the Disclosure Schedule, to the knowledge of the Company, no event has occurred that would give the Company or any other party to any of the Servicing Agreements the right to terminate any of the Servicing Agreements or cease making payments thereunder. The Company has not received any notice of an intention by any other party to any of the Servicing Agreements to terminate or breach any of the Servicing Agreements, in whole or in part, or challenging the validity or enforceability of any of the Servicing Agreements or the obligation to make payments under the Servicing Agreements, or that the Company or any other party thereto is in default of its obligations under any of the Servicing Agreements. The Company is not aware of any default, violation or breach by any other party to any of the Servicing Agreements under or of any of the Servicing Agreements. The Company has no intention of terminating any of the Servicing Agreements and has not given any other party thereto any notice of termination of any of the Servicing Agreements, in whole or in part.

(iv) Except as provided in the Servicing Agreements, no Person has any right of set-off, off-set, rescission, counterclaim, reduction, deduction or defense ("**Set-off**") under any contract or other agreement against any cash flows payable as servicing, operations and maintenance, warranty or similar fees under the Servicing Agreements (the "**Servicing Payments**"). No Person has exercised, and, to the knowledge of the Company, no Person has had the right to exercise, and no event or condition exists that, upon notice or passage of time or both, would reasonably be expected to permit any Person to exercise, any Set-off against the Servicing Payments. The Company has not sold, assigned, transferred or otherwise disposed of any Servicing Payment or otherwise encumbered the right of the Company to receive the same.

(v) Except as forth in **Item 2(qq)** of the Disclosure Schedule, no warranty or indemnity claim under any of the Servicing Agreements has been asserted or overtly threatened against the Company nor, to the knowledge of the Company, is there a valid basis for any such claim.

(vi) The Company has received all amounts owed to it under the Servicing Agreements.

(vii) The list of the agreements on Schedule A to Exhibit B is a true, correct and complete list of the agreements whose cash flows were included in the financial model delivered by the Placement Agent to the Investors on behalf of and at the request of the Company.

(rr) *Cybersecurity*. (i) (a) Except as set forth in **Item 2(rr)** of the Disclosure Schedule, there has been no security breach or other compromise of or relating to any of the Company's or its subsidiaries' information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, "**IT Systems and Data**") and (b) the Company and its subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data, except as would not, in the case of this clause (i), reasonably be expected to have a Material Adverse Effect; (ii) the Company and its subsidiaries are presently in compliance with all

applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (iii) the Company and its subsidiaries have implemented backup and recovery technology reasonably consistent with industry standards and practices.

3. ***Representations and Warranties of Investors***. Each Investor, for that Investor alone, represents, warrants and agrees severally that:

(a) *Binding Obligation*. Such Investor has full legal capacity, power and authority to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement constitutes a valid and binding obligation of such Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) *Placement Agent*. Such Investor is aware and acknowledges that the Company intends to pay the Placement Agent a fee in respect of the sale of the Notes and the Guarantee to the Investors.

(c) *Securities Law Compliance*.

(i) Such Investor represents and warrants that (a) it is a QIB and is purchasing the Notes and the Guarantee for its own account or for the account of a QIB, (b) it is not a U.S. person (as defined in Regulation S) and is purchasing the Notes and the Guarantee in an offshore transaction in compliance with Regulation S or (c) if neither clause (a) or clause (b) is applicable, it is an IAI.

(ii) Such Investor acknowledges that (i) none of the Notes or the Guarantee has been or will be registered under the Securities Act or the laws of any U.S. state or other jurisdiction relating to securities matters and (ii) none of the Notes or the Guarantee may be offered, sold, pledged or otherwise transferred except as set forth in the Transaction Documents and the legend on the Notes regarding restrictions on transfers of the Notes and in accordance with applicable law.

(iii) Such Investor agrees that, if it should resell or otherwise transfer the Notes, in whole or in part, it will do so only pursuant to an exemption from, or in a transaction not subject to, registration under the Securities Act or the laws of any applicable state or other jurisdiction relating to

securities matters and in accordance with the restrictions and requirements of the provisions of the Transaction Documents and the legend regarding restrictions on transfers on the Notes and only to a Person whom it reasonably believes, at the time any buy order for such Notes is originated, is (i) the Company or a subsidiary of the Company, (ii) for so long as such Notes are eligible for resale pursuant to Rule 144A, a QIB that purchases for its own account or for the account of a QIB, to whom notice is given that the transfer is being made in reliance on Rule 144A, (iii) a Person that is not a U.S. person (as defined in Regulation S) in a transaction outside the United States in compliance with Regulation S (if available) or (iv) an IAI that is purchasing such Notes for its own account or for the account of such an IAI for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act, in each case unless consented to by the Company in writing.

(iv) Such Investor represents that it is purchasing the Notes for investment purposes and not with a view to resale or distribution thereof in contravention of the requirements of the Securities Act; however, such Investor reserves the right to sell the Notes at any time in accordance with applicable laws, the restrictions and requirements contained in the Transaction Documents applicable to transfers of the Notes, the legend on the Notes regarding transfers and its investment objectives.

(v) Such Investor has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Notes and the Guarantee by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act.

(vi) Such Investor acknowledges that (a) it has made, either alone or together with its advisors, such separate and independent investigation of the Company and the Guarantor and their respective businesses, financial condition, prospects and managements as such Investor deems to be, or such advisors have advised to be, necessary or advisable in connection with the purchase of the Notes and the Guarantee pursuant to the transactions contemplated by this Agreement, (b) it and its advisors have received all information, documents, corporate records, accounts and data that it and such advisors believe to be necessary in order to reach an informed decision as to the advisability of the purchase of the Notes and the Guarantee pursuant to the transactions contemplated by this Agreement, (c) it understands the nature of the potential risks and potential rewards of the purchase of the Notes and the Guarantee, (d) it is a sophisticated investor with investment experience and has the ability to bear complete loss of its investment, whether as a result of an Event of Default (as defined in Exhibit A) on the Notes or any insolvency, liquidation or winding up of either the Company or the Guarantor or otherwise and (e) it has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of purchasing the Notes and the Guarantee and can bear the economic risks of investing in the Notes and the Guarantee for an indefinite period of time, including the complete loss of its investment. Such Investor acknowledges that it has obtained its own attorneys, business advisors and tax advisors as to legal, business and tax advice (or has decided not to obtain such advice) and has not relied in any respect on the Company, the Guarantor or the Placement Agent for such advice. Such Investor has had a reasonable time to ask questions and receive

answers concerning the Company and the Guarantor and their business and the terms and conditions of the offering of the Notes and the Guarantee and the transactions contemplated hereby and to obtain any additional information that each of the Company and the Guarantor possess or could acquire without unreasonable effort or expense, and has generally such knowledge and experience in business and financial matters and with respect to investments in securities as to enable such Investor to understand and evaluate the risks of such investment and form an investment decision with respect thereto. Except for the representations, warranties and covenants made by the Company and the Guarantor in the Transaction Documents, such Investor is relying on its own investigation and analysis in entering into the transactions contemplated hereby.

(vii) Such Investor represents that it is not an "affiliate" (as that term is defined in Rule 405 under the Securities Act) of the Company or of the Guarantor.

(viii) Such Investor understands that the Company, the Guarantor, the Placement Agent and others will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements. If such Investor is acquiring the Notes and the Guarantee as a fiduciary or agent for one or more investor accounts, it represents that it has sole investment discretion with respect to each such account and it has full power to make the foregoing representations, acknowledgements and agreements on behalf of such account.

(ix) Such Investor acknowledges that the Placement Agent, the other Investors and their respective directors, officers, employees, representatives and controlling persons have no responsibility to such Investor for making any independent investigation of the information contained in the Transaction Documents or any other materials provided in connection with the offering of the Notes and the Guarantee and make no representation or warranty to such Investor, express or implied, with respect to the Company, the Guarantor, the Notes or the Guarantee or the accuracy, completeness or adequacy of such materials, nor shall any of the foregoing persons be liable for any loss or damages of any kind resulting from the use of the information contained therein or otherwise supplied to such Investor.

(x) Such Investor acknowledges that neither the Placement Agent nor any other Investor has acted as its financial advisor or fiduciary in connection with the issue and purchase of the Notes and the Guarantee.

(xi) Such Investor acknowledges that no action has been or will be taken in any jurisdiction outside the United States by the Company or the Placement Agent that would permit an offering of the Notes and the Guarantee, or possession or distribution of offering materials in connection with the issue of the Notes and the Guarantee (including any filing of a registration statement), in any jurisdiction outside the United States where action for that purpose is required. Such Investor will comply with all applicable laws and regulations in each foreign jurisdiction in which it purchases, offers, sells or delivers Notes and the Guarantee or has in its possession or distributes any offering material, in all cases at its own expense.

(d) Tax Advisors. Such Investor has reviewed with its own tax advisors the U.S. federal, state and local and non-U.S. tax consequences of this investment and the transactions contemplated by the Transaction Documents. With respect to such matters, such Investor relies solely on any such advisors and not on any statements or representations of the Company, the Guarantor or any of its agents, written or oral. Such Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment and the transactions contemplated by the Transaction Documents.

(e) No Violations. The entry into and performance of this Agreement by such Investor and the consummation by such Investor of the transactions contemplated hereby will not (i) result in a violation of the organizational documents of such Investor, (ii) conflict with, or constitute a default under, or give to others any rights of termination, amendment, acceleration or cancellation of any agreement, indenture or instrument to which such Investor is party, or (iii) result in the violation of any law, rule, regulation, order, judgment or decree (including federal and state securities laws) applicable to such Investor, except in the case of clauses (ii) and (iii) above, for such conflicts, defaults, rights or violations which would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of such Investor to perform its obligations hereunder.

(f) No Legal, Tax or Investment Advice. Such Investor understands that nothing in the Transaction Documents, or any other materials presented to such Investor in connection with the purchase and sale of the Notes and the Guarantee constitutes legal, tax or investment advice. Such Investor has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Notes and the Guarantee and has made its own assessment and has satisfied itself concerning the relevant tax and other economic considerations relevant to its investment in the Notes and the Guarantee.

(g) Source of Funds. At least one of the following statements is an accurate representation as to each source of funds (each, a "**Source**") to be used by such Investor to pay the purchase price of the Notes to be purchased by such Investor:

(i) The Source is an "insurance company general account" (as the term is defined in the United States Department of Labor's Prohibited Transaction Exemption ("**PTE**") 95-60) in respect of which the reserves and liabilities (as

defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the "**NAIC Annual Statement**")) for the general account contract(s) held by or on behalf of any employee benefit plan, together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95-60) or by the same employee organization in the general account, do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Investor's state of domicile;

(ii) the Source is a separate account that is maintained solely in connection with such Investor's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account;

(iii) the Source is either (a) an insurance company pooled separate account, within the meaning of PTE 90-1, or (b) a bank collective investment fund, within the meaning of PTE 9138, and, except as disclosed by such Investor to the Company in writing pursuant to this clause (iii), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund;

(iv) (a) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the "**QPAM Exemption**")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), (b) no employee benefit plan's assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, (c) the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, (d) neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Company that would cause the QPAM and the Company to be "related" within the meaning of Part VI(h) of the QPAM Exemption, and (d) (1) the identity of such QPAM and (2) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more

of the assets of such investment fund, have been disclosed to the Company in writing pursuant to this clause (iv);

(v) (a) the Source constitutes assets of a "plan(s)" (within the meaning of Part IV(h) of PTE 96-23 (the "**INHAM Exemption**")) managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV(a) of the INHAM Exemption), (b) the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, (c) neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Company and (d) (1) the identity of such INHAM and (2) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Company in writing pursuant to this clause (v);

(vi) the Source is a governmental plan;

(vii) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this clause (vii); or

(viii) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 3(g), the terms "**employee benefit plan**," "**governmental plan**" and "**separate account**" shall have the respective meanings assigned to such terms in section 3 of ERISA.

4. ***Covenants of the Company and the Guarantor***.

(a) *Use of Proceeds*. The proceeds of the sale and issuance of the Notes shall be used by the Company (i) to pay fees, costs and expenses arising in connection with the issuance of the Notes (including the Ticking Fee, if any) and (ii) to the extent not used for purposes of clause (i) above, to repay at or prior to maturity thereof an equivalent principal amount of the outstanding 6% convertible promissory notes of the Company due December 2020 (the "**6% Convertible Notes**", and the principal amount of 6% Convertible Notes equal to such proceeds being referred to herein as the "**Proceeds Repaid 6% Convertible Notes**"). Notwithstanding the foregoing, to the extent the Company is unable to use the proceeds of the sale and issuance of the Notes to repay any 6% Convertible Notes because such 6% Convertible Notes have been converted by any of the holders thereof into shares of the Company's common stock, the Company may use such proceeds for general corporate purposes.

(b) *Information Rights*. The Company and the Guarantor shall deliver to each Investor any required information and reports as set forth in the Indenture.

(c) *No Integration.* Any offer or sale, direct or indirect, in the United States or to any U.S. person (as defined

in Rule 902 under the Securities Act), of any Notes and the Guarantee or any substantially similar security issued by the Company or the Guarantor, within six months subsequent to the date on which the distribution of the Notes and the Guarantee has been completed, will be made under restrictions and other circumstances that would not affect the status of the offer and sale of the Notes and the Guarantee in the United States and to U.S. persons contemplated by this Agreement as transactions exempt from the registration provisions of the Securities Act, including any sales pursuant to Rule 144A or Regulation S under the Securities Act.

(d) *Expenses*. The Company agrees to pay or cause to be paid from the proceeds of the issuance of the Notes and the Guarantee all reasonable, documented fees and expenses of Pillsbury

Winthrop Shaw Pittman LLP, acting as special counsel to the Investors, in an aggregate amount not to exceed $350,000 (except as otherwise provided in the fee letter dated January 7, 2020 between Pillsbury Winthrop Shaw Pittman LLP and the Company), it being understood that the Company will not reimburse any other expenses of the Investors (including expenses of any other counsel).

(e) *Right of First Offer*. Upon any proposed issuance of Additional Securities (as defined in Exhibit A), the Company will grant to each Investor the right to purchase an aggregate amount of such Additional Securities in an amount equal to the same proportion that the principal amount of Notes such Investor has purchased as set forth opposite its name in **Schedule II** bears to the aggregate principal amount of Notes issued to the Investors on the Closing Date and at a purchase price specified by the Company (which purchase price shall not be more than the purchase price per Additional Security being offered to other investors), with such right to purchase being exercised by such Investor by delivering a written commitment to the Company in respect of such Additional Securities no later than 10 business days after being notified of such proposed issuance by the Company. To the extent that any Investor declines to exercise its right to purchase any Additional Securities (in whole or in part) or fails to exercise such rights within the 10-business-day period specified above, the Company will promptly notify the other Investors (only if each such other Investor previously exercised its right to purchase previously available Additional Securities in full pursuant to the preceding sentence), in which case such other Investors will have the right to purchase such remaining Additional Securities on the same terms as any Additional Securities they previously exercised the right to purchase pursuant to the preceding sentence, with such right to purchase being exercised by such Investors by written notice to the Company no later than two business days after being notified of the opportunity to purchase such remaining Additional Securities by the Company.

(f) *Ticking Fee*. If (i) the Closing has not occurred on or prior to the Fee Reference Date (as defined herein) and (ii) the Ticking Fee has not been paid to the Investors on or prior to the Cut-Off Date (whether by reason of the failure of the Closing to occur by the Cut-Off Date or otherwise), then the Company shall pay to the Investors on the Cut-Off Date a fee equal to $175,000 (allocated on a pro rata basis based on the principal amount of the Notes set forth opposite each Investor's name on **Schedule II** hereto) by wire transfer of immediately available funds to the respective accounts of such Investors identified by such Investors to the Company. For the avoidance of doubt, this Section 4(f) shall survive any termination of this Agreement.

5. ***Conditions to Closing of the Investors***. Each Investor's obligations at the Closing are subject to the fulfillment, on or prior to the Closing Date, of all of the following conditions, any of which may be waived in whole or in part by all of the Investors:

(a) *Representations and Warranties*. The representations and warranties made by the Company and the Guarantor in Section 2 shall have been true and correct when made on the Execution Date and shall be true and correct on the Closing Date.

(b) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date with certain federal and state securities commissions, the Company and the Guarantor shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Notes and the Guarantee, the execution and delivery of the Transaction Documents and the compliance by the Company and the Guarantor with their obligations under the Transaction Documents at or immediately following the Closing Date.

(c) *Covenants*. The Company and the Guarantor shall have performed or complied with all covenants, agreements and conditions contained in this Agreement to be performed or complied with by the Company and the Guarantor on or prior to the Closing in all material respects.

(d) *Legal Requirements*. At the Closing, the sale and issuance by the Company and the Guarantor, and the purchase by the Investors, of the Notes and the Guarantee shall be legally permitted by all laws and regulations to which the Investors, the Company or the Guarantor are subject.

(e) *Proceedings and Documents*. All corporate and other proceedings in connection with the transactions contemplated at the Closing and all documents and instruments incident to such transactions shall be reasonably satisfactory in substance and form to the Investors.

(f) *Transaction Documents*. The Company and the Guarantor shall have duly executed and delivered to the Investors the following documents:

(i)This Agreement;

(ii)Their Definitive Securities;

(iii)The Indenture; and

(iv)The Security Agreement.

(g) *Notes Collateral*.

(i) The Investors shall have received on the Closing Date the following, in form and substance reasonably satisfactory to the Investors:

(A) appropriately completed copies of Uniform Commercial Code Form UCC-3 financing statement amendments necessary to release all Liens (other than any Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of Permitted Liens) of any Person in any Notes Collateral; and

(B) certified copies of (i) Uniform Commercial Code Requests for Information or Copies (Form UCC-11), or a similar search report certified by a party acceptable to the Collateral Agent, dated a date reasonably near to the Closing Date, listing all effective financing statements which name the Company under its present name and any previous names, as the debtor, together with copies of such financing statements and (ii) search reports evidencing all tax, judgment or other Liens as may be requested by the Investors;

(ii) The Collateral Agent shall have a first priority Lien (subject to any Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of Permitted Liens) for the benefit of the Investors on the Notes Collateral to the extent perfected by a filing of a Uniform Commercial Code financing statement or by possession or control; and

(iii) All Uniform Commercial Code financing statements and any other filings or other actions necessary or desirable to perfect the first priority security interest (subject to any Liens contemplated by clauses (3), 7(B), 7(C), (26) and (35) of the definition of Permitted Liens) for the benefit of the Investors in the Notes Collateral shall have been delivered to the Collateral Agent or taken by the Company to the extent required under the Security Documents.

(h) *Corporate Documents*. The Company and the Guarantor shall have delivered to the Investors each of the following:

(i) Certificates of officers or other authorized signatories of the Company and the officers or limited liability company members of the Guarantor, in form and substance satisfactory to the Investors, as to the accuracy of the representations and warranties of the Company and the Guarantor herein at and as of the Closing, as to the performance by the Company and the Guarantor of all of their respective obligations hereunder to be performed at or prior to the Closing and as to such other matters as the Investors may reasonably request.

(ii) A certificate of the Secretary of the Company, dated the Closing Date, certifying (a) that the Restated Certificate of Incorporation of the Company, certified as of a recent date by the Secretary of State of the State of Delaware and attached thereto, is in full force and effect and has not been amended, supplemented, revoked or repealed since the date of such certification; (b) that attached thereto is a true and correct copy of the Amended and Restated Bylaws of the Company as in effect on the Closing Date; (c) that attached thereto are true and correct copies of resolutions duly adopted by the Board of Directors of the Company and continuing in effect, which authorize the execution, delivery and performance by the Company of this Agreement, the Indenture, the Security Documents and the Notes and the consummation of the transactions contemplated hereby and thereby; and (d) as to the incumbency and specimen signatures of each officer executing any Transaction Document or any other document delivered in connection herewith on behalf of the Company (together with a certification of another officer of the Company as to incumbency and specimen signature of the Secretary of the Company);

(iii) Certificates of an officer, limited liability company members or other authorized signatory of the Guarantor, dated the Closing Date, certifying (a) that the certificate of organization of the Guarantor, certified as of a recent date by the Secretary of State of the State of the Guarantor's organization and attached thereto, is in full force and effect and has not been amended, supplemented, revoked or repealed since the date of such certification; (b) that attached thereto is a true and correct copy of the limited liability company agreement of the Guarantor as in effect on the Closing Date; (c) that attached thereto are true and correct copies of resolutions duly adopted by the Board of Directors (or other governing body) of the Guarantor and continuing in effect, which authorize the execution, delivery and performance by the Guarantor of this Agreement, the Indenture and the Guarantee and the consummation of the transactions contemplated hereby and thereby; and (d) as to the incumbency and specimen signatures of each officer executing any Transaction Document or any other document delivered in connection herewith on behalf of the Guarantor (together with a certification of another officer of the Guarantor as to incumbency and specimen signature of the officer of the Guarantor signing such certificate);

(iv) A Certificate of Good Standing or comparable certificate as to the Company, certified as of a recent date prior to the Closing Date by the Secretary of State of the State of Delaware and a Certificate of Good Standing or comparable certificate as to the Company, certified as of a recent date prior to the Closing Date by the Secretary of State of the State of California; and

(v) A Certificate of Good Standing or comparable certificate as to the Guarantor in its jurisdiction of organization.

(i) Company and Guarantor Counsel Opinion. There shall have been executed and delivered to the Investors an opinion from Latham & Watkins LLP, counsel to the Company and the Guarantor, addressed to the Investors and dated the Closing Date, in substantially the form of Exhibit C.

(j) Investors' Counsel Opinion. Pillsbury Winthrop Shaw Pittman LLP, special counsel to the Investors, shall have furnished to the Investors their opinion, addressed to the Investors and dated the Closing Date, in form and substance reasonably satisfactory to the Investors.

(k) Placement Agent Certificate. The Placement Agent shall have delivered to the Company a certificate, dated on or about the Closing Date, as to the manner of the offering of the Notes and the Guarantee and the number and character of the offerees contacted, which certificate shall state that the Placement Agent (a) did not solicit offers for, or offer, the Notes and the Guarantee by means of any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act, including publication or release of articles, notices or other communications published in any newspaper, magazine or similar medium or broadcast over television, radio or internet, or any seminar or meeting whose attendees have been invited by any general solicitation or general advertising, and did not engage in any directed selling efforts within the meaning of Rule 902(c) of Regulation S, and (b) solicited offers for the Notes and the Guarantee only from, and offered the Notes and the Guarantee only to, (i) Persons who it reasonably believed were QIBs or, if any such Person was buying for one or more institutional accounts for which such Person was acting as fiduciary or agent, only when such Person reasonably believed that each such account was a QIB, (ii) in the case of offers outside the United States, to Persons that are not U.S. persons (as defined in Regulation S) in compliance with Regulation S, or (iii) IAIs and shall further state that counsel to the Company and the Guarantor and to the Investors may rely thereon in rendering their respective opinions to be delivered hereunder.

(l) Ratings. On or prior to the Closing Date, the Investors shall have received evidence of a rating of the Notes from DBRS, Inc. of at least "B-", which rating shall be in full force and effect on the Closing Date.

(m) CUSIP Numbers. Standard & Poor's CUSIP Service Bureau, as agent for the National Association of Insurance Commissioners, shall have issued a CUSIP number and an ISIN for the Notes.

(n) Consents. On or prior to the Closing Date, the Investors shall have received copies of all consents, approvals, authorizations, orders, registrations, declarations and filings set forth in **Item 2(k)** of the Disclosure Schedule.

(o) Updated Disclosure Schedules. The Company shall have furnished to the Investors a document that updates the Disclosure Schedules as of the Closing Date (or shall certify that there are no such changes).

(p) 6% Convertible Notes. The Company shall have provided written evidence satisfactory to the Investors as to one or more of the following with respect to each of the 6% Convertible Notes:

(i) the terms of the 6% Convertible Notes (other than the Proceeds Repaid 6% Convertible Notes, which shall require compliance with one or more other clauses of this Section 5(p)) have been amended on or prior to the Closing Date to provide that the stated maturity date of such 6% Convertible Notes is no earlier than December 1, 2021;

(ii) the 6% Convertible Notes have been repaid on or prior to the Closing Date solely from (A) the proceeds described in Section 4(a)(ii), (B) the proceeds from any other financing consummated by the Company after the Execution Date but on or prior to the Closing Date and (C) up to $25,000,000 of cash otherwise available to the Company (less any amount used pursuant to Section 5(p)(iii)(C));

(iii) the 6% Convertible Notes will be repaid after the Closing Date but on or prior to December 1, 2020 with the proceeds of a cash amount (no less than sufficient to pay all obligations

in respect of the 6% Convertible Notes to be so repaid) on deposit as of the Closing Date in a trust account of the Company (the "**Trust Account**"), which deposit (x) shall be comprised solely of one or more of (A) the proceeds described in Section 4(a)(ii) (to the extent not used to repay the 6% Convertible Notes on the Closing Date), (B) the proceeds from any other financing consummated by the Company after the Execution Date but on or prior to the Closing Date and (C) up to $25,000,000 of cash otherwise available to the Company (less any

amount used pursuant to Section 5(p)(ii)(C)) (the aggregate amount so deposited pursuant to clauses (A), (B) and (C) being referred to as the "**Restricted Amount**") and (y) shall remain on an uninvested basis in such Trust Account until, and shall be restricted as to use solely for, repayment of all obligations in respect of the 6% Convertible Notes to be so repaid on or prior to December 1, 2020. Such Trust Account shall be subject to an escrow agreement or other arrangement to ensure the Restricted Amount is used solely for repayment of all obligations in respect of the 6% Convertible Notes to be so repaid on or prior to December 1, 2020 (the "**Escrow/Alternative Arrangement**") in each case in form and substance, and with an escrow agent or other third party custodian or depositary bank, reasonably satisfactory to the Investors; *provided* that to the extent any 6% Convertible Notes with respect to which funds have been deposited in the Trust Account have been converted by the holders thereof into shares of the Company's common stock after the Closing Date, the Company may withdraw an amount equal to the aggregate principal amount of 6% Convertible Notes so converted from the Trust Account; or

(iv) any 6% Convertible Notes not amended or repaid pursuant to clause (i) or (ii) above, or with respect to which funds have not been applied as described in clause (iii) above, have been otherwise converted by the holders thereof into shares of the Company's common stock.

(q) *Ticking Fee*. If the Closing Date occurs more than 30 days after the Execution Date (such 30th day being the "**Fee Reference Date**"), the Company shall pay to the Investors on the Closing Date, out of the proceeds of the issuance of the Notes, a fee (allocated on a pro rata basis based on the principal amount of the Notes set forth opposite each Investor's name on **Schedule II** hereto) equal to (i) $70,000,000 multiplied by (ii) the number of days from and after the Fee Reference Date to and including the Closing Date multiplied by (iii) 3.00% divided by (iv) 360 (the "**Ticking Fee**").

6. ***Conditions to Obligations of the Company***. The Company's obligation to issue and sell the Notes at the Closing is subject to the fulfillment, on or prior to the Closing Date, of the following conditions, any of which may be waived in whole or in part by the Company:

(a) *Representations and Warranties*. The representations and warranties made by the applicable Investors in Section 3 shall be true and correct in all material respects when made on the Execution Date, and shall be true and correct in all material respects on the Closing Date.

(b) *Governmental Approvals and Filings*. Except for any notices required or permitted to be filed after the Closing Date with certain federal and state securities commissions, the Company and the Guarantor shall have obtained all governmental approvals required in connection with the lawful sale and issuance of the Notes and the Guarantee.

(c) *Covenants*. The Investors shall have performed or complied with all covenants, agreements and conditions contained in this Agreement to be performed or complied with by the Investors on or prior to the Closing Date in all material respects.

(d) *Legal Requirements*. At the Closing, the sale and issuance by the Company and the Guarantor, and the purchase by the applicable Investors, of the Notes and the Guarantee shall be legally permitted by all laws and regulations to which such Investors or the Company are subject.

(e) *Purchase Price*. Each Investor shall have delivered to the Company the purchase price in respect of the Note being purchased by such Investor referenced in Section 1, less such Investor's respective portion of the Ticking Fee, if any.

(f) *Applicable Documents*. Each Investor shall have duly executed and delivered this Agreement to the Company.

7. ***Miscellaneous***.

(a) *Waivers, Amendments, and Termination*. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the Company and Investors holding at least a majority in aggregate principal amount of the Notes then outstanding. This Agreement will be terminated automatically without further action by any of the parties hereto in the event that the Closing Date has not occurred by the Cut-Off Date. This Agreement may be terminated prior to the Closing by mutual agreement of the parties hereto.

(b) *Governing Law; Consent to Jurisdiction; Waiver of Jury Trial*. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO THE RULES THEREOF RELATING TO CONFLICTS OF LAW OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS. The parties hereto hereby submit to the non-exclusive jurisdiction of the U.S. federal and state courts of competent jurisdiction in the Borough of Manhattan in The City of New York in any suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. EACH OF THE INVESTORS, THE COMPANY AND THE GUARANTOR HEREBY WAIVE TRIAL BY JURY IN ANY ACTION BROUGHT ON OR

WITH RESPECT TO THIS AGREEMENT.

(c) *Survival.* The representations, warranties, covenants and agreements made herein shall survive the execution and delivery of this Agreement and any subsequent transferees of the Notes from the Investors shall have the benefit of any such representations, warranties, covenants and agreements made by the Company or the Guarantor in this Agreement as if such subsequent transferee were a signatory to this Agreement as of the Execution Date.

(d) *Successors and Assigns*. This Agreement will inure to the benefit of and be binding upon the Investors, the Company, the Guarantor and their respective successors. This Agreement and the terms and provisions hereof are for the sole benefit of only those Persons.

(e) *Entire Agreement*. This Agreement together with the other Transaction Documents constitute and contain the entire agreement among the Company and the Investors and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

(f) *Notices*. All notices, requests, demands, consents, instructions or other communications required or permitted hereunder shall in writing and faxed, mailed or delivered to each party as follows: (i) if to an Investor, at the address set forth on the Investor's signature page hereto, or at such other address as such Investor shall have furnished the Company in writing, or (ii) if to the Company or the Guarantor, at 4353 North First Street, San Jose, California 95134, and addressed to the attention of the Chief Executive Officer, or at such other address or facsimile number as the Company shall have

furnished to the Investors in writing. All such notices and communications will be deemed effectively given the earlier of (v) when received, (w) when delivered personally, (x) one business day after being delivered by facsimile (with receipt of appropriate confirmation), (y) one business day after being deposited with an overnight courier service of recognized standing or (z) four days after being deposited in the U.S. mail, first class with postage prepaid.

(g) *Separability of Agreements; Severability of this Agreement*. The Company's and the Guarantor's agreement with each of the Investors is a separate agreement and the sale of the Notes and the Guarantee to each of the Investors is a separate sale. Unless otherwise expressly provided herein, the rights of each Investor hereunder are several rights, not rights jointly held with any of the other Investors. Any invalidity, illegality or limitation on the enforceability of the Agreement or any part thereof, by any Investor whether arising by reason of the law of the respective Investor's domicile or otherwise, shall in no way affect or impair the validity, legality or enforceability of this Agreement with respect to other Investors. If any provision of this Agreement shall be judicially determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) *Counterparts*. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Facsimile copies of signed signature pages will be deemed binding originals.

(Signature Pages Follow)

The parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

COMPANY:

BLOOM ENERGY CORPORATION a Delaware corporation

By: /s/ Randy Furr
Name: Randy Furr
Title: Chief Financial Officer and Secretary

GUARANTOR:

RYE CREEK LLC
a Delaware limited liability company

By: Bloom Energy Corporation, its sole member

By: /s/ Randy Furr

Name: Randy Furr
Title: Chief Financial Officer and Secretary

The parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

INVESTOR:
VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY
SECURITY LIFE OF DENVER INSURANCE COMPANY
RELLIASTAR LIFE INSURANCE COMPANY

By: Voya Investment Management LLC, as Agent

By: /s/ Gregory R. Addicks
Name: Gregory R. Addicks
Title: Managing Director

VENERABLE INSURANCE AND ANNUITY COMPANY
EQUITRUST LIFE INSURANCE COMPANY

By: Voya Investment Management Co., as Agent

By: /s/ Gregory R. Addicks
Name: Gregory R. Addicks
Title: Managing Director

NN LIFE INSURANCE COMPANY

By: Voya Investment Management LLC, as Attorney in fact

By: /s/ Gregory R. Addicks
Name: Gregory R. Addicks
Title: Managing Director

The parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the date and year first written above.

INVESTOR:
HONEYWELL INTERNATIONAL INC.
MASTER RETIREMENT TRUST

By: /s/ Jay W. Burden
Name: Jay W. Burden
Title: Director, Fixed Income Investment

HONEYWELL COMMON INVESTMENT FUND

By: /s/ Jay W. Burden
Name: Jay W. Burden
Title: Director, Fixed Income Investment

SCHEDULE I GUARANTOR

Rye Creek LLC, a Delaware limited liability company

SCHEDULE II

SCHEDULE OF INVESTORS

Investor	Aggregate Principal Amount of Notes to be Purchased
EquiTrust Life Insurance Company	$25,000,000
NN Life Insurance Company Ltd.	$12,000,000
ReliaStar Life Insurance Company	$1,500,000
Security Life of Denver Insurance Company	$4,000,000
Venerable Insurance and Annuity Company	$3,000,000
Voya Retirement Insurance and Annuity Company	$4,500,000
Honeywell International Inc. Master Retirement Trust	$15,000,000
Honeywell Common Investment Fund	$5,000,000
Total	$70,000,000

Exhibit 10.4

AMENDMENT SUPPORT AGREEMENT

This Amendment Support Agreement (including all schedules and exhibits hereto, this "*Agreement*"), dated as of March 31, 2020, is entered into by and among Bloom Energy Corporation, a Delaware corporation (the "*Company*"); and each of the undersigned beneficial owners of the Notes (each, an "*Investor*" and collectively, the "*Investors*"). Each of the Company and the Investors may hereinafter be referred to as a "*Party*" and collectively as the "*Parties*".

RECITALS

WHEREAS, the Company has issued 6% Convertible Senior Secured Notes due 2020 (the "*Notes*") under an Indenture, dated as of December 15, 2015, between the Company and U.S. Bank National Association (as amended by the First Supplemental Indenture, dated as of September 26, 2016, the Second Supplemental Indenture, Omnibus Amendment to Notes and Limited Waiver, dated as of June 29, 2017, and the Third Supplemental Indenture and Omnibus Amendment to Notes, dated as of January 18, 2018, the "*Indenture*");

WHEREAS, the Notes and all other obligations under the Indenture are secured by the related Security Agreement, dated as of December 15, 2015, by and among the Company, the Guarantor and the Collateral Agent (as amended by the First Amendment to Security Agreement, dated as of June 29, 2017, and the Second Amendment to the Security Agreement, dated as of July 7, 2017, the "*Security Agreement*");

WHEREAS, each Investor beneficially owns (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended) the aggregate principal amount of Notes indicated under such Investor's name on its signature page hereto;

WHEREAS, the parties intend to (i) amend and restate the Indenture in the form attached hereto as Exhibit A (the "*Amended and Restated Indenture*"), (ii) amend and restate the Notes in the form attached to the Amended and Restated Indenture (the "*Amended and Restated Notes*"), (iii) amend the Security Agreement in the form attached hereto as Exhibit B (the "*Security Agreement Amendment*" and, collectively with the Amended and Restated Indenture and Amended and Restated Notes, the "*Amendment Documents*") and (iv) provide for a release of certain collateral as specified in the Amended and Restated Indenture and the Security Agreement Amendment (the "*Specified Collateral Release*");

WHEREAS, all capitalized terms used in this Agreement but not defined herein have the meanings given to such terms in the Indenture or the Amended and Restated Indenture, as applicable.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Representations and Warranties of Each Investor: Each Investor, severally and not jointly, represents and warrants to the Company that, as of the date of this Agreement, such Investor owns, beneficially or of record, the aggregate principal amount of Notes set forth under its name on its signature page hereto.

2. Agreements of each Investor. Each Investor, severally and not jointly, agrees as

follows:

(a) Each Investor will not sell, assign or otherwise transfer its Notes until the earlier of (i) the amendments to the Notes, the Indenture and the Security Agreement contemplated hereby have been consummated in accordance with the applicable procedures of The Depository Trust Company ("*DTC*") and (ii) the termination of this Agreement pursuant to Section 7 hereof, unless the transferee shall have executed an agreement in writing agreeing for the benefit of the Company to be bound by the terms of this Agreement.

(b) Effective concurrent with the Effective Time (as defined below), such Investor hereby irrevocably consents pursuant to Section 10.03 and Section 17.03 of the Indenture, with respect to all of its Notes, to the Amended and Restated Indenture, the Amended and Restated Notes, the Security Agreement Amendment and the Collateral Release.

(c) Upon the occurrence of the Effective Time, such Investor agrees to take such further actions and/or execute such other written instruments of an administrative nature, in each case as may be reasonably required to evidence its consent pursuant to Section 2(b) hereof or otherwise effect the transactions contemplated hereby (including any administrative actions required to be taken to evidence such consent or effect the transactions contemplated hereby pursuant to the applicable procedures of DTC or as otherwise reasonably required by the Trustee).

3. Representations and Warranties of the Company. The Company represents and warrants to each Investor, as of the date of this Agreement, as follows:

(a) The Company has all requisite power and full legal right to enter into this Agreement and the Amendment Documents, and to perform all of its agreements and obligations hereunder in accordance with their respective terms. This Agreement has been duly authorized, executed and delivered by the Company, and this Agreement constitutes, and the Amendment Documents will constitute, the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be subject to applicable bankruptcy, reorganization, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

(b) The execution, delivery and performance of this Agreement and the Amendment Documents by the Company will not, (i) violate any law, rule or regulation applicable to the Company or the Company's charter, bylaws or other organizational documents or (ii) result in a breach of, or constitute a default under, any material agreement to which the Company is a party or by which it is bound.

(c) No consent of, or registration, declaration, notice or filing with, any governmental authority is required to be obtained or made by, or given to, the Company in connection with the execution, delivery and performance of this Agreement or any Amendment Documents (except as may be required in connection with disclosure obligations under the U.S. federal securities laws).

(d) As of the date hereof, no default or event of default under the Indenture or the Security Agreement, or under any other material indebtedness of Bloom or its Subsidiaries has occurred and is continuing.

(e) As of the date hereof, immediately after giving effect to the consummation of the transactions contemplated hereby, on and as of such date (i) the fair value of the assets of the Company, at a fair valuation, will exceed the debts and liabilities, direct, subordinated, contingent or otherwise, of the Company; (ii) the present fair saleable value of the property of the Company will be greater than the amount that will be required to pay the probable liability of the Company on its debts and other liabilities, direct, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) the Company will be able to pay its debts and liabilities, direct, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (iv) the Company will not have unreasonably small capital with which to conduct the businesses in which it is engaged as such business is now conducted and is proposed to be conducted following the consummation of the transactions contemplated hereby.

(f) It is not necessary in connection with the transactions contemplated hereby to register the Amended and Restated Notes under the Securities Act or to qualify the Amended and Restated Indenture under the Trust Indenture Act of 1939.

4. Agreements of the Company. The Company agrees with each Investor as follows:

(a) Substantially concurrent with the execution and delivery hereof, the Company will deliver to each Investor (i) a legal opinion of Latham & Watkins LLP, in the form attached hereto as Exhibit C, (ii) a secretary's certificate, in the form attached hereto as Exhibit D and (iii) a Support Agreement, in the form attached hereto as Exhibit E, executed by K.R. Sridhar.

(b) On or prior to the date 7 days after the date hereof, the Company shall have paid all fees and

expenses of Canada Pension Plan Investment Board ("*CPP Investments*"), Moelis & Company LLC and Sullivan & Cromwell LLP, as counsel to CPP Investments, that are due and payable in connection with the transactions contemplated hereby and that have been invoiced on or prior to the execution hereof.

(c) The Company will comply with the terms of the Amended Security Agreement, including that all Uniform Commercial Code financing statements and any other filings or other actions necessary or desirable to perfect the first priority security interests for the benefit of the holders in the collateral will have been delivered to the Collateral Agent or taken by the Company and the Guarantors on or prior to the deadlines with respect thereto as provided in the Amended Security Agreement.

(d) Upon the occurrence of the Effective Time, the Company agrees to take such further actions and/or execute such other written instruments, in each case as may be reasonably required to effect the transactions contemplated hereby (including any administrative actions required to be taken to effect the transactions contemplated hereby pursuant to the applicable procedures of DTC or as otherwise reasonably required by the Trustee).

(e) From and following the Effective Time and prior to the execution and delivery of the Amendment Documents and the consummation of the transactions contemplated thereunder, the Company shall comply with the covenants of the Amended and Restated Indenture in the form attached hereto as Exhibit A as if the Amended and Restated Indenture in such form were effective as of the Effective Time.

(f) The Company hereby agrees that if within three months of the completion of an Optional Redemption pursuant to Section 13.02 of the Amended and Restated Indenture, the Company enters into an agreement for a transaction that constitutes a Make-Whole Fundamental Change (as defined in the Amended and Restated Indenture) and the Investors that hold Notes that were redeemed would have received additional value relative to the Optional Redemption Price that was paid if such Investors had instead been given the opportunity to convert their Notes at the time such Make-Whole Fundamental Change is consummated, the Company shall compensate such Holders in cash for the difference in value within five Business Days of the consummation of such Make-Whole Fundamental Change.

(g) The Company hereby agrees with Canada Pension Plan Investment Board ("*CPP Investments*") that if the Company has not redeemed pursuant to the Amended and Restated Indenture, repurchased or otherwise repaid at least $70.0 million of Amended and Restated Notes held (either beneficially or of record) by CPP Investments before September 1, 2020, the Company will repurchase on September 1, 2020 an aggregate principal amount of Amended and Restated Notes held by CPP Investments, at a purchase price of 100% of the principal amount of the Amended and Restated Notes to be repurchased, plus accrued and unpaid interest to but excluding the date of repurchase, such that CPP Investments has been repaid at least $70.0 million after the date hereof in respect of its Notes held as of the date hereof from all repurchases, redemptions or other repayments after the date hereof; *provided* that CPP Investments may decline such purchase (and CPP Investments agrees to provide prior written notice (which notice shall be irrevocable) to the Company that it will decline no later than August 1, 2020); *provided*, *further*, that if the Company, in breach of its obligation hereunder, makes the required repurchase after September 1, 2020, the purchase price for such repurchase shall include the Applicable Premium (as defined in the Amended and Restated Indenture), if any. Any Notes with respect to which CPP Investments declines redemption or repurchase in accordance with the applicable provisions of the Amended and Restated Indenture or this clause (g) will be deemed to have been repurchased or repaid for purposes of this clause (g). For avoidance of doubt, if it is not possible for the Company to repurchase, redeem or repay such amount because CPP Investments has transferred Amended and Restated Notes to another person, converted its Amended and Restated Notes pursuant to the conversion provisions of the Amended and Restated Indenture or its Amended and Restated Notes are no longer held by CPP Investments for any other reason, such that CPP Investments no longer holds a sufficient amount of Amended and Restated Notes, then the requirements of this clause (g) will be deemed to have been satisfied. No Investor (other than CPP Investments) will have any rights pursuant to this clause (g) or Section 4(b).

(h) The Company hereby agrees with D. E. Shaw Valence Portfolios, L.L.C. ("*DE Shaw*") and Credit Suisse Securities (USA) LLC ("*Credit Suisse*") that upon any Optional Redemption pursuant to Section 13.02 of the Amended and Restated Indenture, with respect to any Amended and Restated Notes beneficially owned by DE Shaw or Credit Suisse or their respective Affiliates, the Company will pay each of DE Shaw and Credit Suisse (and/or such

Affiliates), on the applicable Redemption Date, an amount in cash in addition to the amounts they receive under the Amended and Restated Indenture, but only to the extent necessary in order for each of DE Shaw and Credit Suisse (or such Affiliate) to receive the amount in cash they would have received under the Amended and Restated Indenture in respect of such Optional Redemption if the definition of Applicable Percentage therein had the definition set forth below.

"*Applicable Percentage*" means, for any Redemption Date with respect to which the Applicable Premium is included in the redemption price, (i) 50%, if such Redemption Date occurs after the date hereof and on or prior to the 13-month anniversary of the date hereof, and (ii) 100% if such Redemption Date occurs at any time thereafter.

5. Effective Time. The "*Effective Time*" shall mean the date and time at which both of the following have occurred: (i) the Company shall have filed its Form 10-K for the year ended December 31, 2019 with the Securities Exchange Commission on or prior to March 31, 2020, and (ii) the opinion of PricewaterhouseCoopers LLP accompanying the Company's audited financial statements for the year ended December 31, 2019 included in such filing shall not include a "going concern" or like qualification, explanation, limitation or exception or otherwise be qualified.

6. Amendment. This Agreement may not be amended, supplemented, modified or waived in any way unless such amendment, supplement, modification or waiver is made or given by an instrument in writing signed on behalf of each of the Parties hereto; *provided*, *however*, that (i) Section 4(b) and Section 4(g) hereof may be amended, supplemented, modified or waived by an instrument in writing signed on behalf of each of the Company and CPP Investments and (ii) Section 4(h) may be amended, supplemented, modified or waived by an instrument in writing signed on behalf of each of the Company, Credit Suisse and DE Shaw.

7. Term. This Agreement shall be effective as of the date hereof and remain in full force and effect unless (i) the Effective Time has not occurred on or prior to 10:00 p.m., New York City time, on March 31, 2020 or (ii) the Amendment Documents have not been executed and delivered, and the transactions contemplated thereunder have not been consummated, by April 20, 2020, in which case this Agreement will automatically terminate.

8. Several Obligations. The obligations of the Investors hereunder are several and not joint. No Investor shall have any liability hereunder to any other Investor.

9. Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. The words "execution," "execute", "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include signature conveyed by email or PDF, and electronic signatures and contract formations on electronic platforms, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National

Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10. Governing Law; Jurisdiction. This Agreement, and all matters arising out of or relating to this Agreement and any of the transactions contemplated hereby or in connection with to any matter which is the subject of this Agreement, including the validity hereof and the rights and obligations of the Parties, shall be construed in accordance with and governed by the laws of the State of New York applicable to contracts made and to be performed entirely in such state (without giving effect to the conflicts of law provisions thereof which would result in the application of the laws of any other jurisdiction). The Parties hereby irrevocably submit to the exclusive jurisdiction of any court of competent civil jurisdiction sitting in the State of New York over any action arising out of or in connection with this Agreement or any of the transactions contemplated hereby or related to any matter which is the subject of this Agreement and each Party hereby irrevocably agrees that all claims in respect of such action may be heard and determined in such courts. The Parties hereby irrevocably waive any objection which they may now or hereafter have to the laying of venue of such action brought in such court or any claim that such action brought in such court has been brought in an inconvenient forum. Each of the Parties agrees that a judgment in such action may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by any applicable legal requirement.

[*Signature pages follow*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BLOOM ENERGY CORPORATION

By: /s/Shawn Soderberg
Name: Shawn Soderberg
Title: Executive Vice President, General Counsel and Secretary

CANADA PENSION PLAN INVESTMENT BOARD

By: /s/Mike Koen
Name: Mike Koen
Title: Managing Director, Head of Relationship Investments

By: /s/Wendy Franks
Name: Wendy Franks
Title: Senior Principal

Principal Amount of Notes Held by Such Investor $239,862,370

D.E. SHAW VALENCE PORTFOLIOS, L.L.C.

By: /s/Stephen Eilenberg
Name: Stephen Eilenberg
Title: Authorized Signatory

Principal Amount of Notes Held by Such Investor

$14,000,000

KPCB Holdings, Inc., as nominee

By: /s/Susan Biglieri
Name: Susan Biglieri
Title: Authorized Signatory

Principal Amount of Notes Held by Such Investor $*6,933,525*

NEW ENTERPRISE ASSOCIATES 10, LIMITED PARTNERSHIP

By: NEA Partners 10, LP, its general partner

/s/Louis S. Citron

Name: Louis S. Citron
Title: Chief Legal Officer and Attorney in Fact

Principal Amount of Notes Held by Such Investor $13,867,049

[Signature Page to Support Agreement]

CREDIT SUISSE SECURITIES (USA) LLC

By: /s/Gregg R. Edell
Name: Gregg R Edell
Title: Director

Principal Amount of Notes Held by Such Investor $14,636,376

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 March 31, 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: May 11, 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 March 31, 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: May 11, 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 March 31, 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.

3.

Date: May 11, 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 March 31, 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: May 11, 2020

By: /s/ Gregory Cameron

Gregory Cameron

Chief Financial Officer

(Principal Financial Officer)